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PERADILAN dan HUKUM KELUARGA ISLAM

Kekuatan Eksekusi Putusan Peradilan Agama terhadap Kewajiban Ayah Menafkahi Anak Pasca Perceraian.

The Power of Execution of the Decision of the Religious Courts on the Obligation of the Father to Support Children after Divorce.

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Info Artikel	Abstract
Diterima* 1 September 2020	<i>Penelitian ini bertujuan mengkaji dua pokok masalah penting yakni untuk mengkaji segala aturan terkait dan dasar hukum terhadap kewajiban seorang ayah untuk menafkahi anak pasca perceraian dan kekuatan eksekusi pengadilan agama terhadap kewabiabn terhadap nafkah anak pascaperceraian. Adapaun metode penelitian yang digunakan ialah penelitian hukum normatif. Pendekatan yang digunakan ialah pendekatan undang-undang (statute approach). Dari hasil penelitian dapat disimpulkan bahwa peraturan mengenai kewajiban menafakahi anak oleh ayahnya pascaperceraian tidak memberikan sanksi yang tegas sehingga banyaknya kasus dimana ayah tiak memenhi kewajiban tersebut. perlunya susatu sistem atau mekanisme setelah putusan pengadilan agama dimana kewajiban seorang ayah dapat dipenuhi seperti pemotongan gaji secara otomatis setiap bulannya, mengambil Sebagian harta ayahnya yang kemudian dibayarkan sekaligus diawal, mengambil jaminan harta agar kewajiban seorang ayah dapat dia penuhi setiap bulannya, serta memberikan sanksi yang tegas”.</i>
Revisi I* 17 Oktober 2020	<i>Kata Kunci : Nafkah Anak, Perceraian, Eksekusi Pengadilan</i>
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Disetujui* 26 November 2020	<i>This study aims to examine two important issues, namely to examine all the related rules and legal basis for the obligation of a father to provide for a child after divorce and the power of the execution of the religious court to respect the livelihoods of a child after divorce. The research method used is normative legal research. The approach used is the statute approach. From the results of the study, it can be concluded that the regulations regarding the obligation to support children by the father after divorce do not provide strict sanctions, so that there are many cases where the father does not fulfill this obligation. The need for a system or mechanism after the ruling of a religious court where the obligations of a father can be fulfilled such as automatically deducting wages every month, taking part of his father's assets, which are then paid at once at the beginning, taking collateral for assets so that he can fulfill his father's obligations every month, and giving sanctions that are assertive.</i>
	<i>Keywords: Child Livelihood, Divorce, Court Execution</i>

A. INTRODUCTION

Amid the current development of the world of justice, religious courts are still experiencing their own problems. This problem relates to executing the decision that obliges the father to provide for the child after the divorce. The execution of this decision encountered obstacles when the father did not comply with his obligation based on the religious court's ruling.

Problems related to child support, the religious court basically decided that a father should provide for his child to be paid every month, but the execution of this decision was mostly not followed. Some are obeyed, but the amount is not by the decision by the religious court. Meanwhile, in the 1945 Constitution of the Republic of Indonesia Article 28 B paragraph 2 it is stated that every child has the right to survival, growth and development, and freedom from protection from violence and discrimination ". The regulation of children's rights is also contained in in-laws and international conventions (Convention on the child's rights) convention on children's rights.¹

In the concept of Islamic law for the care of children is included in the Hadlanah area. Hadlanah means responsibility for the care of young children after divorce or breaking up of the Marriage. In-Law No.1 of 1974 and the Compilation of Islamic Law (KHI) clearly regulate the care of children who are not yet included in the category of mumayyiz.²

Article 149 letter d explains that if a marriage breaks up due to divorce, then the ex-husband is obliged to provide hadhanan fees for children who have not reached the age of 21 years. Likewise, in Article 156 letter d, the result of breaking a marriage due to divorce is that all hadhanah costs and child support are the responsibility of the father according to his abilities, at least until the child is an adult who can take care of himself 21 years.

The father must continue to support his child after the divorce. Marriage law does not regulate the sanctions with the force of compulsion regarding living money in the divorce decision to be implemented. Since the sanctions that have compelling power are in the criminal law domain, it can be concluded that the Marriage Law does not regulate criminal sanctions that can be imposed on the father's parents who ignore court decisions. From the axiological realm of legal certainty, the existence of legal sanctions on the laws and regulations of family law in Indonesia serves as social control as an effort preventive measures to prevent child livelihood neglect, as well as a repressive (forcing) effort so that in case of neglect of children's livelihoods.³

¹ Beta Sarianti, 'Tingkat Kepatuhan Ayah Membayar Nafkah Anak Pasca Perceraian', *Supremasi Hukum: Jurnal Penelitian Hukum*, Volume 27, Nomor 2, (2018), h. 107.

² Raudahatunnur, 'Eksekusi Putusan Kewajiban Ayah Atas Nafkah Anak Pasca Peceraian (Studi Kasus Pada Mahkamah Syari'iyah Idi)', *Gender Equality: International Journal Of Child and Gender Studies*, Volume 2. Nomor 1, h. 47-48.

³ Nurhadi dan Alfian Qodri Azizi, 'Filosofis Kewajiban Nafkah Anak Dalam UUU Islam Indonesia', *JAS: Jurnal Ilmiah Ahwal Syakhshiyah*, 1.1 (2019), 67.

The father's obligation to support his child is something that must be carried out, even if it is based on a religious court decision. Lack of control and execution of child support is a separate problem that becomes a problem after divorce. A mechanism and system are needed where the father is obliged to share his right to resolve so many similar cases. The role of the judiciary must be more responsive to every problem as above.

For this reason, this paper will focus on examining and analyzing the problem of the probability of the legal basis governing the obligation of a father to support his child after divorce and the power of execution of religious courts on the obligation to support children.

B. RESEARCH METHOD

This study, using juridical normative legal research methods. The approach used in this research is the statutory approach (Statute Approach). Data sources come from legal documents, statutory regulations, and court decisions relevant to the study of the problem. Data collected and analyzed in-depth to answer problems and provide a perspective in a prescriptive way to find the ideal setting going forward.

C. DISCUSSION

Juridical Analysis of Obligations of Children's Livelihoods

Director General of Islamic Community Guidance at the Ministry of Religion, Kamaruddin Amin, provided data on Indonesia's divorce rate, especially those who are Muslim, stating that the divorce rate reached 306,688 as of August 2020. In 2019, it reached 480,618 cases, and this figure has increased every year since 2015. This is based on data from the Religious Courts of the Supreme Court. This means that the divorce rate in Indonesia averages a quarter of the two million marriages a year. The high rate of divorce will also impact the case of the father's obligation to support his child after the divorce.⁴

After that, the problem of a husband not paying his living occurs due to various factors. The factors causing the failure of the court decision regarding the responsibility of the father to support the child after the divorce are:⁵

- a. Lack of legal awareness;
- b. Lack of understanding of children's rights to support after divorce;

⁴ Intan Umbari Prihatin, 'Kemenag Sebut Angka Perceraian Mencapai 306.688 Per Agustus 2020', *Merdeka.Com* <<https://www.merdeka.com/peristiwa/kemenag-sebut-angka-perceraian-mencapai-306688-per-agustus-2020.html>>., di akses pada tanggal 1 Oktober 2020.

⁵ Raudahatunnur, Eksekusi Putusan Kewajiban Ayah atas Nafkah Anak Pasca Peceraian (Studi Kasus Pada Mahkamah Syari'iyah Idi), *Gender Equality: International Journal Of Child and Gender Studies*, Volume 2, Nomor 2, September 2016, h. 47-48

- c. Low parental income;
- d. Father has had other obligations after remarriage;
- e. There has been a deduction due to credit.

Apart from this, there are also various obstacles experienced by husbands when divorcing. As for the obstacles that are often experienced when implementing the provision of living allowances for children after a divorce:⁶

- a. The child's mother never took issue with or took issue with her ex-husband (the child's father), or it can be said that the mother just gave up. The way to overcome this is that the mother who cares for and educates the child must have the courage to compel or demand that the ex-husband fulfill the decision of the religious court;
- b. In the execution of the execution of providing support for children due to divorce, the religious court does not supervise whether the decision is carried out by the decision of the panel of judges or not. In order to monitor this, the religious courts can be proactive in guarding court decisions whether there are reports of aggrieved actions or no reports, so that the religious court decisions can be executed properly
- c. For Civil Servants, the child's right after divorce will be disrupted if the civil servant responsible for the child's livelihood (the father) has much debt, thereby reducing the child's right to support. Steps that can be taken care that civil servants are given a debt or credit limit not to exceed the right to support their children, and there is the continuous guarantee.

Regardless of the problem a father does not pay for his living to his child. There are so many regulations that oblige the father to pay these obligations. Starting from the law:

- a. Law Number 1 of 1974 concerning Marriage;
- b. Compilation of Islamic Law;
- c. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection;

The article description of the above regulation can be seen that Article 41 of Law Number 1 of 1974 concerning Marriage explains that: The consequences of breaking a marriage due to divorce are:

- a. Either the mother or the father is still obliged to care for and educate their children, solely based on the child's interests. If there is a dispute regarding the control of the children, the practice gives a verdict.

⁶ Nur Chlifah dan Bambang Ali Kusumo, 'Hak Nafkah Anak Akibat Perceraian', *Wacana Hukum*, Volume 9, Nomor 2, h. 64.

- b. The father is responsible for all the maintenance and education costs needed by the child. If the father cannot give this obligation, the court can determine that he is responsible for the costs.

In the Compilation of Islamic Law Article 105 letter

c, "in the event of a divorce, the maintenance is borne by the father". And in article 149, letter d, that "if the marriage breaks up due to divorce, then the ex-husband is obliged to provide hadhanan fees for his children who have not reached the age of 21 years". And in Article 156 letter d, that "the result of the breakdown of marriage due to divorce is that all costs of hadhanah and child support are the responsibility of the father according to his ability, at least until the child is an adult who can take care of himself 21 years". Hadhonah referred to in this case the activity of loving, caring for and educating children to adulthood or standing alone.

In Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 26 paragraph 1 letter a states that "parents are obliged and responsible to care for, care for, investigate, and protect children". Article 9 paragraph 1 states that "every person is prohibited from neglecting a person within the scope of his household, whereas according to the law that applies to him or because of the agreement, he is obliged to provide life, care or maintenance". And in Article 49 it says that "shall be punished with imprisonment of up to 3 years and a maximum fine of Rp. 15,000,000.00, every person who neglects another person within the scope of his household as contained in Article 9 paragraph 1".⁷

As for the other articles in Article 23 of the Child Protection Law stipulates that "the State, Government, and Local Government guarantee the protection, maintenance and welfare of children by taking into account the rights and obligations of parents, guardians, or other people who are legally responsible for children". This article also gives a role to the government in protecting a child's rights from the parents. The government's role must really be present in ensuring the protection, maintenance, and welfare of children. Like the case of a father who does not provide for his child, the government based on the Child Protection Law is certainly obliged to control this because this is the Child Protection Law mandate.

From the above regulations, we can see an obligation for a father to his child after a divorce from his wife. The marriage law and the compilation of Islamic law contain clear rules regarding a father's obligations to bear the costs of maintaining and educating the child. However, no norm contains sanctions or coercion when the father does not carry out these obligations. Without coercion is one factor in so many cases related to not fulfilling children's living by fathers today.

As for the law regarding domestic violence, it does stipulate criminal sanctions for those who neglect other people within their household's scope. This rule can impose coercion on the reluctant father to provide for the child.

⁷ Pemerintah Republik Indonesia, 'Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak', 2014.

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It takes a special mechanism and coercion that can be applied in the future so that cases like this do not always repeat themselves, considering the high number of divorces each year. Enforcement of criminal penalties seems more appropriate in cases of the obligation of children to support their children. However, if it pushes for criminal sanctions or penalties, that is tantamount to ultimately stopping the living that is entitled to a father. This is because it restricts a father from working and making money. After all, he has been given a criminal sentence.

Power of Execution of Religious Court Decisions

The authority of the religious court is regulated in Article 49 of Law Number 3 of 2006 concerning the Religious Court, which states that: "The religious court has the duty and authority to examine, decide and resolve cases at the first level between people who are Muslim in the field of Marriage, inheritance, wills, grants, endowments, zakat and infaq. From this authority it is very clear that in the field of Marriage and relating to divorce in Islam, it is included in the scope of the competence of the religious court."⁸

The legal basis of the Religious Courts' authority has been amended twice from the original law, namely Law Number 7 of 1989 concerning the Religious Courts. The 2 changes are:

a. Law Number 50 of 2009 concerning Second Amendment to Law Number 7 of 1989 concerning the Religious Courts; and

b. Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts.

The religious court law regulates in detail the mechanisms for proceeding and what falls within the scope of its main authority or competence in examining and deciding cases.

The most important thing from the issues raised in this study is the power of executing the Religious Courts decisions on child support cases. The execution of decisions sometimes encounters obstacles in their implementation, this happens in all spheres of justice in Indonesia. In terms of execution is implementing a court decision that has permanent legal force (in kracht van gewijsde) which is carried out by force because the party who loses in the case does not want to comply with the implementation of the court's decision accordingly.⁹

According to Yahya Harahap, there are four principles of execution which are the basic foundation of every decision to be executed. As for these principles:¹⁰

a. Decisions that will be recognized have permanent legal force, except for an immediate decision, a provisional decision, a Grosse Deed and a Certificate of Mortgage;

⁸ Pemerintah Republik Indonesia, 'Undang-Undang Nomor 3 Tahun 2006 Tentang Peradilan Agama', 2006.

⁹ M. Yahya Harahap, *Ruang Lingkup Eksekusi Bidang Perdata* (Gramedia, 1991). h. 5.

¹⁰ Harahap.

- b. The judgment is not voluntarily enforced by the loser;
- c. The verdict to be executed is condemnator; and
- d. Execution by order and presided over by the head of the court.

Apart from the above principles, regarding the types, the execution of decisions consists of two types, namely:

- a. Real execution,

This real execution can be in the form of emptying, handing over, distributing, dismantling, doing something or not doing something, and ordering or stopping an act (Article 218 paragraph (2) RBg / Article 200 paragraph (11) HIR / Article 1033 RV).

- b. Payment Execution

Payment execution, in this case, the execution of the payment of a sum of money (*executie verkoof*), is carried out through an auction mechanism (Article 208 RBg / Article 196 HIR).

From the principles and types of execution, the decision above is a description of the court's decision that is obligatory to be implemented because it contains coercion against those who accept the decision.

We all know that in the procedural law of religious courts, it cannot be separated from HIR / RBG, because there are still many things that need procedural arrangements. One of the articles is Article 196 HIR / Article 208 RGB which states: "If the defeated party is unwilling or negligent to comply with the court's verdict peacefully, the winning party in the case submits a request to the head of the district court to enforce the court's decision." then the head of the district court can summon the party who is under the law and give a warning so that the losing party can fulfill the injunction of the court's decision within a maximum of 8 (eight) days This can also be applied in a religious court to file a request for execution to the religious court which decides the case.

Execution of the child's income from the father is not an easy matter because it is not a once but an obligation every month until the child is an adult. Therefore, a separate mechanism is needed to guarantee that these obligations can be carried out correctly. Several offers can be used, including:

- a. If he/she is a civil servant or has a permanent job, then his salary will be deducted every month;
- b. If he/she is not an employee but has certain assets, then the assets can be used as support for his child, which is counted until he is an adult;
- c. The court asks for guarantees regarding the performance of these obligations in the form of valuable assets;
- d. There are sanctions in the form of fines to penalties when there is no good faith to implement the decision.

D. CLOSING

Conclusion

From the discussion above, we can conclude that basically, the regulation of child support is very clearly regulated in various existing regulations. However, there is no compulsion on a father's obligation to support his child after divorce in this regulation. This is one of the factors in so many cases where a father does not fulfill his obligation. The decisions of the Religious Courts have the same legal force as other courts. As for the problem is related to the execution of decisions on child support from his father after the divorce.

Suggestion

The existing rules and regulations do not provide apparent certainty for sanctions when a father does not fulfill his obligation to support his child after divorce. So that in the future, every word that gives an obligation to someone is accompanied by strict sanctions. This could be a reason to force someone to comply with the existing regulations. Court decisions have strict execution power and are mandatory to enforce. To strengthen this decision in the case of child support, a sound system or mechanism is needed, one of which is control from the court after the verdict. Also, other coercions are terminated when there are allegations that a father has not implemented it, such as automatic salary deductions every month, taking part of his father's assets which are then paid at once at the beginning, taking collateral for assets so that he can fulfill his father's obligations every month, and providing strict sanctions.

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