

Legal Instruments FOR THE Fulfillment OF THE Rights OF Women AND Children Post-Divorce IN THE Indonesian Legal System

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Abstract

The purpose of the research is to examine the legal instrument for the fulfilment of the rights of women and children post-divorce in Indonesia. Until now, the fulfilment of the rights of women and children post-divorce is still a very problematic legal issue in Indonesia. This study uses a juridical-normative method and a qualitative approach. This research shows that the weak of legal instruments, law enforcement, and public legal awareness are the three determining factors that cause the unfulfilled rights of women and children post-divorce in Indonesia. In addition, most judges in the courts also make more decisions on divorce in absentia and declaration without being accompanied by the obligation of execution for the fulfilment of the rights of living and custody for ex-wife and children post-divorce. As the implication, the policy makers at the executive and judicial levels need to take a bigger role in the form of legal and judicial reform for the fulfilment of the rights of women and children post-divorce in Indonesia.

Keyword: Legal; Instrument; Fulfilment; Rights; Divorce; Court.

A. Introduction

The court is one of the government institutions that has the function of providing public services for justice seekers. Public services are an act of providing goods or services to justice seekers by the government in the context of its responsibilities to the public, which are given directly and felt by justice seekers. Public services must be provided to justice seekers related to the public interest, which is part or the government responsibilities and must be guaranteed by the government under the constitutional law (Wilson, Dilulio Jr, Bose & Levendusky, 2020).

In providing its services, the court is also required to be able to provide an excellent service to the public, so that satisfaction is achieved. Excellent service is a service provided to the public that is able to satisfy the parties being served, which has been regulated in the Law of Number 25 of 2009 on Public Services and the Decree of the Minister of Empowerment of State Apparatus of the Republic of Indonesia Number: 63/KEP/M.PAN/7/2003 on General Guidelines for the Implementation of Public Services (Widodo, Hidayat, Venus & Suseno, 2018).

Regarding on the rapid and broad changes in the strategic environment in various sectors, the specialization and variety of demands are also increasing in the activities and lives of justice seekers (Elisa, 2020). In addition, to increase the public legal awareness, the court is required to conduct various changes regarding on maximum services for justice seekers, one of which is justice seekers related to divorce cases in the scope of family law (Arifin, 2021).

One form of protection for the citizens in the Indonesian legal system is the protection of economic rights. Although the 1945 Constitution has emphasized this right as one of the constitutional rights, in fact, there are still many divorce cases that have not paid attention to the fulfillment of economic rights for ex-wives and children after divorce (Rahim, 2020). Whereas the state and government have made various legal instruments that regulate the rights of women and children in marriage law, including their rights after divorce which are regulated in a number of regulations related to family law (Sarib & Alimashariyanto, 2022).

For instance, in the Religious Courts, there are two types of divorce cases, namely the divorce lawsuit by the wife and the divorce lawsuit by the husband (Yusup, Hamnach, & Sumner, 2019). The divorce lawsuit by the wife is a divorce case filed by the wife to her husband. While the divorce lawsuit by the husband is a divorce case filed by a husband to his wife (Huis, 2015). Reported from the data by the Directorate General of the Religious Courts Agency, in 2021 there will be approximately 400,000 divorce cases in the Religious Courts and Sharia Courts. There are so many the divorce lawsuit by the wife more than the divorce lawsuit by the husband cases, which are 70%. It is mean that 70% of cases submitted, only 3 % of divorce decisions contain the rights of women and children after divorce, and only 0.26% of 3% applied for execution. Therefore, the rights of women and children post-divorce are the main concern of the religious courts today (SIPP, 2022).

There are several rights of women and children who can be sued in the event of a divorce, both in the cases of the divorce lawsuit by the wife and the divorce lawsuit by the husband. According to the Indonesian Marriage Law, the rights that can be obtained by women and children, at least consist of six fundamental rights, such as: (1) the right of living in waiting period after divorce (iddah), (2) the rights of gift from a husband to his ex-wife after being divorced (mut'ah), (3) the right of place to live (maskan), (4) proper clothing (kiswah), (5) dowry owed, (6) the right of past livelihood (madhiyah), and (6) the custody rights of the children (hadhanah) (Nurlaelawati, 2016). For women who file a divorce lawsuit, they can obtain these rights through including the claims for the rights of women and children after the divorce in the lawsuit and submitting evidence of the husband's work and income during the trial. Meanwhile, for women who are filed for divorce by their husbands in cases of divorce, they can obtain these rights by submitting demands both during the response agenda in the trial process (Nurlaelawati, 2018).

If the wife's demands are granted by the Panel of Judges in the court, but the ex-husband does not carry out the court's decision, the ex-wife can make several efforts, such as: submitting a request for execution to the Religious Court, visiting the ex-husband's place of work and bringing the court's decision and then consulting with the ex-husband's leadership for a decision can be implemented, as well as reporting to the police on the grounds that the ex-husband has neglected his obligations set by the court (Nurdin, 2018). Therefore, every woman does not hesitate to demand the rights of women and children after divorce in the trial process, because the state guaranteed the security and the rights of every citizen (Nasution & Muchtar, 2020; Zulaiha & Mutaqin, 2021).

The crucial legal issue at the recent times is in the divorce lawsuit by the wife cases, there is no legal basis for the wife to claim the rights due to divorce, which include the right of living in waiting period after divorce (iddah) and the rights of gift from a husband to his ex-wife after being divorced (mut'ah), although in some cases the judge can ex-officio use his authority, has made women - who are mostly housewives and do not have independent income - as the party most affected by divorce because they are included in a vulnerable group, and also to children who are cared by women after divorce if there is no guarantee for the fulfilment of child custody rights by the ex-husband (Mustar, Gunarto & Khisni, 2017; Yuni, 2021; & Novera, 2021).

Referring to the conditions described above, the Directorate General of the Religious Courts Agency has attempted to issue a policy related to guaranteeing the fulfilment of the rights of women and children

after divorce through the Letter of the Director General of the Religious Courts Agency Number: 1960/DJA/HK.00/6/2021 dated 18th June 2021 and Decree of the Director General of the Religious Courts Agency Number 1959 dated 25th June 2021 on the Implementation of the Policy Brief on Guaranteeing the Protection of the Rights of Women and Children Post-Divorce (ISC, 2022).

In addition, the next crucial legal issue is the absence of specific regulations that can be used as a juridical basis and legal certainty for the execution of court decisions related to the obligation for ex-husbands to provide the right of living in waiting period after divorce (iddah) and the rights of gift (mut'ah) from a husband to his ex-wife after being divorced, including guarantees for the fulfillment of child support by the ex-husband (Kasim & Semiaji, 2022). Most judges' decisions tend to be declarations and not executions. The implication of this condition is the ex-wife and child barely get any legal certainty related to the guarantee of their right to life after the divorce decision is handed down by the court (Cammack, 2009).

Referring to the background above, there are at least four legal issues need to be analyzed more comprehensively in this research, such as follows: first, what are the legal instruments for divorce judicial procedures in Indonesia? second, what are the rights of women and children post-divorce in the Indonesian marriage law? third, what are legal instruments for the fulfillment of the rights of women and children post-divorce in Indonesia? and fourth, what are the government efforts for the fulfillment of the rights of women and children post-divorce in Indonesia?

B. Method

This research uses a juridical-normative method and a qualitative approach. The research objective is focused on analyzing the legal instruments for the fulfillment of the rights of women and children post-divorce in Indonesia. The sources and collection techniques of the data refer to the legal opinions and interpretations of various legal instruments regarding on the divorce in Indonesian Family Law, the interview results with the informants (the judges and the parties in the court), including refers to a various literatures, and other sources related to the research objective. The data analysis technique was carried out through three steps such as classification, reduction, and presentation of data, through deductive approaches until the formulation of the conclusion.

C. Result and Discussion

1. Legal Instruments for Divorce Judicial Procedures in Indonesia

The legal instrument for divorce judicial procedures in the Indonesian legal system refer to the Marriage Law Number 1 of 1974 and the Government Regulation Number 9 of 1975. Based on this law, it is possible for one party, namely the husband or wife, to file a divorce lawsuit to the court. In this context, there is a difference regulation about proposing divorce lawsuit between Muslim and Non-Muslims couples (Hidayat, Yaswirman & Mardenis, 2019). For instance, for Muslim couples, they can propose the divorce lawsuit by the wife and the divorce lawsuit by the husband to the Religious Court. In addition, for Non-Muslim couples, both husband and wife can propose the divorce lawsuit to the District Court (Sarib & Alimashariyanto, 2022).

In the Indonesian legal system, a Muslim married couple, husband or wife intends to divorce, which they must comply with the applicable the Compilation of Islamic Law based on Presidential Instruction Number 1 of 1991 on the Dissemination of the Compilation of Islamic Law, the Marriage Law Number 1 of 1974, and the Government Regulation Number 9 of 1975. In the divorce process based on the Compilation of Islamic Law, there are two terms, namely the divorce lawsuit by the wife and the divorce lawsuit by the husband. These are regulated at Article 116 of the Compilation of Islamic Law, which confirms that the dissolution of a marriage due to divorce can occur due to divorce or based on a divorce lawsuit (Sukaenah & Rusli, 2020). Moreover, it is also regulated in the explanation of Article 14 of the Marriage Law Number 1 of 1974, and the Government Regulation Number 9 of 1975. There are regulated about the divorce lawsuit by the husband before a court in accordance with Islamic law (Al Hasan & Yusup, 2021). It is mean that according to Article 117 of the Compilation of Islamic Law, the breakup of a marriage can be done formally when the husband proposes the divorce lawsuit to the Religious Court (Pranawati, 2017).

Referring to the Marriage Law Number 1 of 1974, the Government Regulation Number 9 of 1975, and President Instruction Number 1 of 1991, a Muslim husband who is married in Islam and intends to divorce his wife, must first file a notification letter regarding on the intention to divorce his wife followed by the reasons. The notification letter is submitted to the Religious Court, where he is domiciled. Thus, the husband requested a trial by the Religious Court for this purpose. In addition, a divorce lawsuit can also be filed by the wife to her husband as contained in Article 132 paragraph (1) of the Compilation of Islamic Law, which has regulated that a divorce lawsuit can be filed by the wife on her behalf at the Religious Court, whose legal area is the place of residence of the plaintiff unless the wife leaves residence without the husband's permission (Gautama & Hornick, 2022)..

Non-Muslim married couple can file for divorce lawsuit to the District Court in accordance with Article 20 paragraph (1) the Government Regulation Number 9 of 1975 which regulated that a divorce lawsuit is filed by the husband or wife or their proxies to the District Court whose jurisdiction covers the residence of the defendant. Shortly, the husband who is suing for divorce lawsuit from his wife must apply to the District Court in the area where his wife lives at that time. However, if the place of residence or the residence of defendant is unclear and unknown or changing, a divorce lawsuit can be filed to the court in the area of residence of the plaintiff.

The question here, how long does the divorce legal process take from filing a divorce lawsuit to the decision? Based on the facts that have happened, usually the divorce process will take a maximum of six months at the first level, both in the District Court and the Religious Courts. In the Indonesian Marriage Law regulated that the examination of the divorce lawsuit by the Judge was carried out no later than 30 (thirty) days after the divorce lawsuit was received. This is also in accordance with Article 29 paragraph (1), paragraph (3) the Marriage Law Number 1 of 1974 and the Government Regulation Number 9 of 1975 that in determining the time for the trial to examine a divorce lawsuit, it is necessary to pay attention to the time limit for summoning and receiving the summons by the plaintiff and the defendant or their attorney. If the defendant resides outside the country, the trial for examining the lawsuit is set for at least six months as of the filing of the divorce lawsuit to the court clerk.

2. The Rights of Women and Children Post-Divorce in the Indonesian Marriage Law

After a divorce occurs, there are legal consequences in the form of rights and obligations that appear to be fulfilled as referred to in Chapter XVII of the Compilation of Islamic Law Number 1 of 1991 and the Marriage Law Number 1 of 1974. There are a number of laws and regulations in Indonesia that regulate the rights of women and children after divorce. For instance, Article 41 letter (c) of the Marriage Law Number 1 of 1974 has regulated the rights of women after a divorce. The article also provides the obligations to the husband in which he must ensure the necessities of life for his ex-wife like explicitly regulated in the Chapter XVII of the Compilation of Islamic Law (Sholeh, Gumelar & Fuadah, 2019).

Article 144 of the Compilation of Islamic Law states that divorce can occur because of the divorce lawsuit made by the husband or a divorce lawsuit made by the wife. It can only be carried out based on the judge's decision in a Religious Court trial. The court may oblige the ex-husband to provide living expenses and/or determine an

obligation to his ex-wife. In this regard, the ex-husband's have to pay his obligations to his children in the form of mut'ah, iddah, kiswah, madhiyah, and hadhanah as well as the ex-husbands also have to pay his obligation to the ex-wives in the form of mut'ah, iddah, maskan, and kiswah (Sulistiono, Haries, & Rahmi, 2022)..

The Compilation of Islamic Law has regulated the obligations of ex-husbands after divorce that must be fulfilled, where it is the rights of women as ex-wives. According to Dewi (2020) and Yusup & Al Hasan (2023), there are some post-divorce women's rights are regulated in Article 149, where post-divorce the rights of women include:

- a. The obligation of giving live hood (mut'ah), either in the form of money or objects, except for the women divorced before marriage (qobla al-dukhul). Article 158 of the Compilation of Islamic Law furtherly stipulates that mut'ah is given to fulfill the requirements of qobla al-dukhul, which becomes the right of women if the dowry for the wife has not been determined and the divorce proposal is filed at the divorce will of the husband;
- b. The obligation of fulfilling the right of living in waiting period after divorce (iddah), the rights of gift from a husband to his ex-wife after being divorced (mut'ah), the right of place to live (maskan), and proper clothing (kiswah) to the ex-wife during the waiting period, unless the divorced woman has been sentenced to the last divorce statement (talak ba'in), treacherous (nusyuz) or not pregnant. The purpose of nusyuz is a condition in which a woman as a wife does not fulfill her obligations to her husband, namely to be devoted physically and mentally. To determine the woman was nusyuz or not as a wife, it is based on the valid evidence submitted during the trial process. However, the ex-husband has an obligation to provide a place to live for the ex-wife (maskan) for women post-divorce women during the iddah period regardless the ex-wife was nusyuz or not, it was regulated in Article 81 of the Compilation of Islamic Law;
- c. The custody rights of the children (hadhanah) is a living given to the child until the he or she is an adult and can take care of him or herself. Article 80 Paragraph 4 Letter (c) of the Compilation of Islamic Law states that the family's maintenance which includes living and education for the children is borne by the father. Likewise, it is occurred after divorce, which the Article 105 of the Compilation of Islamic Law states that the child's maintenance costs are borne by the father. This shows that the cost of children custody both before and after divorce remained to the husband's responsibility.

- d. Dowry owed. Currently there are no laws and regulations that specifically regulate the dowry owed, both in the Marriage Law and its derivative regulations, especially related to the regulation on execution, the authorities, and its implementation. This is a legal problem faced by judges in court due to a legal vacuum, and at the same time, the relevant government institutions (ministry/state institutions) also do not have regulations and policies that pay attention to the issue of fulfilling the right to dowry owed for ex-wives.

In addition, women also have the right to joint property as regulated in Articles 96 and 97 of the Compilation of Islamic Law, which states that if a woman is a partner who lives longer, she is entitled to half of the joint property in the case of divorce and women are entitled to one-half of the joint property (Musawwamah, 2020). Based on the post-divorce women's rights mentioned above, the Court has the authority to determine the expenses obligation that must be borne by the ex-husband as well as everything that is necessary to ensure the maintenance of the properties which are shared rights as well as goods that become the women's rights after divorce (Rahmi & Fathurrohman, 2019). The court exercises this authority based on an application submitted by the wife. This is regulated in the Article 24 of the Government Regulation Number 9 of 1975 on the Implementation of the Marriage Law Number 1 of 1974 (Zarori, Asmara & Munandar, 2020).

The Indonesian government has paid great attention to protecting the children's rights. This has been regulated in the laws and regulations in Indonesia, where children as part of citizens have rights that must be protected under the 1945 Constitution. These rights are regulated in Law Number 23 of 2022 on the Child Protection. This law is a consequence of Indonesia as a state of law and the ratification of the Convention on the Rights of the Child. This law regulates several the children's rights, such as:

- a. The right to life as regulated in the Article 4 of the Law Number 23 of 2002 which guarantees the right of children to live;
- b. The rights of religion, thought, and expression as regulated in the Article 6 of the Law Number 23 of 2002. This article provides protection for children to be able to express themselves, freedom to channel their creativity, give children choices about the religion they embrace and receive protection to worship according to their religion;
- c. The right to health and welfare, which the Law Number 23 of 2002 guarantees the children's health for growth and development and in the Article 12 states that the children have the right to rehabilitation, social assistance, and maintenance;

- d. The right to education and teaching, which the children have the right to receive instruction in order to be able to increase their knowledge, channel their abilities and be able to be morally, and socially responsible;
- e. Protection rights, which the children have the right to be protected from various forms of discrimination, neglect, exploitation, cruelty, violence, and other mistreatments;
- f. The right to care, which the children have the right to receive effective care and are free from pressure or arbitrary treatment under care either by their parents or by other parties; and
- g. The right to justice, which the children have the freedom to be treated humanely and get assistance in order to obtain justice in their lives.

Meanwhile, in the context of enforcing legal protection for the children's rights, especially in the household sphere, the government has enacted Law Number 23 of 2004 concerning the Prevention of Domestic Violence, including by stipulating criminal sanctions for parties who are legally responsible for the rights of children, but do not carry out their obligations so that they can be categorized as having committed acts of violence against children (Van Huis, 2010; Alam, Wijaya & Purwaningtyas, 2020). So, through the increasing demands for the protection of children's rights from the state, government, local government and society along with the increase in cases of violence against children, the Legislative Body together with the Government have revised and perfected the child protection law into Law Number 35 of 2014 concerning Amendment to the Child Protection Law Number 23 of 2002 (Sunyoto, 2021; Turisno, Suharto, Priyono & Mahmudah, 2021).

The rights mentioned above must be fulfilled regardless of the conditions. Regarding the rights of children after divorce, it has been regulated both in the Marriage Law and in the Compilation of Islamic Law. At the Article 41 of the Marriage Law states that after divorce, parents still have the obligation to maintain and educate their children for the benefit of the children. In addition, the cost of raising and educating children is the responsibility of the father (Supadi; Luth, Thohir; Permadi, Iwan; Kuswahyono, & Imam, 2019). However, if the father cannot fulfill these obligations, the mother also has an obligation to the costs in question. The same thing is also regulated in Article 149 letter d of the Compilation of Islamic Law, which states that ex-husbands have an obligation to provide hadhanah for their children. The purpose of hadhanah living is the cost of maintaining, nurturing and educating children until they grow up. Besides that, at Article 105 letter c of the Compilation of Islamic Law stipulates where

the responsibility for the maintenance costs of the post-divorce child rests with the father (Rohman & Widyaningrum, 2020).

The obligations that must be fulfilled are the rights that must be obtained by the child after the divorce. This is as regulated in Article 4 of Law Number 23 of 2002 where children have the right to live, grow, develop and participate fairly in accordance with human dignity and protection from violence and discrimination (Iksan, 2020). These rights are a manifestation of the obligations of both parents as regulated in Article 1 of Child Welfare Law Number 9 of 1979, in which the child's welfare is first and foremost the responsibility of the parents. From some of these things, the rights of children which are the obligations of parents must still be fulfilled regardless of the condition, whether the parents are still bound in marriage or after divorce.

3. Legal Instruments for the Fulfillment of the Rights of Women and Children Post-Divorce in Indonesia

There are the number of legal instruments for the fulfillment of the rights of women and children post-divorce in Indonesia. Normatively, the Judges in the court can refer to several regulations regarding on family law instruments such as the Marriage Law Number 1 of 1974, the Government Regulation Number 9 of 1975, Presidential Instruction Number 1 of 1991 on the Dissemination of the Compilation of Islamic Law. Besides that, to fulfill the rights of women and children post-divorce, the Judges can also consider the number of legal instruments such as the Law Number 9 of 1979 on Child Welfare, the Law Number 7 of 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Law Number 39 of 1999 on Human Rights, the Law Number 35 of 2014 on the Amendments to the Law Number 23 of 2002 on Child Protection, the Regulation of the Ministry of Women's Empowerment and Child Protection Number 13 of 2020 on the Protection of Women and Protection of Children from Gender-Based Violence in Disasters, the Law Number 23 of 2004 on the Prevention of Domestic Violence, etc.

However, in the practice of resolving divorce cases in the court, both in the Religious Courts and in the District Courts, not all judges fully refer to all the regulations and laws mentioned above. In several court decisions, some judges only refer to the regulations and laws that are included in legal considerations, both material and formal, but they do not explicitly and clearly state what the decision judicial forms are considered to guarantee the fulfillment of the rights of women and children after divorce. In fact, the impressive progress has been conducted by the Directorate General of the Religious

Courts to respond to this issue through issuing the Circular Letter of the Director General of the Religious Courts of the Republic of Indonesia Number: 1960/DJA/HK.00/6/2021 dated 18th June 2021 and the Decree of the Director General of the Religious Courts Number 1959 of 2021 dated 25th June 2021 on the Implementation of the Policy Brief on Guaranteed Protection of the Rights of Women and Children Post-divorce.

The policy presupposes the availability of adequate information regarding the rights of women and children post-divorce, a blank lawsuit containing the options related to demands due to divorce which includes iddah, mut'ah, past/debt income, child custody, and child support, and demands related to the guarantee of execution of the decision by the Defendant by asking the judges panel to order the Registrar to withhold the Defendant's divorce certificate before the Defendant fulfills the Plaintiff's demands regarding iddah, mut'ah, and past/debt income. Meanwhile, related to the fulfillment of children's custody, there needs to be cooperation with other agencies where the ex-husband works to facilitate the payment of children's custody through salary deductions, which is related to the ex-husband works as an employer or workers. The policy also encourages the judges to use the authority of judges because of their position (ex-officio) in protecting the rights of women and children after divorce through referring to Article 41 letter c of the Marriage Law Number 1 of 1974, the Indonesian Supreme Court Regulation Number 3 of 2017, and the Circular Letter of the Indonesian Supreme Court Number 3 of 2018.

For example, the Pelaihari Religious Court has followed up on these policies. During 2021, the Pelaihari Religious Court has received 828 divorce cases, consisting of 645 divorce cases and 183 divorce cases. In this regard, many of the 645 divorce lawsuit cases proposed by the wife, the judge's decisions containing post-divorce women's rights are 245 cases, and the decisions also containing children's rights after divorce are 227 cases. Meanwhile, many of the 183 divorce lawsuit cases proposed by the husband, the decisions containing the imposition of obligations on women's rights after divorce are 51 cases, and the decisions containing children's rights after divorce are 75 cases. There are still 8 remaining divorce cases that have not been decided). At the Pelaihari Religious Court, the decisions that contained the rights of women and children after divorce have existed before the issuance of policies related to guaranteeing the fulfillment of the rights of women and children after divorce (MIW, 2022).

In a divorce lawsuit cases proposed by the wife, regarding on the payment of iddah, mut'ah, and/or living expenses owed/past by the

Defendant, he must pay the obligations imposed before being able to take the divorce certificate in accordance with the Circular Letter of the Indonesian Supreme Court Number 2 of 2019. In practice, the mechanism is effectively used. As the evidence, it is shown by the 245 of the judge's decisions on the divorce lawsuit proposed by the wife to the court, which contained women's rights after divorce, and as many as 40 Defendants had also fulfilled the obligations imposed, while the others had been sent a notification, but had never come to the office to collect a divorce certificate. Indeed, there were several Defendants who came and said they were unable to fulfill the obligations imposed in the verdict. In this case, the Registrar's policy is to ask the Defendant to make an agreement with the Plaintiff in front of the Registrar regarding on the burden of obligations that can afford by the Defendant.

Until now, the trend developed at the Pelaihari Religious Court after the policy related to guaranteeing the fulfillment of the rights of women and children after divorce was not all wives who filed for divorce lawsuit also demanded post-divorce rights related to iddah and mut'ah, but it was more related to child custody and support, even in some cases, the wife revoked claims for post-divorce rights related to the rights of iddah and mut'ah in the court. This trend is strongly suspected because the wife does not want to cause new problems after the divorce with her husband, and it is indirectly behind the absence of the Defendant, which there has been an agreement to divorce, but without an agreement regarding post-divorce rights. In addition, it is also related to the understanding of Islamic legal norms (fiqh) among society that for the wife asks for a divorce, there is no right for the wife to demand iddah and mut'ah. In several cases, the wife made a mistake and at the same time the husband can ask for some money as a ransom of affection, as like as still believed by the people in the village area in the Tanah Laut Regency (MIW, 2022).

The obstacle often faced by the judges in the examination of post-divorce rights claims is the wife does not know her husband's income, because the husband does not have a permanent or odd job, or the husband works for another person or company but it is very difficult to obtain a certificate of income from the husband's place of work. The ambiguity of the husband's income makes it difficult for the panel of judges to determine the burden of obligations in accordance with the economic capacity of the husband. Meanwhile, if it is using the Regency Minimum Wage (UMK) parameter, sometimes it is not in accordance with the real income received by the husband. In several cases, the Defendant objected to fulfill the imposed obligations

because the nominal amount charged was too high and beyond the ability of the husband.

Moreover, the other obstacle is related to the fulfillment of children's custody after divorce. For example, in the case of the husband who works as an officer at the company. If there is support from the husband's workplace to take salary cuts, it will be able to guarantee the fulfillment of the child's custody after divorce every month. But if not, of course, there need to go through the execution application procedure, which cannot be submitted every month. In this context, it is in need of waiting for the accumulation of the child's custody due, because there are execution costs that must be incurred and need to be considered with the results that will be obtained if the execution is successful. Consequently, the assets of the ex-husband's party also need to be considered as goods that can be confiscated for execution to be auctioned, and the proceeds are to pay for the child's income which has not been paid for a certain time.

4. The Indonesian Government Efforts to Enforce the Fulfillment the Rights of Women and Children Post-Divorce

The Indonesian government has actually conducted various efforts to protect and fulfill the rights of women and children post-divorce. The legal products regulated about family law, including marriage and divorce. For instance, the Marriage Law Number 1 of 1974 contains the principles and provides the legal basis for marriage which has been the guide and has been applied to all Indonesian citizens. In the so bad marriage condition, from any point of view, it is better to break the marital relationship than to be continued. It means that although marriage is a very strong agreement (*mitsaqon ghaliidhan*) which binds physically and mentally between husband and wife, the marriage relationship can be ended if the husband and wife decide to do that, because both parties have the right to end the agreement.

The Indonesian legal system provides an avenue for divorce like regulated in the Marriage Law Number 1 of 1974 which tries to suppress the divorce rate as much as possible. The legislators are also aware about divorce that carried out arbitrarily will impact a damage, not only to the husband and wife, but also to the child who should be cared properly and lovingly in accordance with the principle of the best interests of the child (Ali, Ismail, Jangga & Abu Bakar, 2019). In fact, there are many divorce cases where the children rights do not get the attention by their parents, including by the government and courts. Therefore, the parents, the related government officials, and the judges in the court have more efforts and dominant role together to guarantee the fulfilment of the children's rights post-divorce in

accordance with the principle of the best interests of the child (Erlan, 2022).

Furthermore, in the Article 1 Paragraph (2) of the Child Protection Law Number 35 of 2014 on the Amendments to the Law Number 23 of 2002 stipulates that child protection is all activities to guarantee and protect the children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination. One of the government's efforts in optimizing the child protection in Indonesia is the establishment of the Indonesian Child Protection Commission which is mandated by the Article 74 (1) of the Child Protection Law Number 23 of 2002, which regulates: with this Law an independent Indonesian Child Protection Commission was formed.

The legal consequences of divorce on the children rights is not only impact on the husbands and wives who have the children in their marriage, but also implicated to the husbands and wives who do not have the children in their marriage. As stated in the Article 41 of the Marriage Law Number 1 of 1974, the consequences of breaking up a marriage due to divorce are: (a) both mothers and fathers are still obliged to maintain and educate their children, solely based on the best interests of the child, if there is a dispute regarding the control of the children, the court gives a decision; (b) the father has a responsibility for all costs of maintenance and education needed by the children: If the father is in fact unable to fulfil these obligations, the judges in the court can consider, determine, and decide that the mother is also responsible for the costs; and (c) the court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

Relating to the Indonesian government political law to enforce the fulfillment the rights of women and children post-divorce, there are several legal efforts to protect the rights of women and children post-divorce such as: (a) 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; (b) repressive measures, if the law is violated, the law enforcement must be carried out strictly against the violators indiscriminately, which is carried out by a judicial institution that has the authority and power to do so in accordance with the universal principles of human rights; and (c) rehabilitative efforts, namely restoring the original state. The law will be an instrument to make everyone return to be a good one with the punishment given to the lawbreakers. It is not only being conducted as a deterrent and preventive effects, but also expected to make

someone be a better one in accordance with the purpose of punishment, namely to achieve the social reintegration and socialization with the community where the law can be referred to as rehabilitation law.

Finally, despite all the efforts above are not explicitly mentioned as the government fully mandatory in the Marriage Law Number 1 of 1974 and the Government Regulation Number 9 of 1975, today, the Indonesian government such as the Ministry of National Development Planning, Ministry of Women's Empowerment and Child Protection, Ministry of Social Affairs, Ministry of Home Affairs, Ministry of Finance, Ministry of Education and Culture, Ministry of Religion, and other related government ministries/agencies - as the executive institution - needs to coordinate and work together immediately to issue the government regulation that specifically regulates the guidelines for the fulfilment of the rights of women and children post-divorce. This regulation will be highly helping the judges in the judicial institutions, especially it will become a legal bases for the judges in Religious Court and District Court in taking the legal considerations and decisions that are strong, fair, regulatory, binding, equal, executable, and effective.

D. Conclusion

The fulfilment of the rights of women and children post-divorce is a fundamental right in Indonesia that has been guaranteed in the 1945 Constitution, the Marriage Law Number 1 of 1974, the Law Number 7 of 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Law Number 39 of 1999 on Human Rights, the Child Protection Law Number 35 of 2014 on the Amendments to the Law Number 23 of 2002, the Government Regulation Number 9 of 1975, and the Presidential Instruction Number 1 of 1991 on the Dissemination of the Compilation of Islamic Law. In addition, the Directorate General of the Religious Courts also issued the Circular Letter of the Director General of the Religious Courts Number: 1960/DJA/HK.00/6/2021 and the Decree of the Director General of the Religious Courts Number 1959 of 2021 on the Implementation of the Policy Brief on Guaranteed Protection of the Rights of Women and Children Post-Divorce. Unfortunately, the rights of women and children post-divorce in Indonesia today are still unfulfilled by these laws. Thus, the Indonesian government, as the executive institution, through relevant institutions needs to coordinate and work together immediately to issue the government regulation that specifically regulates the guidelines for the fulfilment of the rights of women and children post-divorce. This regulation will be highly helping and supporting the judges in the judicial institutions in the fulfillment of

the rights of women and children post-divorce in the future.

Acknowledgment

This article is resulted from literature research and presented in the Focus Group Discussion Forum at Center for the Study of Law, Human Rights, and Society, Faculty of Sharia and Law, UIN Sunan Gunung Djati Bandung, West Java, Indonesia on 2nd August 2022 which is free from conflicts of interest, and has never been published anywhere.

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