

## The Legal Protection of Children's Rights due to Parental Divorce in Islamic Family Law in Predominantly Muslim Countries

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**Abstract.** *The divorce is a legal event whose consequences are regulated by law. According to Islamic Family Law, it is considered as legal event that has legal consequences for both couple and the children. Many Islamic countries has specified the consequence of divorce law for the legal protection of children as that both fathers and mothers must still maintain and educate their children. Now, their legal systems have extended the interests of the child in both regulations and court decisions. The issue of legal protection for children and the obligations of parents to children has been regulated in various laws and regulations in some Islamic countries. Court decisions obliged the parents to fulfill children's rights as a form of legal protection for children. The purpose of this study is to investigate the legal protection of children due to parental divorce in some Islamic countries. The object for the research was the regulations in the form of Islamic Family Law in Indonesia, Malaysia and Bangladesh. The method is normative juridical with library research technique by analyzing legal documents in the forms of legal literature, regulations or legislation. The findings of this study highlight the role of decision makers and related institutions to strengthen the magnitude of family law and human rights in providing legal protection for children. The findings are desirable to become a practical and theoretical reference in synchronizing the interests between justice values and the need for family law reconstruction to fulfil children's interests in parental divorce cases.*

**Keywords:** *Child; Islam; Protection.*

### 1. INTRODUCTION

According to Islamic Family Law, divorce is a legal event whose consequences are regulated by law. As a legal event, it has legal consequences for both couple and the family as a whole, including division of marital property, child care and child rights<sup>1</sup>. In

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<sup>1</sup> Abdullah, R. (2007). A study of Islamic family law in Malaysia: A select bibliography. *International Journal of Legal Information*, 35(3), 514-536.

many laws in some majority Muslim countries, divorce has legal consequences as a means for the dissolution of marriage. However, the degree of legal protection for women and children in Islamic countries is vary. While some has higher degree of protection, the other was still lacking. The legal variation is happened because of the difference for sourcing for traditional Islamic law and jurisprudence for each country and the legal system applied<sup>2</sup>. For instance, while Indonesia and Malaysia have combined the source of modern and Islamic jurisprudence as the basis for legalizing family law, Bangladesh was considered more traditional in using the jurisprudence as the main source<sup>3</sup>. The provisions are also entitled in the cases of parental divorce.

The divorce has been well regulated in many Islamic country laws<sup>4</sup>. However, legal considerations and preferability to regulate the children's protection in Islamic family law were arguably lacking. The laws usually regulated many provisions related to husband and wife relations, procedural and administrative stages as well as the right and obligations in post-divorce conditions. However, many argue in divorce cases, children are the most vulnerable victim in divorce cases. Their interests during divorce were usually neglected as the focus of the parents are about their lawsuit in the court. Psychologically, children will no longer be able to enjoy parental care which is very important for their mental growth. Although the problem of legal protection for children and the obligations of parents to children has been regulated in various laws and regulations, they are often ignored, so it is necessary to strengthen legal protection for children due to divorce.

Although divorce is largely considered as something that should be avoided in a marriage because a divorce can harm many parties, such as damaging the family name reputation and causing psychological effects to children, divorce is no longer a new issue in daily lives. Divorce cases continue to increase along with changing times and changes in social values. Even due to the increasing economic capacity among women, it also affects the high number of divorce lawsuits filed by wives against their husbands<sup>5</sup>. Divorce does not only affect the husband or wife who is going through a divorce, but also affects children. In this case, a lawsuit for child custody and maintenance can be made as an effort to protect children's rights. In Indonesian religious courts, the percentage of lawsuits for child custody and child support is very small compared to divorce cases which are relatively high. Indonesian regulation specify that these two types of lawsuits are also the authority of the religious courts<sup>6</sup>.

In term of children rights due to parental divorce, the provisions of Article 41 of Indonesian Act No. 1 of 1974 stipulate that both father and mother are still obliged to

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<sup>2</sup> Sonbol, A. E. A. (2010). A response to Muslim countries' reservations against full implementation of CEDAW. *Hawwa*, 8(3), 348-367.

<sup>3</sup> Hossain, Z. (2013). Fathers in Muslim families in Bangladesh and Malaysia. *Fathers in cultural context*, 95-121.

<sup>4</sup> El-Alami, D., & Hinchcliffe, D. (1996). Islamic marriage and divorce laws of the Arab world. In *Islamic Marriage and Divorce Laws of the Arab World*. Brill.

<sup>5</sup> Nelwan, O. I. (2019). Akibat Hukum Perceraian Suami-Isteri Ditinjau Dari Sudut Pandang Undang-Undang Nomor 1 Tahun 1974. *Lex Privatum*, 7(3), 103-110.

<sup>6</sup> Khuluq, M. K. (2022). Gugatan Hak Asuh dan Nafkah Anak Sebagai Upaya Perlindungan Hak Anak Pasca Perceraian. Available: <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/gugatan-hak-asuh-dan-nafkah-anak-sebagai-upaya-perlindungan-hak-anak-pasca-perceraian-oleh-m-khususul-khuluq-23-6>.

maintain and educate their children, solely based on the interests of the child. If there is a dispute regarding the control of the children, the court gives its decision. The similar notion was also applied in Malaysia which regulated that father is responsible for the maintenance and education costs needed by the child. If the father is unable to provide these obligations, the court can determine that the mother is also responsible for the costs<sup>7</sup>. Law Reform (Marriage & Divorce) Act 1976 (LRA) which specified the role of parents in maintaining the rights of their children due to parental divorce.

More specifically, Article 45 of Act No. 1 of 1974 regulates the rights of children, where it is stated that children have certain rights that must be fulfilled by parents. The right of children to get a decent living including clothing, food, education, and health is a child's livelihood (alimentation) that must be fulfilled by parents, especially fathers, both during the marriage or after a divorce. Taking into account the substance of Article 41 and Article 45 of Act No. 1 of 1974, it can be emphasized that divorce has legal consequences for children. If we look closely at the essence of the legal consequences of divorce as regulated in Act No. 1 of 1974 is to recognize and protect children's rights as human rights. In practice, the provisions of Article 41 and Article 45 of Act No. 1 of 1974 are often not heeded. An example of a case is the implementation of the fulfillment of child support in case Number 205/Pdt.G/2015/PA.Smg and Number 2521/Pdt.G/2016/PA.Smg, namely ex-husband (father) or applicant for convention/defendant reconvention from both cases does not meet the child's livelihood. The child's income which has become his obligation is not carried out according to the decision of the Semarang Religious Court which already has permanent legal force. In both of these cases, they have underage children who should receive child support from father as the convention applicant/reconvention defendant.

This paper henceforth aims to investigate the reinforcement of legal protection for children due to divorce. The focus of the research is the legal protection as the inherent part of children's rights during parental divorce. The main legal object for this study was Indonesian Marriage Act No. 1 of 1974. To enrich the discussion, the study also took into account the comparison approach by taking Malaysian and Bangladesh as two Islamic countries. The scientific consideration was that these countries are predominantly Muslim countries with their Islamic family law sourcing from Islamic law and traditional jurisprudence. The comparison was also taken into account to investigate the degree and difference of legal adoption in compiling modern and Islamic law in the legal system in Indonesia, Malaysia and Bangladesh. Lastly, the inclusion of human right perspective was used in this study to enrich the discussion and possible further projection of legal reconstruction of family law as a whole and the legal protection interest for children due to parental divorce.

## **2. RESEARCH METHODS**

Based on the focus of the discussion in this research, which is about strengthening the protection of the law, therefore the research method used in this research is library research. Library research method is a research method where in the process of

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<sup>7</sup> Maheran, M., Khairun-Nisaa, A., & Farhanin, A. A. (2016). Financial Neglect and Children's Right to Education: Issues on the Maintenance of Children After Divorce in Muslim Marriages in Malaysia.

searching, collecting and analyzing data sources to be processed and presented in the form of a library research report. This library research was conducted to collect a number of data, including library materials sourced from books, and regulations or legislation related to research writing. In this study the sources used are secondary data sources, namely data obtained through library studies in the form of literature books, regulations or legislation.

### 3. RESULT AND DISCUSSION

Divorce is the process of breaking up a marital relationship through legal and religious processes due to the demands of one party. A divorce process must be decided by a judge because it has been regulated in law that a divorce process cannot be decided between husband and wife only because it must be legally decided by the court and must be based on clear reasons. In a divorce, there are many things that must be passed, such as decisions on the distribution of assets, regarding child custody and several other things that must be formalized<sup>8</sup>. Formalization was common to sustain the life of both parents and the protection for the life of children. Many Islamic countries, including Malaysia, Indonesia and Bangladesh also took into account the right of children based on the values of Islamic law and jurisprudence.

In Indonesia, the legal consequences of divorce concerning children's rights were regulated in Article 41 and Article 45 of Act No.1 of 1974 or known as Marriage Law. Specifically, Article 41 of the Marriage Law states that "*either the mother or father is still obliged to maintain and educate their children, solely based on the interests of the child.*" Meanwhile, Article 45 reads "*Both parents are obliged to maintain and educate their children as well as possible.*" The obligations of the parents in question are valid until the child marries or can live independently, which obligations continue even though the marriage between the two parents breaks up.

In Malaysia, there was Law Reform (Marriage & Divorce) Act 1976 (LRA) which specified the role of parents in maintaining the rights of their children due to parental divorce. Article 88 verse 1 of the LRA reads that "*The court may at any time by order place a child in the custody of his or her father or his or her mother or, where there are exceptional circumstances making it undesirable that the child be entrusted to either parent, of any other relative of the child or of any association the objects of which include child welfare or to any other suitable person.*" The article also obliged that in deciding in whose custody a child should be placed the paramount consideration shall be the welfare of the child and subject to this the court shall have regard to the wishes of the parents of the child and to the wishes of the child, where he or she is of an age to express an independent opinion.

In terms of quantity, divorce in Indonesia is increasingly showing an increasing trend from year to year. This occurs equally in almost all religious courts in Indonesia. The same has been also happened in Bangladesh. Over recent years, there has been a rise in the number of women seeking a divorce in Bangladesh. As more and more women attend higher education and enter work, the proportion of women working has risen from 4% to 35% in the last 30 years – the numbers of women petitioning for divorce

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<sup>8</sup> Fahriyanti, N. (2019). Gugat Cerai: Membebaskan Perempuan Dari Penderitaan. QAWWAM, 13(2), 101–122. <https://doi.org/10.20414/qawwam.v13i2.1468>

has increased. In this regard, children are the individuals who are most affected by the divorce both in social and emotional domains and financial matter<sup>9</sup>. This needs serious attention for many developing Islamic nations. Divorce cases are no less serious than the impact of domestic turmoil that drives divorce itself. In addition to the couple after divorce, the joint or marital assets that have been painstakingly collected must fall apart. The divorce also has a negative impact on the children in the family<sup>10</sup>. Similar concern about children right after parental divorce was also amplified in Malaysia. Makhtar et al. (2017) which investigates the financial implications of divorce on children's education rights, especially when the father fails or is unable to pay for the child's support, encouraging more active enforcement of court decisions to protect the child's best interests in terms of education.

Socially, after the couple decides to divorce, there are 2 (two) possible decisions to be taken by each divorced couple. The decision is choosing to find a new partner or choosing to be alone/not remarried (single parent). The intimacy and warmth of the harmonious relationship of the couple that initially made the children happy all this time, but after they divorced the happiness that the children got seemed to disappear. The crowded atmosphere of parents due to the destruction of the household and economic problems will have an impact on children, such as violence against children<sup>11</sup>. In fact, it is not uncommon for economic reasons that parents consciously fall into action or unconsciously their children become targets of trafficking. Even if the couple chooses to remarry and get their new partner back, when the joint property is successfully divided equitably, the next new problem will come to their children. This problem will usually last for a long time. The children have to live in a new environment with the stepmother/stepfather. For children, living with their mother/stepfather is not an easy matter. Because it requires adaptation which is also not easy<sup>12</sup>.

Hence, to determine the right party who should take care of the post-divorce children becomes a very important issue. For this important matter, according to Act No. 1 of 1974, the court must intervene in handling cases of child custody after divorce. For people who are Muslim, Article 63 of Act No. 1 of 1974 stated that the court referred to is a religious court and for non-Muslims it is a general court. Especially for the Religious Courts, regarding this child, its absolute authority has been confirmed in the explanation of Article 49 paragraph (2) of Act No. 7 of 1989 as amended by Act No. 3 of 2006 and the second amendment to Act No. 50 of 2009<sup>13</sup>.

In Malaysia, Article 92 of the LRA states that "*except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the*

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<sup>9</sup> Makhtar, M., Asari, K. A., Pauzai, N. A., & Asuhaimi, F. A. (2017). Children's Right to Education: Financial Neglect after Divorce in Muslim Marriage in Malaysia. *Pertanika Journal of Social Sciences & Humanities*.

<sup>10</sup> Asmu'i. (2021). Hak Asuh Anak Pasca Perceraian. Available at: <https://pa-semarang.go.id/home/arsip-artikel/428-hak-asuh-anak-pasca-perceraian>.

<sup>11</sup> Donahey, K. (2018). Effects of divorce on children: The importance of intervention. *Intuition: The BYU Undergraduate Journal of Psychology*, 13(1), 3.

<sup>12</sup> Steinbach, A. (2019). Children's and parents' well-being in joint physical custody: A literature review. *Family Process*, 58(2), 353-369.

<sup>13</sup> Asmui. Op.cit.

*custody of any other person, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof."* This was further strengthened by the power of court that in its discretion, when ordering the payment of maintenance for the benefit of any child, order the person liable to pay such maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay such maintenance or part thereof out of the income from such property, and subject thereto, in trust for the settlor.

In Bangladeshi law, the natural guardian of the children due to parental divorce was the father. Meanwhile, a mother was considered by law as the custodian until a certain age. According to Wiselaw (n.d), this means that a mother is entitled to custody of her son until the age of 7 years old, and her daughter until she has obtained puberty. The law also stated that a divorce does not end these rights, unless the mother remarries in which case custody will revert to the father. A father as the guardian will maintain responsibility for his child even on divorce, its means that he will have a duty to provide child support even if the child is living with the other parent.

On contrast, Bangladesh faced the issue of reconciling the modern human right values with the Islamic law as the main source of its family law. This is based on the fact that the divorce laws in Bangladesh are based on Sharia law. This means that family law is linked to Islamic traditions, but laws also require divorces to be formally registered. The right of women is also less comparable when the divorce happens with other Islamic countries such as Indonesia and Malaysia. In Bangladesh, women have no recognized rights over marital property.

The issue of children's rights was debatable by Islamic legal experts from the past until now. Various Islamic jurisprudence (*fiqh*), both classical and contemporary, have described at length the debates of the Islamic scholars regarding child custody rights. In Indonesia, the Compilation of Islamic Law, as Indonesian *fiqh*, has also provided provisions to regulate the issue. Article 156 provides a stipulation that a child who is not yet *mumayiz* (underage children) has the right to receive parental care (*hadlanah*) from his mother. If the mother dies, it is given to the woman a straight line up from the mother. When no one can afford it, the rule specified it is given to the father as the ex-husband. When the father cannot afford it, it is given to the women in a straight line up from the father. If this group does not exist, it is given to the sister of the child in question. If there is no care, it is given to women who are blood relatives according to the side line from the mother. If this group does not exist, it is given to blood relatives according to the side line from the mother. The compilation emphasizes the selection of various opinions of fuqaha. In this case, women are prioritized because of psychological problems, such as affection and tenderness. Ultimately, the decision ultimately returns to the benefit of the child. It is also this intention that has now been accommodated by contemporary legal thought, that child care is solely aimed at the interests of the child<sup>14</sup>.

A divorce often occurs because of differences of opinion, disputes, the emergence of a problem and disharmony in a family relationship. Divorce is a decision taken when several attempts have been made but have not found a solution to unite and repair the

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<sup>14</sup> Ibid.

marriage. One of the things that must be considered when a divorce occurs is about the rights that must be obtained by a child as a result of the divorce. The rights that must be obtained by a child even though his parents are divorced are the right to get a decent life, the right to get an education, the right to get protection, the right to develop, the right to get health facilities and other rights that must be obtained by a child<sup>15</sup>.

Children are the party most affected by the divorce and are very often victims. Therefore, children need to get protection for their survival and future as the consequence of parental divorce. The right to protection is in accordance with Act No. 35 of 2014 concerning child protection<sup>16</sup>. In Malaysia, Child Act No. 611 of 2001 recognized every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status. The concern to provide the legal protection for the children was also behind the reason for legalizing Bangladesh's Children's Act, 2013 (Act No. 24 of 2013). The Act changes the legal definition of a child from being a person under the age of 14 to one under the age of 18.

However, it is worthy to note about Islamic law as the main source for enacting family law in Indonesia, Malaysia and Bangladesh. Although the law provides a way for divorce, Indonesian Act No. 1 of 1974 concerning Marriage tries as much as possible to suppress the divorce rate. The legislators are also aware that a divorce that is carried out arbitrarily will cause damage not only to the husband and wife, but also to the child who should be cared for and cared for properly, so that the child will fall further as a victim of divorce. Children's civil rights should not be ignored, so efforts are made to guarantee the maintenance of children's rights after divorce. The judiciary in this case has an important role to guarantee the rights of children through court decisions. Meanwhile, Bangladesh's Children's Act, 2013 (Act No. 24 of 2013) regulated that when deciding on alternative ways and methods of parenting, the reintegration of the child with his parents should be considered on a priority basis, but if the parent divorce or separate, the child will be reintegrated with one of the parents after taking into account the opinion of the child. Furthermore, Bangladesh Legal Aid and Services Trust (2013) stated that before prioritizing the opinion of the child, it is necessary to pay attention to the characteristics of the parents and the reasons for the separation between them. If it is not possible to reintegrate the child with parents, the child may be reintegrated with extended family or, in the absence of parents, with a guardian, child supervising person or healthy person, as a community-based integration.

Furthermore, Article 1 paragraph (2) of Act No. 35 of 2014 concerning Amendments to Indonesian Act No. 23 of 2002 on Child Protection regulates "*child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination*". One of the government's efforts in optimizing child protection is the establishment of the Indonesian Child Protection

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<sup>15</sup> Fakhria, S. (2018). Cerai Gugat Dan Implikasinya Terhadap Hak-Hak Finansial Perempuan. Legitima: Jurnal Hukum Keluarga Islam, 1(1).

<sup>16</sup> Wiradharma, G. A., Budiarta, I. N. P., Sukadana, I. K. (2020). Perlindungan Hukum Terhadap Anak Dalam Terjadinya Perceraian. Jurnal Preferensi Hukum, 1(2), 47-50

Commission. It is mandated by Article 74 (1) of Act No. 23 of 2002 concerning Child Protection. The Article regulates that in order to increase the effectiveness of monitoring the implementation of the fulfillment of children's rights, with this law an independent Indonesian Child Protection Commission has been established. In Malaysia, the Child Act 2001 (Act 611) obliged the government to establish Coordinating Council for the Protection of Children (part II), and the courts for children (part IV).

After the divorce, because the parents have separated, in general, the law regulates the children only live with one of them, whether with his father or mother. In this case, there are children's rights that are reduced. The most visible thing, for example, is the right to proper care. In the context of family life, family laws in Indonesia, Malaysia and Bangladesh technically providing a living and the obligation for providing the financial provisions is the father's obligation. This means that even though the husband and wife are divorced, the child is still entitled to receive a living from the father. This is in accordance with the provisions in Article 105 of the Compilation of Islamic Law which essentially states that, in the event of a divorce, the child's maintenance costs are borne by the father<sup>17</sup>. Act No. 1 of 1974 concerning Marriage Article 41 (b) states that, *"as a result of the dissolution of the marriage due to divorce, the father is responsible for all the maintenance and education costs needed for the child. If the father is in fact unable to provide this obligation, the court can determine that the mother is also responsible for the costs"*.

The problem is, even though the child's livelihood has been determined in the judge's decision, sometimes it does not run optimally. For example, when the child's rights are passed on to the mother, and the child's income has been assigned to the father, where every month the father has to provide a certain amount of income to the child through his mother. The father neglect for financial support implications after divorce has become administrative law concern in Malaysia and Bangladesh regarding the effectiveness of court decisions<sup>18</sup>. As a solution, this was usually resolved with court decision and the firmness of the implementation of court decisions.

In Indonesia, the legal consequences of divorce on children only apply to husbands and wives who have children in their marriage, but do not apply to husbands and wives who do not have children in their marriage. Article 41 of the Marriage Law specified the consequences of breaking up a marriage due to divorce. Both mothers and fathers are still obliged to maintain and educate their children, solely based on the interests of the child, if there is a dispute regarding the control of the children, the court gives a decision. The father is responsible for all costs of maintenance and education needed by the child: if the father is in fact unable to fulfill these obligations, the Court can determine that the mother is also responsible for the costs. The court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

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<sup>17</sup> Khuluq, M. K. (2022). Gugatan Hak Asuh dan Nafkah Anak Sebagai Upaya Perlindungan Hak Anak Pasca Perceraian. Available: <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/gugatan-hak-asuh-dan-nafkah-anak-sebagai-upaya-perlindungan-hak-anak-pasca-perceraian-oleh-m-khusnul-khuluq-23-6>.

<sup>18</sup> Maheran. Op.cit.



To sum, there are generally three stages of legal protection for child victims of divorce in relation to legal functions. More specifically, the type is classified into three stages, namely:

1. Preventive efforts, namely prevention in the form of threats to perpetrators of law violators, the presence of the law with various sanctions can be an instrument to provide deterrence, both specifically and in general, giving fear to the community so that it is prevented from taking unlawful actions.
2. Repressive measures, if the law is violated, law enforcement must be carried out against the violators indiscriminately, which is carried out by a judicial institution that has the authority and power to do so.
3. Rehabilitative efforts, namely restoring the original state. The law will be an instrument to make that person good again with the punishment given to lawbreakers, besides being a deterrent, it is also expected to make someone good again in accordance with the purpose of punishment, namely achieving social reintegration and socialization with the community so that the law can also be referred to as the law of rehabilitation.

Starting from the idea that the issue of legal protection for children due to divorce has been regulated in various laws and regulations, but in practice, it is often not heeded, the authors recommend reinforcing the legal norms in the legislation as shown in the Table 1.

Table 1. Reinforcement of Indonesia Act No. 1 of 1974 concerning Marriage and Act No. 35 of 2014 concerning Child Protection

No	Before Reinforcement	Weakness	Reinforcement
1	<b>Marriage Law</b>		
	Article 41 b	Article 41 b	Article 41 b
	The consequences of breaking up a marriage due to divorce are:  The father is responsible for all costs of maintenance and education needed by the child; if the father is unable to fulfil these obligations, the Court may determine that the mother is also	The provisions of this article are not clear in regulating the responsibility of the father for all costs for the maintenance and education of his child, because there is a sentence that if the father cannot fulfil his obligations, the mother will also bear the costs.	The consequences of breaking up a marriage due to divorce are:  The father is fully responsible for all the maintenance and education costs needed by the child, if the father does not fulfil these obligations, the Court can determine the existence of a fine.

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responsible for the costs.

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## 2 **Child Protection Law**

Article 76 a

The Indonesian Child Protection Commission is tasked with:

Supervise the implementation of the protection and fulfilment of children's rights.

Article 76 a

The provisions of this article are not clear because they only regulate supervision without follow-up with certainty towards the fulfilment of children's rights.

Article 76 a

The Indonesian Child Protection Commission is tasked with:

Proactively supervise and ensure the implementation of the fulfilment of children's rights.

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## 3 **Child Protection Law**

Article 76 g

The Indonesian Child Protection Commission is tasked with:

Provide reports to the authorities regarding alleged violations of this Law.

Article 76 g

The provisions of this article are neither clear nor firm in regulating what forms of violations must be reported, because they only mention violations of this law.

Article 76 g

The Indonesian Child Protection Commission is tasked with: Pro

actively reporting to the authorities if any parents who do not comply with court decisions regarding the fulfilment of children's rights result in child neglect.

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Table 2 showed that Article 41 b of the Marriage Law opens up opportunities for irresponsible fathers not to fulfil their obligations on the grounds of being unable, because in Article 41 b there is a sentence that if the father cannot fulfil his obligations, the mother will share the responsibility. The provisions of Article 41 b need to be added with a clause that regulates fines for fathers who do not fulfil their obligations as a form of administrative sanctions to create a deterrent effect.

About Article 76 an of the Child Protection Law, the provisions are not firm because it only regulates supervision without follow-up with certainty towards the fulfilment of children's rights, while Article 76 g of the Child Protection Law, the provisions should clearly and unequivocally state that the reported to the authorities is related to violations of the fulfilment of children's rights which result in child neglect. With the Indonesian Child Protection Commission report, referring to the provisions of Article 76

B regarding child neglect, the authorities can follow up on the Commission report by applying Article 77 B regarding the provision of criminal sanctions for violations of Article 76 B concerning child neglect where the sanction is imprisonment at most. 5 (five) years and/or a maximum fine of IDR 100,000,000 (one hundred million rupiahs).

Departing from the fact that civil law only has the power to regulate, therefore the author recommends the application of administrative sanctions and criminal sanctions, and also the establishment of a Supervisory Agency against the actions of parents, especially fathers, who do not carry out or refuse to carry out their obligations, in the event of a divorce. Although it is recommended to use criminal law, the use of criminal law must function as a support for civil law and administrative law. Thus, the enactment of criminal law provisions must take into account the principle of subsidiarity, namely that criminal law is only utilized if other legal sanctions, such as civil sanctions and administrative sanctions, are ineffective and/or the perpetrator's level of error is relatively severe and/or the consequences of his actions are relatively large and/or his actions cause public unrest. In other words, among this law enforcement, civil law enforcement is considered the most important law enforcement effort aimed at encouraging husbands to carry out their obligations according to court decisions. Administrative law enforcement is considered the second most important effort, because one of the goals of divorce law enforcement is an effort to restore and protect the future of divorced children. Meanwhile, law enforcement through criminal law is a last resort because the aim is to punish the perpetrators with imprisonment.

#### **4. CONCLUSION**

The findings have practical implications for decision makers and related institutions to make various programs to strengthen children's protection in family law. Moreover, the implications highlight the need for strengthening family resilience, including pre-marital counseling programs and programs to strengthen the family economy. Marriage guidance programs can be required in regulations to strengthen family resistance to avoid divorce due to economic problems while at the same time providing awareness about the rights of both parties and the need for legal and psychological fulfilment of children's rights during marriage, divorce and post-divorce processes. Pre-marital guidance can be used as an effort to strengthen family resilience and create a *sakinah* family according to the objectives of the marriage law. In addition, regulations also need to strengthen family resilience programs through family assistance to conduct family counselling and strengthening. In the context of divorce, regulations also need to be reformulated to not only focus on the rights of each party from a spouse, but also on the fulfilment of the legal and psychological rights of children.

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