

CRITICAL STUDY OF CRIMINAL SANCTIONS FOR CHILD NEGLECT BY PARENTS IN INDONESIA

M. Alpi syahrin¹

¹ Faculty of Sharia and Law, Sultan Syarif Kasim State Islamic University, Indonesia.

E-mail: msyabrin@uin-suska.ac.id

Abstract:

Cases of child neglect are considered an indicator of the minimal quality of child protection in Indonesia. Sanctions for perpetrators of criminal acts of child neglect are explained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In fact, sanctions against parents do not support their children are in accordance with the court decision regarding the obligation to pay child support, especially for a father who does not carry out his obligations, namely by revising the Elucidation to Article 76 B of Law Number 35 of 2014 concerning Child Protection, namely by adding editorial clarification. that article. This research uses a qualitative research method with a type of library research with an empirical normative juridical approach that examines reciprocal relationships. The results of the research show that the provisions for criminal sanctions for child neglect committed by parents in Indonesia, by revising the Elucidation of Law Number 35 of 2014 concerning Child Protection, in Article 76B, with a sufficiently clear explanation of the Article, were changed to: "What is meant by Negligence, including the refusal of parents (fathers) to pay child support based on religious court decisions that have permanent legal force.

Keywords: Critical Study, Sanctions, Crime, Child Neglect

1. Introduction

The issue of child support after divorce often becomes a problem because children's rights are neglected and not taken seriously, especially those related to children's basic rights, namely maintenance, education, housing and other supporting facilities. Even though the parents are no longer united in one family, the issue of providing for children's support remains the responsibility of the parents and this should not be transferred to other people. That based on the provisions of Article 41 of Law Number 1 of 1974 concerning Marriage, the consequences of dissolution of a marriage due to divorce are:

- a. Whether the mother or father remains obliged to care for and educate their children, solely based on the interests of the child, if there is a dispute regarding control of the children, the court makes a decision;
- b. The father is responsible for all maintenance and education costs required by the child, if the father is in fact unable to fulfill these obligations, the court can determine that the mother also bears these costs;

The provisions of Article 45 paragraph (1) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 regulate that "Both parents are obliged to care for and educate their children as well as possible". This provision explicitly

emphasizes the importance fulfillment of children's rights to ensure their growth and development process is good through the framework of fulfilling child support.¹ That the regulations do not strictly regulate the lowest amount of post-divorce child support every month and do not regulate strict sanctions against fathers who do not provide and/or neglect child support after the divorce decision. Child neglect is an act that is very detrimental to children and is contrary to human rights. In Indonesia, child neglect is regulated in Article 59 of Law Number 23 of 2002 concerning Child Protection. However, the provisions for sanctions against child neglect by parents are still being debated.² That perpetrators who commit cruelty, violence, or threats of violence, or abuse against children can be punished with imprisonment for a maximum of 3 years and 6 months and/or a fine of a maximum of Rp. 72,000,000.00. If the child suffers serious injuries, the perpetrator can be punished with imprisonment for a maximum of 5 years and/or a fine of a maximum of IDR. 100,000,000,-. These sanctions provisions are still relatively light and do not have a deterrent effect on perpetrators. Therefore, it is necessary to reform the legal protection of children as perpetrators of criminal acts in criminal justice in Indonesia.

That based on data in the form of previous research in articles discussing the fulfillment of child support in Indonesia, including:

1. Implementation of Child Support Payments Based on Court Decisions That Have Permanent Legal Force (Case Study Case Number 2324/PDT.G/2011/PA.JR);³
2. Responsibilities of Parents for Children's Support After a Divorce Decision for Indonesian Citizens who are Muslim;⁴
3. Children's rights to support owed by their father from the perspective of fiqh and positive law (Study of Supreme Court Decision No. 608 K/AG/2003);⁵

¹ M. Nur Syafuddin, Best Interests of Children in Support Decisions as an Effort to Guarantee Children's Human Rights, *Human Rights Journal*, Volume 13 Number 2 August 2022, p.263.

² Child neglect is categorized as an act of violence and is an offense that is prohibited by Indonesian criminal law regulations. For someone who neglects a child, the criminal sanction threatened is imprisonment for a maximum of 5 years or a fine of a maximum of IDR. 100,000,000,- (One Hundred Million Rupiah).

³ Andika Perdana Putra Dewanda, Implementation of Child Support Payments Based on Court Decisions That Have Permanent Legal Force (Case Study Case Number 2324/PDT.G/2011/PA.JR), (Thesis of the Undergraduate Program of the Muhammadiyah University of Jember Legal Studies Program in 2012) .

⁴ Anjani Sipahutar, Responsibilities of Parents for Children's Support After a Divorce Decision for Indonesian Citizens of the Muslim Faith, (2013 University of North Sumatra Law Postgraduate Program Thesis. See also Research on Parents' Responsibility for Children's Support for Children After a Divorce Decision for Citizens Islamic Indonesia, (*USU Law journal* Vol.4 No. 1 January 2016), pp. 152-167.

⁵ Achmad Habibul Alim Mappiasse, *Hak anak atas nafkah terbutang ayah dalam Perspektif fiqh dan hukum positif (Studi Putusan MA No. 608 K/AG/2003)*. (Skripsi Program Strata Satu Perbandingan Hukum dan Mazhab Universitas Islam Negeri Sunan Kalijaga Yogyakarta tahun 2015).

4. Provision of child support by the biological father after divorce (Case Study of Broken Home Families among Students at MAN Salatiga);⁶
5. Juridical review of the implementation of religious court decisions regarding the father's responsibility for child maintenance costs after divorce (Study Decision Number: 586/Pdt.G/2016/PA.Mks);⁷
6. Child Support Rights of State Civil Servants after Divorce (Case Study of the Banda Aceh Syar'iyah Court);⁸
7. Father's Obligation for Child Support Costs After Divorce from an Islamic Law Perspective (Case Study of Divorce in the Sleman Religious Courts in 2015);⁹
8. Father's compliance in paying child support after divorce (Decision Number 0402/PDT.G/2015. PA.BN and Decision Number 0519/PDT.G/2016/ PA.BN);¹⁰
9. Implementation of Child Support Payment Obligations Stipulated in the Semarang Religious Court Decision (Case Number 2521/Pdt.G/2016/PA.SMG and Number 205/Pdt.G/2015/PA.SMG);¹¹
10. Implementation of Providing Support for Children after Divorce (Case Study of Banguntapan Village, Bantul, DIY);¹²
11. Obligations to support children who are victims of divorce (Study of the level of compliance with decisions in the Jambi Class I A Religious Court);¹³

⁶ Muhammad Latif, *Pemberian nafkah anak oleh ayah Kandung setelah perceraian (Studi Kasus Keluarga Broken Home Pada Siswa di MAN Salatiga)*, (Skripsi Program: Strata Satu Jurusan Ahwal Al- Syakhshiyah Institut Agama Islam Negeri Salatiga tahun 2015).

⁷ Abd. Rahman Aziz, *Tinjauan yuridis pelaksanaan putusan pengadilan agama Mengenai tanggung jawab ayah terhadap biaya Pemeliharaan anak setelah perceraian (Studi Putusan Nomor: 586/Pdt.G/2016/PA.Mks)*. (Skripsi Program Strata Satu Hukum Peradilan dan Kekeluargaan Universitas Islam Negeri Alauddin Makassar tahun 2016).

⁸ Zakki Fikri Khairuna, *Hak Nafkah Anak Aparatur Sipil Negarasetelah Perceraian (Studi Kasus Mahkamah Syar'iyah Banda Aceh)*, (Skripsi Program Strata Satu Ilmu Hukum Universitas Islam negeri Ar Raniry Darussalam Aceh tahun 2017).

⁹ Muhammad Hamid Abdul Azis, *Kewajiban Ayah Atas Biaya Nafkah Anak Setelah Terjadi Perceraian Dalam Persepektif Hukum Islam (Studi Kasus Perceraian di Pengadilan Agama Sleman tahun 2015)*, (Skripsi Program Strata Satu Ahwal Syakhshiyah Universitas Islam Indonesia Yogyakarta tahun 2017).

¹⁰ Betra Sarianti, *level of father's compliance in paying child support after divorce*, (Journal of Legal Research Vol. 27 Number 2 of 2015).

¹¹ Ghevina Ferisma W, *Implementation of Child Support Payment Obligations Stipulated in the Decision of the Semarang Religious Court*, (Thesis for Undergraduate Program at the Faculty of Law and Communication, Soegijapranata Catholic University, 2018).

¹² Arlizza Muzayyanah, *Implementation of Providing Support for Children after Divorce (Case Study of Banguntapan Village, Bantul, DIY)*. (2018 Islamic Law Master's Program Thesis, Sunan Kalijaga State Islamic University, Yogyakarta).

¹³ Fatkhor Rahman, *Obligations to support children who are victims of divorce (Study of the level of compliance with decisions in the Class I A Jambi Religious Court)*, (Thesis for the Undergraduate Program of the Family Law Study Program, Sulthan Thaha Saifuddin State Islamic University, Jambi, 2018).

12. Protection of children's maintenance rights after divorce from an Islamic law perspective (Study of Manado religious courts);¹⁴
13. Obligations to support wives and children after breaking up a marriage (Case Study in Curup Tengah, Banyumas District);¹⁵
14. Payment of Child Support as a Result of Dissolution of Marriage in the Legal Area of the Pekanbaru City Religious Court (Case Number 1857/Pdt.G/2017/PA.Pbr and case Number 1254/Pdt.G/2018/PA.Pbr);¹⁶
15. Legal protection against negligence in fulfilling post-divorce child support payments based on the decision of the Blitar Religious Court.¹⁷

Based on the above, there has been a lot of discussion about the lack of realization of child support payments after the parents' divorce, especially regarding child neglect. This research does not specifically discuss the provisions of criminal sanctions for fathers who do not provide for their children, so it is also an idea for the author to carry out research on the provisions of criminal sanctions for child neglect committed by parents in Indonesia.

2. Method

This research uses qualitative research methods with the type of library research with an empirical normative-judicial approach that examines the reciprocal relationship between law and social phenomena, namely that law is not only studied by law in books which states that law applies to the formation and realization of social order. by applying the concept of law is a tool of social engineering, but also having to study law in action by being aware of the social conditions of society and then looking for solutions to every problem.¹⁸ To find the concept of criminal sanctions for child neglect committed by

¹⁴ Nurjana Antareng, protection of children's maintenance rights after divorce according to the perspective of Islamic Law (Study of the Manado Religious Court), (Lex Et Societatis Journal Vol. VI/ No. 4 June 2018), p. 26-34

¹⁵ Ratih Purwasih, Obligations to support a wife and children after breaking up a marriage (Case Study in Curup Tengah, Banyumas District), (Graduate Thesis of the Ahwal Al-Syakhshiyah Study Program, Curup State Islamic Institute, 2019).

¹⁶ Winda Anisa, Payment of Child Support as a Result of Dissolution of Marriage in the Legal Area of the Pekanbaru City Religious Court, (Thesis of Master of Notary Program at Andalas University 2020).

¹⁷ Rufia Wahyuning Pratiwi, Legal protection against negligence in fulfilling post-divorce child support payments based on the decision of the Blitar Religious Court, (Journal: State and justice Vol. 9 No.1 February 2020), p. 99-111,

¹⁸ Burhan Ashshofa, Legal Research Methods (Jakarta; Rineka Cipta, 2013) p. 50., Syamsul Anwar, Islamic Legal Methodology, p. 8-9., Sabian Ustman, Basics of Legal Sociology The Meaning of Dialogue between Law & Society complete with Legal Research Proposal, (Yogyakarta; Student Library, 2009), p. 135-138

parents in Indonesia, this research uses a progressive legal theory approach. According to Satjipto Rahardjo, law is not something static, absolutely final, stagnant and unchanging, but can always change or flow, because law is in the process of becoming (law as a process, law in the making). This is quite interesting when at the level of general common sense it is recognized that man-made laws can certainly change or be changed by those who make them according to the needs or times. In the concept of Progressive Law, the change referred to is perhaps dynamic change. Does this change occur automatically or change itself (potential) without action (actus) changing as in the ideas of Heraklitos, the Ancient Greek philosopher, namely that everything is never fixed, but always changes by itself, It seems, "becomes" or "flows" in Progressive Law is attached to ¹⁹the act of change. If change, "becoming" and "flowing" is placed in a deconstructive postmodern context.

3. Results and Discussion

Child neglect is part of a form of violence against children, because it is included in social violence against children (social abuse). Social child abuse includes child neglect and child exploitation. Child neglect is the attitude and behavior of parents who do not give proper attention to the child's growth and development process. For example, children are ostracized, isolated by their families, or not given proper food, education and health.

Law Number 23 of 2002 concerning Child Protection, is essentially the same, namely both are regulations. Rules are regulatory and coercive for their members, but the basis or purpose is different, giving rise to different implications. Violence is inappropriate behavior that results in physical, psychological, financial loss or danger, whether experienced or group. Meanwhile, violence against children is an intentional act that causes physical or emotional loss or danger to children, including various kinds of behavior. or behavior, ranging from direct physical threats by parents or other adults to neglect of the child's basic needs.²⁰

Providing protection for children is an obligation and responsibility of parents, families, communities, government and the state. As stated in Law Number 23 of 2002 concerning Child Protection, Article 20 which reads

"The state, government, community, family and parents are obliged and responsible for implementing child protection."

The obligations and responsibilities of family and parents are regulated in article 26 which has been amended

¹⁹ Abu Huraerah, "Violence Against Children" (Cet 1, Nuansa, Bandung), 2006, p.37

²⁰ *Ibid*, p.36, in the concept there is also child protection. In a simple form, namely, child protection seeks to ensure that every child's rights are not harmed. Child protection is complementary to other rights which interalia guarantee that children will receive what they need in order for them to survive, develop and grow. Child protection covers important and urgent issues, diverse and varying levels of traditions and values prevailing in society. There are many problems in society that require protection for children, especially minors.

by Law Number 35 of 2014 article 26 which reads as follows:

1. Parents are obliged and responsible for a. Caring for, nurturing, educating and protecting children b. Develop children according to their abilities, talents and interests c. Prevent marriage at the age of children, and d. Providing character education and instilling moral values in children;
2. In the event that parents are absent, or their whereabouts are unknown or for some reason are unable to carry out their obligations and responsibilities, the obligations and responsibilities as intended in paragraph (1) can be transferred to the family, which is carried out in accordance with the provisions of statutory regulations."

According to Article 3 of Law Number 35 of 2014 concerning Child Protection states that, "child protection aims to guarantee the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human dignity, as well as receiving protection from violence and discrimination, for the sake of creating quality, noble and prosperous Indonesian children."²¹

Amarullah Sali stated that: "The success or failure of law enforcement practically depends on whether or not each decision can be implemented which has permanent (definite) legal force." Therefore, what is the legal standard is that it really exists and can be assessed from the implementation of every court decision that has permanent legal force".²²

Based on data in the form of previous research on several journal articles discussing the fulfillment of child support in Indonesia, it can be seen in the following table:

Table I.
Implementation of Child Support Payments Post Parental Divorce

No	Research on Child Support Payments after Parental Divorce	Results
1.	Implementation of Child Support Payments Based on Court Decisions That Have Permanent Legal Force (Case Study Case Number 2324/PDT.G/2011/PA.JR)	Not implemented
2.	Parents' Responsibilities for Children's Support After Divorce Decisions for Indonesian Citizens Who Are Muslim Are	Not implemented
3.	Children's rights to support owed by their father from the perspective of fiqh and positive law (Study of Supreme Court Decision No. 608 K/AG/2003).	Not implemented
4.	Providing child support by biological fathers after divorce (Case Study of Broken Home Families for	Implemented, but the nominal amount is

²¹ Law Number 4 of 1979 concerning Child Welfare

²² Salim, Amarullah. The Role of the State Administrative Court as Judicial Supervision of the Government Based on the General Principles of Good Governance of a Legal State, (Jakarta: State Administration Institute, Ministry of Justice, 2000), p. 26.

	Students at MAN Salatiga)	not in accordance with the Religious Court Decision.
5.	Juridical review of the implementation of religious court decisions regarding the father's responsibility for child maintenance costs after divorce (Study Decision Number: 586/Pdt.G/2016/PA.Mks)	Not implemented
6.	Child Support Rights for State Civil Servants after Divorce (Case Study of the Banda Aceh Syar'iyah Court)	Implemented, the nominal amount is not in accordance with the Religious Court Decision and Child Support Payments are not continuous/sometimes paid and sometimes not paid.
7.	Father's Obligation for Child Support Costs After Divorce from an Islamic Law Perspective (Case Study of Divorce in the Sleman Religious Courts in 2015)	Not implemented
8.	Father's compliance in paying child support after divorce (Decision Number 0402/PDT.G/2015. PA.BN and Decision Number 0519/PDT.G/2016/PA.BN).	Not implemented
9.	Implementation of Child Support Payment Obligations Stipulated in the Semarang Religious Court Decision (Case Number 2521/Pdt.G/2016/PA.SMG and Number 205/Pdt.G/2015/PA.SMG.	Not implemented
10.	Implementation of Providing Support for Children after Divorce (Case Study of Banguntapan Village, Bantul, DIY)	Not implemented
11.	Obligations to support children who are victims of divorce (Study of the level of compliance with decisions at the Jambi Class I A Religious Court).	Not implemented
12.	Protection of children's maintenance rights after divorce from an Islamic law perspective (Manado religious court study)	Not implemented
13.	Obligations to support wives and children after breaking up a marriage (Case Study in Curup Tengah, Banyumas District).	Not implemented
14.	Payment of Child Support as a Result of Dissolution of Marriage in the Legal Area of the Pekanbaru City Religious Court (Case Number 1857/Pdt.G/2017/PA.Pbr and case Number 1254/Pdt.G/2018/PA.Pbr).	Not implemented
15.	Legal protection against negligence in fulfilling post-divorce child support payments. Based on the decision	Not implemented

of the Blitar Religious Court	
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Source: Processed Research Data

Based on Table I. above, namely 15 scientific/research works with various decisions of Religious Courts in various regions on the Implementation of Child Support Payments After Parental Divorce, it can be seen that in its implementation, many were not implemented, even if some were implemented, it is still on record that the implementation not in accordance with the Religious Court Decision regarding the Amount/Nominal that must be paid, there are also payments that are not regular or erratic, of course this is a complicated problem and there must be legal certainty, to be clearer about the Percentage of Implementation of Child Support Payments After Parental Divorce can be seen in the following table:

Table II.
Implementation of Child Support Payments Post Parental Divorce

No	Implementation of Child Support Payments Post Parental Divorce	Amount	Percentage
1.	Held	2	13,33%
2.	Not implemented	13	86,67%
Amount		15	100%

Source: Processed Research Data

Based on Table II. above, it can be seen from the results that the Implementation of Child Support Payments After Parental Divorce from 15 scientific works/research with various Religious Court decisions in various regions, a total of 13 (Thirteen) studies or 86.67% (Eighty Six point sixty seven Percent) stated that the child's post-divorce parent's maintenance payment was not carried out by the father based on the decision of the religious court.

Due to the importance of updating the regulations on criminal sanctions for child neglect committed by parents in Indonesia, revisions should be made to the Elucidation of Law Number 35 of 2014 concerning Child Protection.

In the event that statutory regulations are unclear or incomplete, the Systematic Interpretation or Logical Interpretation method can be used. In this method, the interpretation of legislation is by connecting legal regulations or other laws or with the

entire legal system. Procedures for interpreting this law must not deviate from or depart from the statutory system.

In Law Number 35 of 2014 concerning Child Protection, Article 76B states that every person is prohibited from placing, allowing, involving or ordering children to be involved in situations of abuse and neglect. In Article 77B, every person who violates the provisions as intended in Article 76B, shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of IDR 100,000,000.00 (one hundred million rupiah). That the denial of child support payments based on a religious court decision is part of abandonment, because the decision made by the panel of judges is a decision that has been considered so it is something that has indeed weighed the harm and benefits. Therefore, in the Elucidation of Law Number 35 In 2014 concerning Child Protection, Article 76B, which is quite clear, was changed to: "What is meant by Neglect, includes the denial of a parent (father) to pay child support based on a religious court decision which has permanent legal force.

4. Conclusion

Provisions for criminal sanctions for child neglect committed by parents in Indonesia, by revising the Elucidation to Law Number 35 of 2014 concerning Child Protection, in Article 76B, with an explanation of the Article that is Sufficiently clear, changed to: "What is meant by Neglect, including the refusal of parents (fathers) to pay child support based on religious court decisions which have permanent legal force.

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