The Limits of Absolute Competence of Religious Courts in Resolving Child Support Disputes Post-Divorce

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ABSTRACT

Divorce does not eliminate the obligation of parents, particularly fathers, to fulfill their children's right to financial support. However, disputes regarding child support after divorce and the limits of the Religious Courts' absolute jurisdiction in resolving such disputes remain common in practice. This study aims to analyze the absolute jurisdiction of the Religious Courts in resolving post-divorce child support disputes and to examine the legal protection of child support rights from the perspectives of Islamic law and Indonesian positive law. This research employs a normative legal research method using statutory and conceptual approaches. Data were collected through library research and analyzed qualitatively using a descriptive-analytical method. The findings indicate that the Religious Courts have absolute jurisdiction to examine, adjudicate, and decide disputes concerning child support rights as part of matrimonial matters. Child support rights are protected under both Islamic law and Indonesian positive law and remain the responsibility of the father even after divorce. Nevertheless, their implementation continues to face various obstacles, including non-compliance by obligated parties, weak enforcement mechanisms, and economic constraints. Therefore, strengthening legal enforcement and optimizing the role of the Religious Courts are necessary to ensure the effective protection and fulfillment of children's support rights.

***Keywords**: legal protection, child victims, sexual violence, child protection, victim recovery*

INTRODUCTION

Divorce does not absolve parents of their responsibilities toward their children, particularly in fulfilling basic needs such as child maintenance (nafkah). In Indonesia, this responsibility is regulated under the Marriage Law and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). Numerous court decisions also reaffirm that a father remains obligated to provide maintenance for his child, even though his marriage to the child's mother has dissolved. Post-divorce child maintenance is a right protected by both positive law and Islamic law. However, negligence in fulfilling this right remains a frequent occurrence. Consequently, the protection of children's rights has not yet been optimally implemented (Fatahillah et al., 2023).

The issue of post-divorce child maintenance involves not only the rights of the child but also the Religious Courts (Peradilan Agama) as the judicial institution authorized to resolve such matters. In practice, debates frequently arise regarding the boundaries of the Religious Courts' competence, especially when the issue of child maintenance escalates into the enforcement or execution of the child's rights. A study on the boundaries of the Religious Courts' competence is vital to provide legal certainty for justice seekers. Thus, the issue of post-divorce child maintenance can be resolved equitably and in accordance with the law.

The Religious Courts play a pivotal role in safeguarding children's rights following parental divorce. Beyond resolving family disputes, judges must ensure that their decisions consistently prioritize the best interests of the child. Research indicates that the Religious Courts hold the responsibility to protect children's rights post-divorce, particularly in cases pertaining to Islamic

family law. Therefore, the Religious Courts play a strategic role in maintaining the best interests of the child post-divorce (Andriani et al., 2021).

The jurisdiction of the Religious Courts in handling child maintenance disputes must be comprehensively understood to prevent overlapping jurisdictions with other judicial branches. Absolute competence serves as an essential instrument to determine the extent to which the Religious Courts can examine, adjudicate, and decide cases relating to post-divorce child maintenance rights. Clarity regarding these jurisdictional boundaries will offer legal certainty while simultaneously ensuring the effective protection of children's rights as legal subjects whose interests must be prioritized.

To date, there are no clear and detailed regulations on how to determine and calculate post-divorce child maintenance. Furthermore, the execution of court decisions regarding child maintenance often encounters obstacles, due to either the father's inadequate economic condition or weak judicial enforcement mechanisms. As a result, many court decisions that have attained final and binding legal force (inkracht van gewijsde) fail to provide tangible benefits to the children entitled to receive maintenance (Fathurrahman & Hartanto, 2025).

Based on the aforementioned context, the author contends that a study examining the boundaries of the Religious Courts' absolute competence in resolving post-divorce child maintenance disputes is imperative. This study is required to understand the legal basis of the Religious Courts' jurisdiction, the specific cases they can examine and decide, and their impact on the protection of children's rights. By delineating the absolute competence of the Religious Courts, it is expected that we can foster legal certainty, enforce decisions effectively, and better protect post-divorce child maintenance rights.

METHODOLOGY

This study employs a normative legal research method utilizing a statute approach and a conceptual approach (Solikin, 2019). Normative legal research was selected as this study focuses on examining the legal norms governing the absolute competence of the Religious Courts in resolving post-divorce child maintenance disputes. The statute approach is applied to analyze relevant legal provisions, including Law Number 7 of 1989 concerning the Religious Courts, as amended by Law Number 33 of 2006 and Law Number 50 of 2009, Law Number 1 of 1974 concerning Marriage, and the Compilation of Islamic Law. Meanwhile, the conceptual approach is utilized to analyze the concepts of the Religious Courts' absolute competence, child maintenance rights, and post-divorce dispute resolution based on evolving legal doctrines and theories.

The data sources in this study comprise three types of legal materials: primary legal materials, secondary legal materials, and tertiary legal materials (Putra et al., 2026). Primary legal materials include statutory legislation and court decisions related to the jurisdiction of the Religious Courts and child maintenance rights. Secondary legal materials are sourced from books, scholarly journals, research reports, and legal articles relevant to the object of this study. Tertiary legal materials consist of legal dictionaries, legal encyclopedias, and other sources that support the understanding of the primary and secondary legal materials.

The technique for collecting legal materials is conducted through library research by reviewing various literature, legal documents, and prior research findings concerning the absolute competence of the Religious Courts and post-divorce child maintenance disputes. Subsequently, the gathered legal materials are analyzed qualitatively using a descriptive-analytical method, which entails expounding upon the applicable legal provisions, linking them with relevant legal theories, and analyzing the jurisdictional boundaries of the Religious Courts in resolving post-divorce child maintenance disputes to yield a systematic and comprehensive conclusion.

RESULTS AND DISCUSSION

Absolute Competence of the Religious Courts

Absolute competence refers to the full authority vested in a judicial institution to examine, try, and decide specific cases based on the subject matter under its jurisdiction. In Indonesia, absolute competence serves to differentiate the jurisdictions among the Religious Courts, General Courts, Military Courts, and State Administrative Courts. According to Fataruba (2015), the absolute competence of the Religious Courts is the power exclusively granted by law to the Religious Courts to resolve specific disputes that cannot be examined by other judicial bodies. Therefore, any case legally designated under the jurisdiction of the Religious Courts must be examined and decided by the Religious Courts as the institution exercising judicial power for the Muslim population.

Within the Indonesian judicial system, the Religious Courts possess absolute competence. This signifies that the Religious Courts constitute an integral branch of judicial power recognized by the 1945 Constitution of the Republic of Indonesia. As one of the judicial bodies under the Supreme Court, the Religious Courts hold specialized jurisdiction to handle specific matters involving Muslim citizens. The state grants this authority as an acknowledgment of the necessity to resolve disputes based on Islamic law principles, which live and develop within Indonesian society. Consequently, the Religious Courts play a vital role in resolving disputes involving the Muslim community in Indonesia (Wattimena et al., n.d.).

The absolute competence of the Religious Courts underwent significant expansion following the enactment of Law Number 3 of 2006. Prior to this law, inheritance cases involving ownership disputes had to be settled through the General Courts first. However, following the amendment, the Religious Courts were granted the authority to examine and decide ownership disputes and other civil matters connected to cases under their jurisdiction, provided that the parties involved are Muslim. This policy aims to realize the judicial principles of simplicity, speed, and low cost (Adicahya, 2023).

The determination of the Religious Courts' absolute competence does not always depend on all parties sharing the same religion. For instance, in a grant (*hibah*) case involving parties of different faiths, judges consider that the legal relationship underpinning the dispute arose from an agreement executed under Islamic law. Thus, the resolution of the dispute must also utilize Islamic law as the basis for consideration. This approach demonstrates an evolution in the interpretation of the Religious Courts' absolute competence, with the clear objective of providing better legal protection and legal certainty for the Muslim community (Hakim et al., 2020).

Child Maintenance Rights from the Perspectives of Islamic Law and Positive Law

Child maintenance rights constitute a fundamental right possessed by every child from birth. Maintenance encompasses all necessities required for a child’s livelihood, including food, clothing, shelter, education, healthcare, and other aspects supporting their growth and development. Under both Islamic law and Indonesian positive law, providing maintenance to children is a parental obligation aimed at ensuring child welfare and protection. Therefore, child maintenance rights are paramount and must not be neglected, regardless of the child's legal status or the status of the parents' relationship (Saputra & Saputra, 2024).

In the perspective of Islamic law, a father as the head of the family is obligated to fulfill his child’s maintenance. This obligation does not terminate due to divorce, as the paternal-child lineage remains intact even though the husband and wife are no longer together. In Islamic law, child maintenance is considered a vital moral, religious, and legal responsibility that must be fulfilled to guarantee the child's well-being. Consequently, a father remains responsible for providing all living, educational, and upbringing necessities until the child becomes independent or reaches adulthood (Leliya et al., 2025).

In Indonesian positive law, several regulations govern child maintenance rights. These include Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 concerning Child Protection, and the Compilation of Islamic Law for the Muslim population. These regulations clarify that a child has the right to receive care, education, health services, and welfare from both parents, even after parental divorce.

Specifically, Article 41 of the Marriage Law states that the father remains responsible for the costs of the child's maintenance and education post-divorce. This implies that the obligation of maintenance does not cease simply because the marriage has dissolved. The father must continue to fulfill the child's basic needs, such as educational expenses, healthcare, and daily provisions essential for the child's proper growth and development (Hanifah, 2025).

Although both Islamic law and positive law explicitly regulate post-divorce child maintenance obligations, numerous hurdles persist. One of the most common issues is the father's reluctance to fulfill the maintenance obligations mandated by the court. In reality, many children are deprived of their maintenance rights due to financial constraints, a lack of legal awareness, or the ineffective enforcement of court decisions.

To address this issue, active engagement from the courts, the government, and the community is required to monitor the execution of child maintenance obligations. Furthermore, enhancing legal awareness and religious understanding regarding the importance of parental responsibility is crucial to guarantee the fulfillment of children's rights post-divorce. Thus, the protection of child maintenance rights can be more effectively realized in accordance with the principles of justice and public interest (*maslahah*) (Hamzah et al., 2022).

Post-Divorce Child Maintenance Disputes

Post-divorce child maintenance disputes refer to conflicts between a father and a mother regarding the manner of fulfilling their child's needs after dissolution of marriage. These disputes typically occur when one party defaults on their obligations or when they disagree on the quantum of maintenance to be provided. Such disputes can also stem from prolonged parental conflicts, resulting in the neglect of children's rights. In family law, divorce does not dissolve the parental-child relationship; thus, both parents must continue to fulfill their obligations to care for and maintain the child in accordance with the best interests of the child. These disputes demonstrate that parental duties do not conclude with divorce and must be resolved by prioritizing the child's best interests (Rahman & Rizkianti, 2024).

Post-divorce child maintenance disputes pertain not only to statutory text and religious provisions but also to how effectively these rules are enforced. The core issue often lies in the non-compliance of the liable party and weak supervision regarding the enforcement of court decisions. Consequently, despite the existence of court orders mandating child maintenance payments, the rights of the child are frequently unfulfilled in practice (Fitria et al., 2026).

These disputes generally arise when a father fails to perform his obligations voluntarily. Under such circumstances, the mother or the party representing the child may file a lawsuit or a petition for execution with the Religious Court. Unfulfilled child maintenance can be enforced through legal mechanisms via a petition for the execution of monetary payment, which progresses from the petition, *aanmaning* (judicial warning), asset seizure (*sita eksekusi*), to public auction of property if necessary. This mechanism demonstrates that the state provides legal protection for child maintenance rights through judicial institutions (Burhanudin, 2015).

During court proceedings to resolve child maintenance disputes, judges bear a heavy responsibility to ensure that the determined amount aligns with the child's needs and the father's economic capacity. This is predicated upon the principle of the best interests of the child, meaning all decisions must focus on the protection and welfare of the child. This principle also serves as the bedrock of Islamic family law, where child welfare is the primary priority in every decision relating to child custody and maintenance (Dwi Pamudi, 2024).

CONCLUSION

Based on the discussion, it can be concluded that the Religious Courts possess full absolute competence to resolve post-divorce child maintenance disputes. This is because child maintenance issues constitute an integral part of matrimonial cases, which fall under the statutory jurisdiction of the Religious Courts. The Religious Courts are authorized to examine, try, and decide cases related to child maintenance, as well as handle the execution of such decisions. Clarity regarding this jurisdiction is vital to prevent overlapping authority with other courts and to provide legal certainty for the litigating parties.

Child maintenance is a fundamental right protected by both Islamic law and positive law in Indonesia. Despite parental divorce, a father remains legally obligated to fulfill the child's living, educational, health, and welfare needs until the child reaches adulthood or independence. However, numerous obstacles hinder the fulfillment of child maintenance, such as non-compliance by the obligor, weak court enforcement mechanisms, and economic factors that impede the optimal fulfillment of children's rights.

Post-divorce child maintenance disputes typically surface because fathers refuse to pay maintenance voluntarily. Consequently, the intervention of the Religious Courts is required to resolve this issue. Throughout the settlement process, judges play a crucial role in protecting children's rights by applying the principle of the best interests of the child. Thus, the Religious Courts function not only as a forum for dispute resolution but also as an instrument for safeguarding children's rights post-divorce.

RECOMMENDATIONS

The recommendations derived from this study are as follows:

a. The public is expected to increase awareness regarding the importance of fulfilling post-divorce child maintenance rights and to support parents in maintaining their responsibilities. With proper civic concern and sound legal literacy, the protection of children's rights can be achieved more optimally.
b. Future researchers are advised to conduct empirical studies concerning the effectiveness of child maintenance order enforcement in the Religious Courts, as well as the factors influencing party compliance with such verdicts, thereby providing a more comprehensive overview of post-divorce child maintenance rights protection.

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