



Peran Dan Implementasi Pengadilan Agama Dalam Melindungi Hak-Hak Perempuan Dan Anak Pasca Perceraian Melalui Putusan Pengadilan Agama Sebagai Upaya Pertahanan Ekonomi Keluarga

The Role and Implementation of Religious Courts in Protecting the Rights of Women and Children Post-Divorce Through Religious Court Decisions as A Family Economic Defense Measure

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Abstrak

Peran dan implementasi Pengadilan Agama dalam melindungi hak-hak perempuan dan anak pasca perceraian melalui putusan pengadilan agama sebagai upaya pertahanan ekonomi keluarga. Penelitian ini bertujuan untuk memahami bagaimana pengadilan agama secara efektif menjalankan tugasnya dalam melindungi hak-hak perempuan dan anak serta memberikan perlindungan ekonomi bagi keluarga pasca perceraian. Metode penelitian yang digunakan dalam penelitian ini adalah metode penelitian hukum yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan historis. Hasil penelitian menunjukkan bahwa pengadilan agama memiliki peran yang signifikan dalam melindungi hak-hak perempuan dan anak pasca perceraian. Putusan pengadilan agama secara konsisten menerapkan prinsip-prinsip keadilan, kemanfaatan dan kesejahteraan sosial untuk memastikan hak-hak perempuan dan anak terlindungi dengan baik. Melalui putusan tersebut, hakim Pengadilan Agama sebagai aparat negara menjadi garda terdepan dalam memastikan hak-hak perempuan dan anak terlindungi, serta memberikan keadilan dan kemanfaatan bagi pemberian perlindungan ekonomi keluarga. Namun dalam implementasi belum seluruhnya putusan pengadilan agama pasca perceraian yang mengakomodir hak-hak perempuan dan anak. Temuan ini diharapkan dapat memberikan kontribusi pada pengembangan kebijakan yang lebih baik dalam melindungi hak-hak perempuan dan anak pasca perceraian, serta memperkuat peran pengadilan agama sebagai lembaga dari suatu sistem hukum yang berperan dalam pemberian keadilan dan kemanfaatan bagi masyarakat pencari keadilan sebagai upaya pertahanan ekonomi keluarga pasca perceraian.

Kata Kunci: Pengadilan Agama; Hak-Hak Perempuan dan Anak; Putusan Pengadilan.

Abstract

The role and implementation of Religious Courts in protecting the rights of women and children after divorce through religious court decisions as an effort to defend the family's economy. This study aims to understand how religious courts effectively carry out their duties in protecting the rights of women and children and providing economic protection for families after divorce. The research method used in this study is the normative legal research method with a statutory, conceptual, and historical approach. The results of the study indicate that religious courts have a significant role in protecting the rights of women and children after divorce. Religious court decisions consistently apply the principles of justice, benefit and social welfare to ensure that the rights of women and children are well protected. Through these decisions, Religious Court judges as state officials are at the forefront in ensuring that the rights of women and children are protected, as well as providing justice and benefits for providing family economic protection. However, in implementation, not all post-divorce religious court decisions accommodate the rights of women and children. It is hoped that these findings can contribute to the development of better policies in protecting the rights of women and children after divorce, as well as strengthening the role of religious courts as institutions of a legal system that play a role in providing justice and benefits for justice seekers as an effort to defend the family economy after divorce.

Keywords: Religious Courts; Women's and Children's Rights; Court Decisions.

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INTRODUCTION

The 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution, states that every citizen, regardless of gender or age, has the same rights and obligations in the eyes of the law (Indonesia, 2002). Articles 28A and 28I of the 1945 Constitution affirm human rights, including the right of every citizen to live, worship, and the right to self-protection (Cerdas & Afandi, 2019). In the context of women, the 1945 Constitution prohibits discrimination based on gender. Article 28J of the 1945 Constitution states that everyone is obliged to respect the human rights of others in the order of life in society, nation, and state. Law No. 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also supports the protection of women's rights (No. 7 C.E.).

Meanwhile, children's rights are also recognized in the 1945 Constitution. Article 28B Paragraph (2) states that every child has the right to survival, growth, and development and the right to protection from violence and discrimination. Law No. 23 of 2002 which was amended by Law No. 35 of 2014 concerning Child Protection provides a more detailed legal basis related to the rights and protection of children in Indonesia (Number, 23 C.E.). The ideal purpose of marriage according to the marriage law is to form a happy and eternal family, as affirmed in Article 1 of Law Number 1 of 1974 which was amended by Law Number 16 of 2019 concerning Marriage, hereinafter referred to as the Marriage Law, which contains the juridical meaning of marriage is "the bond of birth and mind between a man and a woman as husband and wife to form a family (household) that happiness and eternity based on the One Godhead" (Harlina, 2020). The meaning of marriage is eternal, not temporarily decided, because it is thus possible to establish a peaceful and orderly household and obtain legitimate offspring in society.

In essence, Law Number 1 of 1974 which was amended by Law Number 16 of 2019 concerning Marriage, in Indonesia makes it difficult to get divorced (DAMAYANTI, 2024). This is evident in determining divorce, the judge must use one of the reasons under the Marriage Law. Divorce can occur when there is a demon, for example, a husband who possesses divorce (Thalaq), or a wife who possesses divorce and refers to Thalaq's right as Sighat Taklik Thalaq (Saroni, 2022). In contrast to Islamic divorce which is only carried out in the Court department, but is used in the teaching process. It is a method of reducing the number of rights and obligations that may be demonstrated at the time of the event.

Religious courts in Indonesia have received many cases related to women and children. These cases include divorce talaq, divorce lawsuits, child support, and child custody. The number of cases of Talak Divorce, a Divorce Lawsuit, which has been accepted and decided by the Religious Courts throughout Indonesia in the last 5 (five) years is as follows:

Table 1. Number of Divorce and Talak Divorce Cases Received by Religious Courts Throughout Indonesia

Types of Things	Year 2018	Year 2019	Year 2020	Year 2021	Year 2022
Divorce Lawsuit	325.505	355.842	377.776	363.388	374.427
Thalaq's divorce	118.853	124.776	130.851	121.379	122.449

Source: Annual Report of the Directorate General of Religious Courts

Table 2 Number of Divorce and Talak Divorce Cases Decided by Religious Courts Throughout Indonesia

Types of Things	Year 2018	Year 2019	Year 2020	Year 2021	Year 2022
Divorce Lawsuit	307.778	347.234	330.824	344.935	348.011
Thalaaq's divorce	111.490	121.042	113.231	114.695	113.128

Source: Annual Report of the Directorate General of Religious Courts

Divorce can have a significant impact, especially on children and on women who are single parents. The role of single parents in this case divorced women often involves greater responsibility in caring for and raising children without the help of their ex-husbands. In some cases, divorced women may be the only ones responsible for providing for their children physically, emotionally, and financially without the help of their ex-husbands.

The majority of divorce cases are filed by the wife and end with a reverse decision that only grants the divorce lawsuit. However, the justice that women want through the divorce process that is sued is not only about the divorce itself but also about iddah, mut'ah, custody, and child support as an effort to maintain the family economy, according to the data obtained, and the author's experience working as an employee at the Religious Court. The provision of maintenance of mut'ah and iddah in divorce cases has gone through several decisions of religious court judges, but these decisions still leave problems and shortcomings. This defect is because, unlike divorce cases, no instrument can force the defendant to implement the terms of the judgment. In a talak divorce, the decision can be implemented through a talaq pledge hearing, while in a lawsuit talak, the decision is carried out out of court.

The implementation of rulings on the fulfillment of women's and children's rights after divorce in Indonesia is considered slower than that in other Muslim-majority countries such as Australia, Turkey, Egypt, Qatar, and Malaysia. It takes initiative, awareness, and serious collaborative efforts from the State, Government, Courts, and Society to ensure that the rights of women and children after divorce can be properly implemented in Indonesia and there needs to be a system that forces the implementation of the judge's decision.

RESEARCH METHODS

Research Approach Methods

This approach to legal research is that law is conceptualized as what is written in laws and regulations or laws are conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate (Supryadi & Amalia, 2021). The approach used in conducting normative juridical research in this writing is by using the statute approach and conceptual approach which are the main sources of reference, as well as the comparative law approach of Australia which uses the Common Law legal system as a supporting reference (Safa'at, 2013).

Types and Nature of Research

In this study, the author uses positive law related to the role of the Religious Court in protecting the rights of women and children after divorce and protection in ensuring the fulfillment of the rights of women and children after divorce as an effort to defend the family economy (Purwati, 2020). The nature of the research in this writing is descriptive and analytical, namely to describe the applicable



laws and regulations associated with legal theory in enforcing justice. To fulfill the family's economic defense of the rights of women and children after divorce, the role of the Religious Court is needed by outlining matters related to laws and regulations that can ensure the fulfillment of the rights of women and children after divorce.

Data Collection Sources and Techniques

- Interviews with primary data sources, namely the Chairman, Vice Chairman, Judge and Clerk of the Karawang Religious Court regarding the decision of the Karawang Religious Court which accommodates the rights of women and children after divorce.
- Literature study of data sources, namely laws and regulations and books related to the rights of women and children after divorce

The technique of collecting legal materials in this study is using the library research method to examine the document materials and library materials used in this study. Legal materials are analyzed qualitatively normatively, namely conducting research by interpreting and building statements contained in legal and regulatory documents. This study is carried out by researching existing documents, namely by collecting legal materials and information in the form of books, scientific essays, laws and regulations, and other written materials related to this research, namely by searching, studying, and recording, and interpreting matters related to the object of research.

RESULTS AND DISCUSSION

Family Economic Defense and Protection of Women's and Children's Rights After Divorce

After divorce, many families experienced a decline in economic conditions. This is due to the division of assets, the rising cost of living, and the possibility of losing income from one party (Kabalmay, 2015). Here are some important aspects to consider in maintaining a family economy after divorce:

- **Determination of Maintenance:** After a divorce, it is important to determine the amount of maintenance that must be provided by the party who does not have custody of the child. This aims to ensure that children's needs are still met, including education, health, and daily necessities.
- **Asset Distribution:** Equitable asset distribution is key in maintaining post-divorce economic stability. Courts are often involved in deciding the division of these assets based on applicable law.
- **Women's Economic Empowerment:** Often, women experience greater economic losses after divorce. Therefore, it is important to support women's economic empowerment through skills training, access to employment, and financial support to start a business.

In addition to the economic aspect, the protection of women's and children's rights after divorce is also very important. These rights cover a wide range of aspects, from child custody to protection from domestic violence.

1. **Child Custody:** In many cases, child custody is one of the main issues in divorce. Custody is usually given to the mother, but this arrangement should always have the child's best interests in mind, including the child's right to stay in touch with both parents.

2. Protection from Violence: After divorce, women and children may face the risk of violence from their ex-partners. Therefore, it is important to ensure that there are adequate legal protections, such as detention orders or access to shelters.
3. Access to Justice: Women and children should have equal access to justice in the divorce process. This includes access to legal aid, fair trials, and competent legal representation.

The Role and Implementation of Religious Courts in Protecting the Rights of Women and Children After Divorce

Religious courts in Indonesia are inseparable from the history of the entry of Islam, which existed long before Indonesia's independence. Since its inception, Islam and Islamic law have gone hand in hand, and the need for judicial institutions that decide cases based on Islamic law has been increasing (Zaelani, 2019). During the time of the Islamic kingdoms in the archipelago, the judiciary functioned to implement Islamic law. However, the term "Religious Court" itself is a product of the colonial Netherlands, which called it "godsdienstigenrechtspraak" and Muslims "Mohamedanen". Before independence, this court was known by various names such as the Ulema Council, Raad Agama, and Sharia Court. Although it has existed since the 7th century AD, the Religious Court has undergone various changes along with the development of law and society. During the Netherlands colonial period, this court was officially recognized in 1882 with the establishment of Religious Courts in Java and Madura. However, these courts were not treated on an equal footing with the Landraad (District Court) by the colonial government, which did not provide a budget or salary for its officers. The Netherlands colonialists applied the theory of receptie on the advice of Snouck Hurgronje, who stated that Islamic law was only valid if it was accepted by customary law. This policy limits the authority of the Religious Court, especially in inheritance cases that are transferred to the General Court (Iqbal, 2012). Although after independence the Religious Court was recognized juridically, its authority remained limited and was still influenced by the legacy of Netherlands colonial policy.

After Indonesia's independence in 1945, the Religious Court was still recognized based on Article II of the 1945 Constitution Transitional Rules, which stated that existing state institutions remained in effect until a new law was established (Subiyanto, 2012). In 1946, the Religious Court was transferred from the Ministry of Justice to the Ministry of Religion through Government Regulation No. 5/SD/1946, which transferred the affairs of the High Islamic Court to the Ministry of Religious Affairs. Law Number 19 of 1948 included Religious Courts in the General Court, but this law never came into effect because it was not under the legal awareness of the community (Arifyanto, 2017). Until the Old Order period, the Religious Court was still considered a second-class court, even though Law No. 19 of 1964 had confirmed its existence. During the Old Order period, Government Regulation No. 45 of 1957 recognized Religious Courts outside Java, Madura, and South Kalimantan as one of the four State Judicial Environments. This condition continued until the New Order, although Law No. 14 of 1970 replaced Law No. 19 of 1964. The Religious Court still does not have full authority, only handling divorce and referrals. It was not until 1989, through Law No. 7 of 1989 on Religious Courts, that Islamic law was recognized and enforced, although in inheritance cases there was still the option to choose between the Religious Court and the District Court.

In the Reform Era, the Religious Court reached the peak of its power in 2001 with the third amendment of the 1945 Constitution. Article 24 of the amended Constitution explicitly states that the Religious Court is one of the executors of judicial power under the Supreme Court. In 2004, Law No.



4 of 2004 strengthened the independence of the judiciary by moving the organizational, administrative, and financial development of the Religious Court from the Government to the Supreme Court (Indrayana, 2007). Under the government of Susilo Bambang Yudhoyono, Law No. 3 of 2006 expanded the authority of the Religious Court to include not only marriage, inheritance, wills, grants, waqf, and shadaqah, but also zakat, infaq, and sharia economics. In 2009, Law No. 50 of 2009 further strengthened the position of the Religious Court as a constitutional institution, which could only be abolished through amendments to the Constitution (Manan & SH, 2019). This confirms the important role of the Religious Court in Indonesia's judicial power system.

The Role and Implementation of Religious Courts in Ensuring the Fulfillment of Women's and Children's Rights After Divorce According to Laws and Regulations

Divorce, according to Article 38 of Law Number 1 of 1974, can occur due to death, divorce, or court decision (Rodliyah, 2014). Since the enactment of Law Number 1 of 1974 and Law Number 16 of 2019, divorce in Indonesia has been carried out through the courts after mediation efforts failed, under Article 39 Paragraph (1) (Januartika et al., 2022). The Religious Court is authorized to handle divorce for Muslims, including the obligation to regulate the impact of divorce laws such as child custody, maintenance, and the division of joint property. According to Article 41 of the Marriage Law, parents are still obliged to maintain the child, and the court can determine the cost of living for the ex-wife and children. Religious Courts have an important role in protecting the rights of women and children after divorce, through rulings that guarantee the fulfillment of these rights. In carrying out its functions, religious courts follow Lawrence M. Friedman's theory of the Legal System, which includes legal substance, legal structure (including judges and court jurisdiction), and legal culture (Nugroho et al., 2024). The Supreme Court, in cooperation with the courts in Australia, emphasizes the importance of fulfilling the rights of women and children after divorce. The 2021 circular directs religious courts to provide information on the rights of women and children. As an example of implementation, the Karawang Religious Court has handled various cases related to women and children, including divorce talaq, divorce lawsuits, alimony, and child custody.

Divorce has a significant impact on the fulfillment of women's and children's rights, especially in the context of the family economy. Laws and regulations that protect their rights after divorce are essential to maintain the economic stability of the family.

1. Protection of Women's Rights After Divorce:

- Law Number 1 of 1974 (amended by Law Number 16 of 2019) concerning Marriage:
- Article 41 (c): The ex-husband is obliged to guarantee the living needs of the ex-wife.
- Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI):
- Article 144: Divorce is only valid if it is decided by the court. Ex-husbands are obliged to provide alimony of iddah, mut'ah, masakan, and kiswah to their ex-wives.
- Article 149: Women's rights after divorce, including alimony of iddah and mut'ah.

2. Protection of Children's Rights After Divorce:

- Law Number 1 of 1974 (amended by Law Number 16 of 2019) concerning Marriage:
- Article 41 (b): The father is responsible for the cost of maintenance and education of the child; The court can determine the mother's contribution if the father is unable to afford it.
- Law Number 23 of 2002 (amended by Law Number 35 of 2014) concerning Child Protection:

- Articles 4-18 govern the rights of children, including protection from violence, discrimination, and exploitation.
 - KHI:
 - Article 105 (c): The cost of child maintenance shall be borne by the father.
 - Article 156 (d): Regulates the minimum living expenses of children.
3. Family Economic Defense Efforts After Divorce:
- Strengthening Income Sources:
 - Improving skills and job training for women to earn a better income.
 - Strengthening Legal Protection:
 - Access to legal aid and fair enforcement for women and children.
 - Strengthening Social Support:
 - Build a social support network to provide emotional and practical assistance.

Role of Religious Courts: Religious courts play an important role in protecting the rights of women and children after divorce. Fair and impartial court rulings help maintain the economic stability of the family. However, the main challenge is the enforcement of the ruling, especially in terms of the division of assets. Public education and cooperation between religious courts, social institutions, and the government are important to ensure the smooth implementation of the ruling.

CONCLUSION

Religious Courts have a strategic and very important role in protecting the rights of women and children after divorce starting from being given the widest possible access to the public who will file a divorce lawsuit both electronically (court) and through PTSP services, provide case services, trial services outside the court building, electronic trials (litigation) to decisions that provide justice and fulfillment of the rights of women and children after divorce such as Mut'ah Maintenance, Iddah Maintenance, Past Maintenance (Madhiyah), Kiswah, Child Custody, Child Maintenance to Adult/Independent and the Distribution of Common Property, this is an effort to provide support for the family's economic defense, including the implementation of executions against decisions that are not carried out voluntarily. Laws and regulations have provided an important role in providing legal support and protection to women and children after divorce, in addition to these laws and regulations are used as the main guidelines and references for judges in the Religious Court/

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