

Barriers to Child Support After Divorce: A Legal Review in the Indonesian Context

Silva Samanta

UIN Maulana Malik Ibrahim Malang

silvatha462@gmail.com

Abstract:

Child support is one of the legal issues that arise after divorce. Although the law clearly states that child support is a shared responsibility post-divorce, it is not always guaranteed that child support will be fulfilled in accordance with court rulings and applicable laws. One issue that may occur is when the ex-wife obstructs the ex-husband from fulfilling his obligation to provide child support, even denying him access to meet his child. This research aims to describe the views of Civil Law Experts on the obstruction of ex-husbands in providing child support and to explain the legal remedies available for ex-husbands when ex-wives obstruct child support obligations. This research falls under the category of empirical juridical research with a sociological approach. The data sources were obtained through interviews with Islamic Civil Law Experts and supported by relevant laws and literature. The findings of this research indicate that the actions of an ex-wife obstructing the ex-husband from providing child support are not justified, as there is no detailed regulation allowing such obstruction unless it causes harm to the child. The legal recourse available to the ex-husband when his child support obligations are obstructed after divorce is to file a lawsuit for child custody, as stipulated in SEMA No. 1 of 2017.

Keywords: Child Support, Post-Divorce, Islamic Civil Law.



© 2024 by the authors. It was submitted for possible open-access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<http://creativecommons.org/licenses/by/4.0/>).

Introduction

Divorce remains a significant legal issue and social phenomenon in Indonesia. The high number of divorces is evident, with data from the Indonesian Central Bureau of Statistics recording 448,126 divorce cases throughout 2022. Several factors contribute to the high divorce rate, including continuous disputes and disagreements, which are the leading cause of divorce, followed by economic issues, abandonment by one spouse, domestic violence, divorce due to alcohol abuse, apostasy, divorce due to imprisonment, gambling, adultery, polygamy, and forced marriages¹.

¹ Badan Pusat Statistik, "Jumlah Perceraian Menurut Provinsi dan Faktor, 2022", Badan Pusat Statistik Indonesia, 20 Februari 2023, diakses 29 Maret 2024,

One of the legal challenges that arise post-divorce is related to child support. Various legal regulations have emphasized that child support is a shared responsibility after divorce. As stated in Law Number 1 of 1974 concerning Marriage, Article 45 paragraph 1 explains that both parents are obliged to care for and educate their children to the best of their ability. Additionally, in the Compilation of Islamic Law, the obligation to provide child support is regulated in Article 149 letter (d), which states that if a marriage ends due to talaq, the ex-husband is obligated to provide hadhanah (child care) costs for children under 21 years old. Article 156 letter (d) further explains that as a result of divorce, all hadhanah and child support costs fall under the father's responsibility according to his capability, at least until the child reaches adulthood and is capable of self-care (21 years old).

One of the legal challenges that arise after divorce is related to child support. Various legal regulations have emphasized that child support is a shared responsibility after divorce. As stated in Law Number 1 of 1974 on Marriage, Article 45 paragraph 1 explains that both parents are obliged to care for and educate their children to the best of their ability. Additionally, in the Compilation of Islamic Law, the obligation to provide child support is regulated in Article 149(d), which states that if the marriage ends due to talaq (divorce initiated by the husband), the ex-husband is required to provide hadhanah (child care) costs for children under 21 years of age. Article 156(d) further explains that following a divorce, all guardianship (hadhanah) and child support expenses are the responsibility of the father according to his financial capacity, at least until the child reaches adulthood and is capable of self-care (21 years old).

Despite the legal regulations that mandate the fulfillment of child support obligations, several research findings indicate that many ex-husbands or fathers still fail to meet their responsibilities. As highlighted in Shafira Tsany Tsamara's legal study on post-divorce child support, many ex-husbands do not fulfil their obligations due to economic limitations and communication barriers. Similarly, a study published in the Jambi University Law Journal on child support rights after divorce also found that the failure to provide child support is often caused by economic factors and communication breakdowns after the divorce.²

Aside from the issue of former husbands or fathers failing to fulfil their obligations regarding child support, there is also a phenomenon where a former husband, who is trying to provide financial support for his child, is hindered by his ex-wife. As stated in an interview with the ex-husband, identified by the initials (MA), he divorced his ex-wife, referred to as (MS), in 2022. After the court ruling, the ex-husband made a good-faith effort to provide support and meet his child. However, (MA) was unable to meet his child, with reasons given such as the child being asleep or out of the house. The obstacles put in place by the ex-wife are believed to stem from feelings of resentment from their marriage. There has been no access to communication, either directly or through social media. When the ex-husband tries to provide child support in the form of a monthly allowance, the ex-wife often gives various reasons to prevent the meeting and refuses to accept the child support from the ex-husband.³

<https://www.bps.go.id/id/publication/2024/02/28/c1bacde03256343b2bf769b0/statistik-indonesia-2024.html>

² Armevya Sepma and Yenni Erwita, "Pemberian Hak Nafkah Anak Pasca Perceraian Di Pengadilan Agama Jambi," *Zaaken: Journal of Civil and Business Law* 1, no. 2 (2020): 345, <http://online-journal.unja.ac.id/zaaken>.

³ (MA), Wawancara, (Malang, 22 Juni 2024).

As described in the case above, the behavior of the ex-wife in obstructing the ex-husband from providing child support results in the delay or failure to meet the child's basic rights. Meanwhile, current laws do not regulate this form of obstruction, and there are no clear criteria regarding what constitutes obstruction or the legal consequences of it. A child should have certain rights, including the right to material needs, immaterial rights, and the right to social interaction with their father, but these are being hindered by the mother.⁴

Research on the fulfillment of child support rights after divorce has been conducted by several researchers, including a study by Ronal Panjalo, which found that the responsibility of ex-husbands in providing child support is not fully carried out because the fulfillment of child support depends on the good faith of the ex-husband. Another study by Denisa Ratna Faradilla revealed that the failure to provide child support is due to a lack of awareness on the part of the ex-husband.⁵ The research conducted by Abdul Ghofur found that the failure to fulfil child support rights is caused by several factors, including economic factors, drug-related issues, and employment factors.⁶

Regarding the fulfilment of child support rights after divorce, researchers found a study that discusses the obstruction of child support after divorce, namely a study by Rama Dandi. The study revealed that the ex-wife obstructs the ex-husband from fulfilling his obligation to provide child support, citing that the income earned by the ex-husband is not considered halal. While this study does address the refusal of child support by the ex-wife, it only examines the issue from the perspective of Islamic law and does not offer a legal solution for the ex-husband, who also has the obligation to provide for his child.

The absence of regulations regarding the criteria for obstructing child support and legal measures against such behavior by the ex-wife creates legal uncertainty that can threaten the child's economic rights. Unlike the previous study, the purpose of this research is to describe the perspective of Civil Law experts on the obstruction of an ex-husband in providing child support and to outline the legal measures that can be taken against the actions of an ex-wife who hinders an ex-husband from fulfilling his child support obligations.

Metode

This research employs an empirical juridical method, focusing on analyzing the implementation of legal norms within society through direct field data collection. A sociological approach is utilized to examine societal interactions and reactions to the application of normative systems. The study is conducted in Malang City, East Java, chosen due to the availability of relevant informants—Islamic Civil Law experts—and

⁴ Tedy Sudrajat, "Perlindungan Hukum Terhadap Hak Anak Sebagai Hak Asasi Manusia Dalam Perspektif Sistem Hukum Keluarga Di Indonesia," *Kanun Jurnal Ilmu Hukum* 13, no. 2 (2011): 112, <https://jurnal.usk.ac.id/kanun/article/view/6245>

⁵ Denisa Ratna Faradilla, "Tanggung Jawab Orang Tua Terhadap Pemenuhan Nafkah Anak Setelah Perceraian (Studi Kasus Di Kota Makassar)" (Undergraduate thesis, Universitas Muslim Indonesia, 2019), <http://repository.umi.ac.id/162/>.

⁶ Abdul Ghofur, "Hak Nafkah Anak Pasca Perceraian Dalam Perspektif Hukum Islam Dan PerundangUndangan (Studi Kasus Di Keluran Gunung Lingai Samarinda)," (Undergraduate thesis, Universitas Islam Negeri Aji Muhammad Idris Samarinda, 2021), <https://repository.uinsi.ac.id/handle/123456789/1156>.

the occurrence of pertinent cases in the region. The data sources consist of primary data collected through semi-structured interviews with Islamic Civil Law experts in Malang City and secondary data derived from relevant literature, legal documents, and legislation, including Indonesia's Marriage Law, Child Protection Law, and Supreme Court Circular Letter No. 1 of 2017. Data collection involves semi-structured interviews, which provide flexibility for in-depth insights, and document studies, which encompass legal and scholarly literature as well as judicial decisions. The data is processed systematically using several steps: editing for completeness and consistency, classifying data by themes such as legal remedies for child support obstruction, verifying the validity of data by comparing primary and secondary sources, and analyzing the data qualitatively to draw connections between empirical findings and legal theories. Finally, conclusions are drawn based on a synthesis of the data.

The analytical framework combines normative legal aspects with empirical practices, aiming to explain how legal regulations address post-divorce child support obligations, identify barriers in fulfilling these obligations, and explore potential legal remedies. Data validity is ensured through source triangulation, while reliability is maintained by employing consistent interview instruments and meticulously documenting the research process. This methodological approach ensures that the findings are comprehensive, credible, and contextually relevant to Indonesia's legal and social framework.

Results and Discussion

Enforcement of Child Support Rights After Divorce in Indonesia

Law Number 23 of 2004 on the Prevention of Domestic Violence (KDRT) is an important legal instrument for upholding the legal protection of children's rights, especially within the family context. One of the key mechanisms for enforcing legal protection of children's rights is by imposing criminal sanctions on individuals who are legally responsible for children but fail to fulfil their obligations properly. Such actions can be categorized as acts of violence against children and may be subject to criminal penalties in accordance with applicable regulations. The revision and improvement of the Child Protection Law into Law Number 35 of 2014 is a step taken by the Legislature and the Government to enhance the protection of children's rights in Indonesia. With growing public awareness of the importance of child protection and the increasing number of child abuse cases, changes in this law are crucial to adapt to current needs and challenges.⁷

The legal consequences for parents who fail to fulfill their obligations to their children after divorce, regardless of the form of neglect or abandonment, are outlined in the Child Protection Law. Parents who neglect their children after divorce, whether the father or the mother, are subject to Article 76A of the Child Protection Law, which states, "Every person is prohibited from treating children in a discriminatory manner

⁷ Feni Sagita Indah, Kairuddin Karim, and Lia Trizza Firgita Adhilia, "Pemenuhan Hak-Hak Anak Pasca Perceraian," *Jurnal Litigasi Amsir* 11, no. 1 (2023): 3, <https://journalstih.amsir.ac.id/index.php/julia/index>.

that causes them harm, whether material or moral, thereby hindering their social function.” Furthermore, Article 76B states, “Every person is prohibited from placing, allowing, involving, or instructing a child to be involved in situations of mistreatment and neglect.” The criminal sanctions for such actions are stipulated in Article 77B, which provides that anyone who violates the provisions in Article 76B may face a maximum prison sentence of 5 (five) years and/or a maximum fine of IDR 100,000,000 (one hundred million rupiah).⁸

Legal protection regarding the fulfilment of child support has been guaranteed and established in various applicable laws and regulations. As stipulated in Article 1 of Law No. 4 of 1979 on Child Welfare, children's rights are a manifestation of the obligations of both parents to care for their children properly, and it is the parents' responsibility to do so. In cases such as parental divorce, the rights of children that are the responsibility of the parents must still be protected, regardless of whether the parents remain in a marital relationship or are divorced.⁹

Child welfare is regulated in Law Number 4 of 1979 on Child Welfare, which outlines a framework for children's lives that ensures their proper growth and development, both spiritually and physically, as well as socially.¹⁰ Enhancing the protection of children's rights is an important effort in creating well-being for children. Child protection aims to ensure that every child can effectively exercise or obtain their rights and fulfil their obligations. Protection is an inherent right of every child, regardless of whether they request it or not. This reflects the principle of justice in society, where every child has the right to be protected and cared for, especially by their family, which is the core of society and the natural environment for their growth and well-being.¹¹

Various other laws also stipulate that child support must be provided until the child reaches the age of 21 or is able to be independent, whether the child is from the parents' marriage or after the marriage has ended. This is based on Law Number 1 of 1974 on Marriage, which states that the obligation to support a child lasts until the child can stand on their own. The Compilation of Islamic Law (KHI) further clarifies that the age at which a child is considered independent or an adult is 21 years. Additionally, KHI states that in the event of parental divorce, child support is to be provided until the child reaches the age of 21. According to these legal provisions, the specific age limit for providing child support is 21 years. When a divorce occurs, the mechanism for fulfilling child support obligations is also regulated. A demand for child support can be included in divorce petitions and counterclaims filed in court, which is a way to request child support from the father. If child support is specified in a court decision that has

⁸ Adnan Iksan, “Perlindungan Anak Pasca Perceraian Orang Tua,” *Fundamental: Jurnal Ilmiah Hukum* 9, no. 1 (2020): 14, <https://doi.org/10.34304/fundamental.v1i1.9>.

⁹ Ansari, “Legal Certainty Of The Judge’s Decision On The Father’s Obligation To Provide For Children After Divorce,” in *International Conference on Humanity Education and Society (ICHES)*, vol. 3, 2024, <http://proceedingsiches.com/index.php/ojs/article/view/182>.

¹⁰ Irma Setyowati Soemitro, *Aspek Perlindungan Anak*, (Jakarta: Bumi Aksara, 1990), 16-20.

¹¹ Imam Sukadi, “Tanggung Jawab Negara Terhadap Anak Terlantar Dalam Operasionalisasi Pemerintah Di Bidang Perlindungan Hak Anak,” *De Jure: Jurnal Hukum dan Syar’iah* 5, no. 2 (December 30, 2013): 124, <https://doi.org/10.18860/j-fsh.v5i2.3003>.

permanent legal force and the father neglects his obligations, another course of action is to file for execution.¹²

Based on the laws and regulations governing the obligation to fulfil child support after divorce, it is indicated that a father who fails to provide child support can be considered to have committed a criminal act of neglect.¹³ However, there are currently no legal regulations that clearly state the existence of attempts to obstruct child support after divorce. In this sense, there are no limits or criteria that deem it permissible for an ex-wife to obstruct an ex-husband in providing child support, which is an obligation that a father must fulfil. Therefore, there is a need for a legal framework regarding the obstruction of child support, as there are no legal provisions that can be applied to the cases that arise.

In the provisions of Islamic Law and Positive Law, such as the Marriage Law and the Compilation of Islamic Law, it is explained regarding child support after divorce that the parents' obligation to the child is to care for and educate them properly, which also means providing for and fulfilling the child's needs, both materially and non-materially. This obligation remains until the child reaches adulthood or is capable of earning a living for themselves. This obligation persists even if both parents are divorced; if the father is in a state of incapacity, the court may determine that the mother also shares in bearing those costs.¹⁴ Thus, there are currently no legal rules that explain the revocation of parental obligations regarding child support. Even for parents who are said to be economically insufficient, they are still burdened with child support according to their ability.

Regarding the revocation of parental obligations and authority over the child, particularly in terms of guardianship, it is explained in Article 49, paragraph (1) of Law Number 1 of 1974 on Marriage, that the revocation of parental authority as a guardian occurs when a parent neglects their duties toward their child and behaves very poorly. Furthermore, Article 10 of Law Number 4 of 1979 on Child Welfare states that parental authority may be revoked if they neglect their responsibilities in ensuring the welfare of the child, both spiritually, physically, and socially, resulting in obstacles to the child's growth and development. This article explains that the impact of the guardian's actions serves as the basis for the revocation of their authority over the child.¹⁵

In addition to the aforementioned articles, there are legal implications following the revocation of parental or guardian authority, as regulated in Article 32 of Law Number 23 of 2002 on Child Protection. This article states that the revocation of parental authority as a guardian does not sever the blood relationship between the child

¹² Puja Cahyani Prihatining Randhi, "Konstruksi Perlindungan Hukum Terhadap Pemenuhan Nafkah Anak Dalam Keluarga Di Indonesia" (Undergraduate thesis, UIN Sunan Kalijaga, 2019), <https://digilib.uin-suka.ac.id/id/file/978759>.

¹³ Khamim Choirun Nasiruddin Rosichin, "Analisis Keadilan Hukum Terhadap Kewajiban Nafkah Anak Pascaperceraian (Studi Kasus Di Pengadilan Agama Kabupaten Madiun)" (Undergraduate thesis, IAIN Ponorogo, 2021), <http://etheses.iainponorogo.ac.id/id/eprint/13147>.

¹⁴ Rita Widiyani, "Tinjauan Hukum Islam Dan Hukum Positif Terhadap Status Nafkah Anak Pasca Perceraian Tanpa Melalui Keputusan Hakim PA," *Journal Al-Ahkam*, vol 19, no. 2 (2023): 474. <https://jurnal.uinbanten.ac.id/index.php/ahkm>

¹⁵ Fakhruddin dan Ramadhita, "Perkosaan Sebagai Alasan Pencabutan Kekuasaan Wali Dalam Perkawinan," *De Jure: Jurnal Hukum dan Syar'iah* 3, no. 2 (December 1, 2011): 121, <https://doi.org/10.18860/j-fsh.v3i2.2145>.

and their biological parents, nor does it eliminate the parents' obligation to provide care and living expenses for the child.¹⁶

Efforts by the Ex-Wife to Obstruct the Ex-Husband from Providing Child Support After Divorce

In concept, children after divorce are in joint custody; there is no term for ex-parents. When a child is in the care of the mother or ex-wife and is financially supported by the father or ex-husband, the ex-wife should not be allowed to obstruct the ex-husband. This is because the custody arrangement is a shared one. If such obstruction occurs, the child's rights to receive affection from their father cannot be fulfilled. If an ex-wife obstructs her ex-husband from providing support or prevents him from meeting the child, this is not permissible.¹⁷

The ex-wife's attempts to obstruct the ex-husband from providing child support after divorce hinder the rights that the child should receive, as guaranteed by both Islamic law and positive law. Since the obstruction of the child's right to support by the ex-wife is based solely on hurt feelings from the marriage, the child should not be the one affected by their parents' divorce. Therefore, the ex-wife's actions in obstructing the ex-husband from fulfilling his obligation to provide child support for the child are unjustifiable. The responsibility of parents after divorce is also mentioned in Article 149, Letter d of the Compilation of Islamic Law, which states: "When a marriage is dissolved by divorce, the ex-husband is obligated to provide maintenance for his children who have not reached the age of 21." The ex-wife's actions in obstructing child support may hinder the child's normal growth and development, as the obligations that the ex-husband or father should fulfill to provide what is necessary for the child are being obstructed.¹⁸

There is currently no provision in Islamic law or positive law stating that the ex-wife's actions in obstructing the ex-husband from providing support are permissible. Since this falls under private law, obstructing a legal act within private law has not yet been classified as a criminal offense.¹⁹ Based on this statement, the ex-wife's actions in obstructing the ex-husband from providing child support do not constitute a legal violation; such actions still fall under the category of private law and have not yet become a criminal offense. In private law, the principle of autonomy allows the parties involved to regulate their relationship according to their views, such as the freedom to make agreements. In cases of disputes in private law, the right to defend or not defend one's rights lies with the parties themselves to be brought before the court.²⁰

The lack of regulations and policies in Islamic law and positive law that detail the actions of an ex-wife obstructing the ex-husband from providing child support after divorce means that there are no legal consequences for the actions taken by the ex-wife. Therefore, the proposed solution regarding the regulation of child support obstruction is

¹⁶ Ramadhita, 123.

¹⁷ Erfaniah Zuhriah, Wawancara, (Malang, 17 Mei 2024).

¹⁸ Virianto Andrew Jofrans Mumu, "Tinjauan Yuridis Tentang Tanggung Jawab Orang Tua Terhadap Anak Setelah Perceraian Dalam UU No 1 1974 Pasal 45 Ayat (1)," *Lex Privatum* 6, no. 8 (2019): 166, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/22871>.

¹⁹ Muslich, Wawancara, (20 Mei 2024).

²⁰ A. A. Gede D. H. Santosa, "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat," *Jurnal Komunikasi Hukum (JKH)* 5, no. 2 (November 17, 2019): 162, <https://doi.org/10.23887/jkh.v5i2.18468>.

that there should be provisions for violations related to family criminal law. For example, cases of child neglect after divorce, obstruction of child support, or a husband failing to provide mut'ah support should have regulations addressing violations related to family crimes. These violations fall under civil matters but lean toward criminal aspects, as the child's right to affection is not fulfilled.²¹

The regulations concerning children's rights that have been established in our country are efforts to implement the mandate of the 1945 Constitution regarding the protection of children's rights, particularly those affected by divorce.²² Therefore, there is a need for regulations that address violations of family criminal law, particularly violations of civil matters that fall within the realm of criminal law, to avoid adding to the legal void present in Indonesia beyond just child neglect. The provisions regarding child custody due to divorce are explained in Article 41 of Law Number 1 of 1974 on Marriage, which states that the legal consequences for the child in the event of a divorce are that both the mother and father remain obligated to care for and educate their children solely for the benefit of the child.²³ When there are specific regulations, such as those suggested by the informant regarding violations of family criminal law, for instance, regulations that govern the obstruction of support after divorce, the aim of establishing legal rules concerning violations of family criminal law is to prevent the emergence of new legal voids, specifically concerning the rights of children that are not fulfilled due to the actions of the ex-wife obstructing the ex-husband from providing child support after divorce, which should be an obligation.

Legal Actions Against the Ex-Wife's Obstruction of the Ex-Husband's Provision of Child Support

When discussing civil law, the act of an ex-wife obstructing the ex-husband from providing child support or restricting access to meet the child has no regulation in civil law that imposes penalties on the ex-wife for blocking the ex-husband's access to his child or his ability to provide support. However, from a criminal perspective, the ex-wife may be infringing on the child's rights to receive affection from their father. Regarding children's rights, the government has normatively made many legal efforts to protect children's rights, as evidenced by the numerous regulations established concerning child protection.

As previously mentioned, children's rights, according to Article 1, point 12 of the Republic of Indonesia Law Number 35 of 2014 regarding Amendments to Law Number 23 of 2002 on Child Protection, are part of human rights that must be guaranteed, protected, and fulfilled by parents, family, community, state, government, and regional governments. This law also provides detailed explanations regarding children's rights, regardless of whether their parents are divorced, outlined in Articles 4 through 18. In cases where parents fail to fulfil their obligations, the Child Protection Law imposes sanctions, as stated in Article 76B, which says, "No person may place, allow, involve, or instruct a child to be involved in situations of abuse or neglect." The criminal

²¹ Erfaniah Zuhriah, Wawancara, (17 Mei 2024).

²² Amrin Nurfieni, "Dinamika Regulasi Perlindungan Hak Konstitusional Anak Pasca Perceraian," *Cita Hukum Indonesia* 1, no. 2 (2022): 78, <https://doi.org/10.57100/jchi.v1i2.15>.

²³ Leonardo Tumuju, "Perlindungan Hukum Terhadap Anak Dibawah Umur Setelah Perceraian Orang Tua," *Lex Administratum* 12, no. 1 (2023), <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/52612>.

sanctions imposed on parents are stipulated in Article 77B, stating that anyone who violates the provisions of Article 76B shall be punished with imprisonment for up to 5 (five) years and/or a fine of up to Rp100,000,000 (one hundred million rupiah).

When an ex-wife obstructs the ex-husband, who is deemed capable of providing support, from fulfilling child support due solely to resentment from their marriage, this action, from a criminal law perspective, indirectly constitutes an unlawful act. This is because the rights of the child, which are guaranteed under various legal regulations, are hindered by the ex-wife, preventing the child from receiving support from the ex-husband, whether it be in the form of affection or living expenses.²⁴

Another opinion states that the ex-wife's act of obstructing the ex-husband from providing child support does not violate the law, as it still falls within the realm of private law, except in cases of public criminal law. Preventing someone from fulfilling their obligations is not or has not yet become a criminal offense, as this concerns the domain of private law. The act of an ex-wife blocking the ex-husband from providing child support is a matter of private law; thus, in private law, any disputes over the right to enforce or not enforce one's rights lie with the parties themselves to bring to court. Moreover, in private law, parties can agree to settle disputes through means other than court, such as mediation or arbitration.

The legal recourse available to an ex-husband, as per court rulings, is that each parent, who were once spouses, has the obligation to provide access rights to the parent who does not have custody of the child following a divorce decision. If the ex-husband, who does not have custody rights, is denied access, he may file for custody rights. If the child becomes a political pawn, where the ex-wife harbors resentment and denies the non-custodial parent access to the child, the ex-husband may also be hindered from fulfilling his obligation of providing child support. Since the ex-wife's obstruction of the ex-husband's attempts to provide child support is not considered a criminal offense, she cannot be sued in either civil or criminal court. As long as it is not regulated in the Criminal Procedure Code (KUHAP), it is not considered a criminal act, and similarly, in civil court, a lawsuit by an ex-husband against an ex-wife for blocking child support is not enforceable, as it does not constitute a legal obligation.²⁵

In the context of issues in this study, an ex-husband being prevented from providing child support and denied access to meet his child gives rise to a possible legal action: he may file a lawsuit based on custodial rights. As stated in point c, item 4 of the appendix to Supreme Court Circular Letter Number 1 of 2017, which serves as a guide for court operations, the ruling requires that the custodial parent must explicitly affirm that they are obliged to allow the child to communicate with, meet directly, and maintain a continuous relationship with the non-custodial parent. A non-custodial parent denied the right to meet their child can thus file a lawsuit to have custody rights revoked from the custodial parent due to this restriction.²⁶ With the foundation provided by the Supreme Court Circular, the ex-husband can fulfil his obligation to provide child support by filing for custody rights if he was initially denied access to meet his child by

²⁴ Ansari, "Legal Certainty Of The Judge's Decision On The Father's Obligation To Provide For Children After Divorce," in International Conference on Humanity Education and Society (ICHES), vol. 3, 2024, <http://proceedingsiches.com/index.php/ojs/article/view/182>.

²⁵ Muslich, Wawancara, (20 Mei 2024)

²⁶ Arif Sugitanata, "Transformasi Konsep Hadhanah Di Indonesia: Analisis Kemaslahatan Pada Surat Edaran Mahkamah Agung Nomor 1 Tahun 2017," *Jurnal Darussalam: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab* 3, no. 2 (2023): 309, <https://doi.org/10.59259/jd.v3i2.66>

the ex-wife, including any obstruction regarding the provision of child custody rights post-divorce.

Conclusion

Based on the study's findings, it can be concluded that Islamic Civil Law experts in Malang City disagree with and do not justify an ex-wife's actions in obstructing an ex-husband from providing child support after divorce solely due to personal resentment from the marriage. Whether bound by marriage or separated, parents are still obligated to provide for their child's needs as outlined in various Islamic and positive laws. Given the absence of specific regulations and legal consequences governing an ex-wife's obstruction of child support from the ex-husband, Islamic Civil Law experts suggest that a regulation should be established to address such actions, especially considering family-related violations that cross into the criminal domain within civil matters. The legal recourse available to an ex-husband to fulfil his obligation to provide child support is to first file for custody rights, as he has not been granted access to meet or provide support for the child. According to Supreme Court Circular Letter (SEMA) Number 1 of 2017, if an ex-husband is denied access to meet his child, he can file a custody lawsuit in court. This enables him to fulfil his duty of providing child support. Since parental obligations remain binding, any obstruction by the ex-wife, who holds custody, does not technically absolve the ex-husband of his responsibility to provide child support after divorce. However, the study is limited to Malang City, East Java, and primarily focuses on the perspectives of Islamic Civil Law experts, which may not fully capture the broader societal and practical challenges related to enforcement. Future research is recommended to expand the scope to other regions in Indonesia and include a wider range of stakeholders, such as judges, lawyers, and divorced parents, to provide a more comprehensive understanding. Additionally, exploring enforcement mechanisms and proposing detailed regulatory frameworks would be crucial to improving child welfare and ensuring equitable solutions for all parties post-divorce.

References

- Ansari. "Legal Certainty Of The Judge's Decision On The Father's Obligation To Provide For Children After Divorce." In International Conference on Humanity Education and Society (ICHES), Vol. 3, 2024. <http://proceedingsiches.com/index.php/ojs/article/view/182>.
- Badan Pusat Statistik, "Jumlah Perceraian Menurut Provinsi dan Faktor, 2022", Badan Pusat Statistik Indonesia, 20 Februari 2023, diakses 29 Maret 2024, <https://www.bps.go.id/id/publication/2024/02/28/c1bacde03256343b2bf769b0/statistik-indonesia-2024.html>.
- Dandi, Rama. "Tanggung Jawab Ayah Terhadap Anak Pasca Perceraian Perspektif Hukum Islam (Studi Kasus Penolakan Nafkah Anak Dari Mantan Suami Oleh Mantan Istri Di Kecamatan Bukit Kapur Kota Dumai)." Undergraduate thesis, Universitas Islam Negeri Sultan Syarif Kasim Riau, 2023. <https://repository.uin-suska.ac.id/74437/>.
- Efendi, Jonaedi, and Johnny Ibrahim. *Metode Penelitian Hukum Normatif Dan Empiris*. Jakarta: Kencana, 2018.

- Faradilla, Denisa Ratna. "Tanggung Jawab Orang Tua Terhadap Pemenuhan Nafkah Anak Setelah Perceraian (Studi Kasus Di Kota Makassar)." Undergraduate thesis, Universitas Muslim Indonesia, 2019. <http://repository.umi.ac.id/162/>.
- Ghofur, Abdul. "Hak Nafkah Anak Pasca Perceraian Dalam Perspektif Hukum Islam Dan Perundang-Undangan (Studi Kasus Di Kelurahan Gunung Lingai Samarinda)," (Undergraduate thesis, Universitas Islam Negeri Aji Muhammad Idris Samarinda, 2021). <https://repository.uinsi.ac.id/handle/123456789/1156>.
- Muhaimin. *Metode Penelitian Hukum*. Mataram: Mataram University Press. 2020.
- Nst, Rona Parjolo. "Implementasi Pemberian Nafkah Terhadap Anak (Hadhanah) Pasca Perceraian (Studi Kasus: Perkara No. 0454/PDT. G/2017/PA. RGT)." Undergraduate thesis, Universitas Islam Riau, 2021. <https://repository.uir.ac.id/8163/>.
- Nurfieni, Amrin. "Dinamika Regulasi Perlindungan Hak Konstitusional Anak Pasca Perceraian." *Cita Hukum Indonesia* 1, no. 2 (2022): 73–86. <https://doi.org/10.57100/jchi.v1i2.15>.
- Santosa, A. A. Gede D. H. "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat." *Jurnal Komunikasi Hukum (JKH)* 5, no. 2 (November 17, 2019): 152–66. <https://doi.org/10.23887/jkh.v5i2.18468>.
- Sepma, Armevya, and Yenni Erwita. "Pemberian Hak Nafkah Anak Pasca Perceraian Di Pengadilan Agama Jambi." *Zaaken: Journal of Civil and Business Law* 1, no. 2 (2020): 344–58. <http://online-journal.unja.ac.id/zaaken>.
- Subakti, Kurniawan. "Pertimbangan Hakim Dalam Memutus Perkara Nafkah Madhiyah Anak Ditinjau Dari Maqhashid Syariah (Analisis Putusan Nomor 19/Pdt. G/2019/PA. Batg Dan Putusan Nomor 80/Pdt. G/2019/PA. Psp)." Undergraduate thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta. Accessed April 16, 2024. <https://repository.uinjkt.ac.id/dspace/handle/123456789/60725>.
- Sudrajat, Tedy. "Perlindungan Hukum Terhadap Hak Anak Sebagai Hak Asasi Manusia Dalam Perspektif Sistem Hukum Keluarga Di Indonesia." *Kanun Jurnal Ilmu Hukum* 13, no. 2 (2011): 111–32. <https://jurnal.usk.ac.id/kanun/article/view/6245>.
- Sugitanata, Arif. "Transformasi Konsep Hadhanah Di Indonesia: Analisis Kemaslahatan Pada Surat Edaran Mahkamah Agung Nomor 1 Tahun 2017." *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab* 3, no. 2 (2023): 302–16. <https://doi.org/10.59259/jd.v3i2.66>.
- Tsany Tsamara, Shafira. "Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten." Undergraduate thesis, Univeritas Islam Indonesia Yogyakarta, 2020. <https://dspace.uui.ac.id/handle/123456789/31205>.
- Tumuju, Leonardo. "Perlindungan Hukum Terhadap Anak Dibawah Umur Setelah Perceraian Orang Tua." *Lex Administratum* 12, no. 1 (2023). <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/52612>.