



LEGAL PROTECTION OF CHILD CUSTODY RIGHTS AFTER DIVORCE ACCORDING TO ARTICLE 41 OF LAW NO. 1 OF 1974: A STUDY AT THE CIANJUR RELIGIOUS COURT

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Abstract

This study aims to analyze the legal protection of child custody after divorce under Article 41 of Law Number 1 of 1974 concerning Marriage. The focus of this study is on the practice taking place at the Cianjur Class 1A Religious Court. This study uses an empirical juridical method with a descriptive qualitative approach. Data were obtained through observation, document study, and interviews with judges and court clerks. The results show that the protection of children's rights has been considered in the verdict, but its implementation still faces obstacles such as weak post-decision supervision, minimal parental legal awareness, and emotional conflict between parties. Judges use the principle of the best interest of the child and sometimes consider the results of mediation and the psychosocial conditions of the child and parents. Therefore, strengthening regulations, legal education, and the establishment of effective oversight mechanisms are needed to optimize legal protection for children.

Keywords: child custody, legal protection, divorce, Article 41, Religious Court

INTRODUCTION

Divorce is a social phenomenon that not only affects the relationship between husband and wife but also has serious repercussions for the lives of the children born from the marriage. In the context of family law, custody (hadhanah) and child support are two crucial issues that often become sources of disputes after a divorce. Based on Article 41 of Law Number 1 of 1974 concerning Marriage, even though parents have divorced, both parents retain the responsibility to care for and educate their children.

However, the implementation of this legal provision does not always run as intended in practice. Research shows that even though the court has determined who holds custody, the provision of child support is often neglected, especially when there is a lack of adequate oversight from the judicial system (Ulfah Fahmiyati, 2025). For example, in the Cianjur Religious Court, the oversight mechanism for the provision of child support is not yet systematically implemented and relies solely on complaints from aggrieved parties (Rifany, 2025).

This phenomenon reflects the continued weakness of the legal protection system for children after divorce, particularly in terms of fulfilling their economic and emotional rights from both parents. Children are often the ones most disadvantaged, deprived of the ideal balance of affection from both parents. In many cases, custody

conflicts between ex-husbands and wives actually worsen the psychological well-being of children who deserve maximum protection. Yet, children need not only the physical presence of their parents, but also the right to sustenance, education, and comprehensive emotional care. (Sepma and Erwita, 2020)

Data from the Central Statistics Agency (BPS) shows that the divorce rate in Indonesia continues to increase annually. This trend not only reflects social dynamics within households but also has serious consequences for children, who are the most vulnerable in divorce proceedings. The rising divorce rate is directly proportional to the increasing number of children in divorced families, who are potentially denied their basic rights, including economic needs, affection, moral guidance, and education. (BPS, 2023).

The disparity in the implementation of child custody and support rights demonstrates a gap between legal norms and social realities on the ground. Legal protection for children in the context of divorce must not only be declaratory in legislation but also be effectively implemented through a responsive judicial system.

ByTherefore, this study aims to critically explore the implementation of child custody and support after divorce in religious court practice, and to evaluate the extent to which court decisions are able to guarantee the fulfillment of children's rights comprehensively. The main focus is directed at the effectiveness of the implementation of the provisions of Article 41 of Law Number 1 of 1974 concerning Marriage in addressing the problem of child protection after divorce, with a specific case study at the Cianjur Religious Court.

Research methods

This study uses a qualitative, descriptive approach to explore the effectiveness of the implementation of custody (hadhanah) and child support after divorce in the Cianjur Religious Court, based on the experiences, perceptions, and roles of court officials in family law practice. The juridical-empirical approach employed is based on the understanding that law is not merely normative as a product of legislation, but also a social phenomenon that lives and develops in society (Nugraha et al., 2023).

The method used in this research is a case study, focusing on the implementation process of court decisions relating to child custody and support. This study examines in depth the dynamics between legal norms and judicial practices, directly examining their implementation within the social, cultural, and institutional contexts within the Religious Courts (Ramadani et al., 2022).

The basic assumption of this approach is that legal reality is contextual and constructed through interactions between legal actors, court officials, and the community (Nurfalah, 2021). Therefore, researchers seek to understand the meanings and experiences of key informants such as judges, substitute clerks, and the parties to the case.

The initial stages of the research began with the preparation of a proposal and an official permit application from the Cianjur Religious Court. Informants were selected purposively, namely those with direct understanding of the case under study. Data collection techniques included in-depth interviews, analysis of court decision documents, and literature review to gain a comprehensive understanding of the legal and social context.

The data thatThe collected data is then analyzed using Miles and Huberman's interactive model, which consists of three stages: data reduction, data presentation, and conclusion drawing/verification. This technique is used so that researchers can systematically identify patterns, trends, and meanings contained in qualitative data (Miles & Huberman, 2014).

Research Results and Discussion

This study found that the implementation of Article 41 of Law Number 1 of 1974 concerning Marriage in the Cianjur Religious Court has been carried out with consideration of the principle of the best interest of the child. This principle is the primary basis for judges in every decision, so that the protection of children's rights is not only understood as a formal obligation stipulated in legislation, but also as a concrete effort to ensure the physical and psychological development of children after divorce.

Decisions regarding child custody and support are based not only on the normative text of the articles but also through a contextual assessment of the psychological, social, and economic conditions of the parties. In practice, judges consider the child's age, emotional needs related to closeness with each parent, the parents' level of economic and moral stability, and the results of mediation and agreements reached during the trial. These considerations demonstrate an effort to balance the normative aspects of the law with the social realities faced by families after divorce.

BesidesFurthermore, in several cases, judges have also emphasized the importance of ensuring continued child support as an integral part of the right to custody. The amount of support is not only calculated based on the father's financial capacity but also takes into account the child's needs in accordance with the local social conditions. Therefore, it can be said that the implementation of Article 41 in the Cianjur Religious Court is not merely legal and formal, but also oriented towards substantive justice, which strives to ensure that children's rights are fully protected.

A concrete example is seen in the Cianjur Religious Court Decision No. 2660/Pdt.G/2023/PA.Cjr, where a minor child was given to his father because he was deemed to have greater emotional readiness, free time, and a stable income. Although Article 41 serves as the legal basis, judges in practice prioritize a juridical-empirical approach through social and psychological studies of the child.

Right-The children's rights guaranteed by the ruling include the right to adequate care, regular support, education, and emotional relationships with both parents. However, its implementation still faces obstacles. Most cases do not clearly state the amount of support due to limited data on the defendant's income. As a result, judges can only make appropriate determinations based on the principle of reasonableness.

An interview with Pa Rifani, the Junior Clerk of the Cianjur Religious Court, revealed that the implementation of decisions regarding child support still faces structural obstacles. Religious courts, being declaratory in nature, only stipulate rights and obligations in the verdict, without direct executive authority over its implementation. This means that if one party fails to fulfill their obligations, the court can only act upon a request from the aggrieved party. This limitation makes the

system for monitoring the fulfillment of child support ineffective and has the potential to hinder the comprehensive protection of children's rights in post-divorce practice.

Meanwhile, in a separate interview, Ulfah Fahmiyati, one of the judges at the Cianjur Religious Court, explained that the determination of custody rights in court practice is greatly influenced by the factual conditions that develop in the field. She emphasized that judges consider the principle of the best interest of the child as the main basis, including factors such as the child's age, emotional closeness, and the readiness and suitability of parents as caregivers. However, she also acknowledged other obstacles in implementing Article 41 of Law No. 1 of 1974, such as low legal awareness among the parties, prolonged emotional conflict, and the absence of the defendant during the trial process. All of these impact the quality and enforceability of the decision in the long term.

Furthermore, Ms. Ulfah added that some decisions still do not explicitly include child support orders due to limited evidence regarding the father's income. In some cases, defendants submit income figures that cannot be verified, so judges can only estimate the amount of child support based on the child's needs and local social conditions. Furthermore, judges must consider ensuring that the decision remains realistic and not difficult to enforce later.

On the other hand, emotional conflict between former partners is also a hindering factor. Many parents still bring personal issues into parenting, which impacts the child's psychological instability. Weak public legal awareness and the absence of monitoring mechanisms for the implementation of custody and support rights exacerbate this situation. This demonstrates that although the law provides a clear normative basis, its implementation still faces serious challenges on the ground.

This issue also emphasizes the importance of the judge's role, not only as a law enforcer but also as a party striving to deliver substantive justice while considering the best interests of children. Therefore, synergy is needed between the judiciary, relevant agencies such as the Social Services Agency and the Indonesian Child Protection Commission (KPAI), and the public to increase awareness and compliance with court decisions. These efforts are expected to minimize violations of children's rights after divorce and ensure more effective implementation of decisions.

Conclusion

This study reveals that the implementation of Article 41 of Law Number 1 of 1974 concerning Marriage in the Cianjur Religious Court has shown a direction that is in line with the principle of the best interest of the child, especially regarding the determination of custody and provision of post-divorce support. In practice, judges not only adhere to the normative provisions of the law, but also strive to comprehensively consider various relevant aspects. These considerations include the age and psychological needs of the child, emotional closeness to each parent, the economic and moral capacity of the father and mother, as well as the results of the mediation process and the agreement reached by the disputing parties.

Furthermore, judges also consider the social conditions of the surrounding community and the standards of children's needs in their area of residence, so that the

decisions rendered are not only legally just but also realistic to implement. This approach demonstrates an effort to harmonize legal norms, practical interests, and psychological protection for children, so that the resulting decisions can provide a sense of security, stability, and continuity in the lives of children after their parents' divorce. Thus, although several obstacles remain in practice, the legal policy direction taken by the Cianjur Religious Court demonstrates a seriousness in making children the primary subjects whose rights must be protected.

However, although Article 41 of Law Number 1 of 1974 provides a clear legal framework for protecting children's rights after divorce, its implementation still faces significant challenges. These challenges include a weak oversight system for the implementation of decisions, resulting in many decisions being rendered at the declaratory level without any guarantee of effective implementation. Furthermore, the lack of transparency regarding the income of the father or defendant is often a serious obstacle. This makes it difficult for judges to determine the amount of child support proportionally, so that decisions are sometimes only estimates based on the minimum needs of children in the local community.

The low level of legal awareness among parents after divorce also exacerbates the situation, as many still view child support obligations as a personal burden, rather than a legal and moral responsibility that must be fulfilled for the benefit of the child. In practice, there are also cases where judges do not explicitly include the obligation to provide child support in their decisions, especially when not specifically requested by the parties. This situation certainly has the potential to weaken legal protection of children's rights, as it opens up space for obligated parties to evade their responsibilities. Therefore, although a normative framework is in place, strengthening implementation mechanisms, both in terms of regulation and public awareness, is still needed to ensure that child protection can be truly realized.

This situation is further exacerbated by the limited oversight function of external institutions, such as the Indonesian Child Protection Commission and the Ministry of Women's Empowerment and Child Protection. These institutions should act as bridges connecting legal norms enshrined in the law with the social realities faced by children after their parents' divorce. However, this oversight role has not been optimally implemented, resulting in the implementation of court decisions regarding child custody and child support often not in accordance with established regulations.

On the other hand, the declaratory nature of religious courts essentially only determines the rights and obligations of the parties to a dispute, without full authority to supervise or directly ensure the implementation of the decision. The court's authority can only be exercised upon a formal request from a party who feels aggrieved by the failure to implement the decision. This situation results in many decisions regarding child custody and support being suspended at the normative level, without adequate guarantees for implementation in practice.

Thus, it can be concluded that legal protection for children after divorce has not been fully implemented effectively and remains largely normative. While court decisions have established the rights and obligations of each party, in practice, implementing these decisions often encounters various obstacles, both in terms of

public legal awareness and limited oversight mechanisms. Therefore, concrete steps are needed that address structural, cultural, and functional aspects.

This step can be realized through strengthening judicial institutions, namely by developing more effective, measurable, and sustainable instruments to oversee the implementation of every decision related to children's rights. This strengthening goes beyond improving the technical capacity of the judiciary, but also includes providing transparent and accountable monitoring mechanisms, ensuring that all parties involved truly fulfill their obligations.

Besides Furthermore, improving public legal literacy is also crucial, as a good understanding of post-divorce rights and obligations will minimize violations and neglect of children's rights. With adequate legal literacy, parties can be more aware of their roles and responsibilities, both in terms of meeting the child's material and non-material needs.

Furthermore, establishing cross-sector synergy between courts, child protection agencies, relevant government agencies, and the wider community is key to achieving comprehensive protection. This collaboration can take the form of developing child support programs, periodically monitoring child support, and even working together to address psychological and social issues arising from divorce.

With structured and continuous cooperation between these parties, legal certainty and real protection for children will be created, not only limited to court decision documents, but truly implemented in their daily lives.

This is crucial to ensure that the principles of justice and child protection are not limited to the court's decision, but are truly implemented in everyday life. The concrete implementation of court decisions will ensure that children affected by divorce receive their full rights, including care, affection, and the fulfillment of their basic needs. This way, children can grow and develop in a supportive environment, with their rights protected, and with adequate security for their future.

Furthermore, when court decisions are truly implemented responsibly, a healthier legal climate will be created, where divorce is no longer synonymous with child neglect, but rather maintains the child's place as a subject whose interests must be protected. In this way, the principle of the best interest of the child can function not merely as legal jargon, but as a social reality directly present and experienced by children in their daily lives.

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