

**Legal Efforts in Fulfilling Children's Right after Divorce
Based on Single Mother in Malang Regency**



Aee Munyasa
14/11/2024

Fred Hasanudin, Lc. MA.

By:
Fairuza 'Alima Fardindaputri
NIM: 21421010

THESIS

Submitted to Ahwal Syakhshiyah Department Internasional Program
Faculty of Islamic Studies Universitas Islam Indonesia
Presented As Partial Fulfillment Of The Requirements Of Obtaining
A Bachelor Degree Of Law

**YOGYAKARTA
2024**

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By:
Fairuza 'Alima Fardindaputri
NIM: 21421010

Supervisor:
Fuat Hasanudin, Lc., MA

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STATEMENT LETTER

STATEMENT LETTER OF THESIS AUTHENTICITY

The undersigned :

Name : Fairuza 'Alima Fardindaputri
NIM : 21421010
Place and Date of Birth : Malang, 9th of September 2000
Study Program : *Ahwal Syakhshiyah* International Program
Faculty : Islamic Studies
Thesis Title : **Legal Efforts in Fulfilling Children's Rights after Divorce
Based on Single Mother in Malang Regency**

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Thus, I made this statement actually and not forcefully.

Yogyakarta, 11 November 2024

That stated,


Fairuza 'Alima Fardindaputri

SURAT PENGESAHAN



FAKULTAS
ILMU AGAMA ISLAM

Gedung K.H. Wahid Hasyim
Kampus Terpadu Universitas Islam Indonesia
Jl. Kaliurang km 14,5 Yogyakarta 55584
T. (0274) 898444 ext. 4511
F. (0274) 898463
E. fia@uii.ac.id
W. fia.uii.ac.id

PENGESAHAN

Tugas Akhir ini telah diujikan dalam Sidang Tugas Akhir Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyah Program Internasional yang dilaksanakan pada:

Hari : Senin
Tanggal : 2 Desember 2024
Judul Tugas Akhir : Upaya Hukum Pemenuhan Hak Nafkah Anak Pasca Perceraian Berdasarkan Ibu Tunggal di Kabupaten Malang
Disusun oleh : FAIRUZA 'ALIMA FARDINDAPUTRI
Nomor Mahasiswa : 21421010

Sehingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar sarjana dari Program Studi Ahwal Al-Syakhshiyah Program Internasional Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta.

TIM PENGUJI:

Ketua/Pembimbing : Fuat Hasanudin, Lc., MA
Penguji I : Dr. Mukhsin Achmad, S.Ag, M.Ag.
Penguji II : Muhammad Miqdam Makfi, Lc., MIRKH.

Yogyakarta, 2 Desember 2024



INTERNAL MEMO

INTERNAL MEMO

Yogyakarta, 11 November 2024
9 Jumadil Awal 1446 H

Subject : **Thesis**
Dear : **Honorable Dean of the Faculty of Islamic Studies**

Universitas Islam Indonesia
Di-Yogyakarta

Assalaamu'alaikum Wr. Wb.

Based on the appointment by the Dean of the Faculty of Islamic Studies, Universitas Islam Indonesia, with letter number: 893/Dek/60/DAATI/FIAI/IV/2024 on 20th of June 2024 / 13th of Zulhijjah 1445 H, for our duties as supervisor of the thesis:

Student Name : Fairuza 'Alima Fardindaputri
Student Number : 21421010

The student of the Islamic Studies Faculty, Universitas Islam Indonesia

Study Department : *Ahwal Syakhshiyah* International Program

Academic Year : 2023-2024

Thesis Title : **Legal Efforts in Fulfilling Children's Rights after Divorce Based on Single Mother in Malang Regency**

After researching and making necessary improvements, we finally decided that your thesis above fulfills the requirements to be submitted to the *Munagasyah* Trial of the Islamic Studies Faculty, Universitas Islam Indonesia.

Thus, it can be tested soon, and together with us, we will send 4 (four) copies of the thesis in question.

Wassalaamu'alaikum Wr. Wb.

Dosen Pembimbing,



Fuat Hasanudin, Lc., MA

SUPERVISOR APPROVAL



UNIVERSITAS ISLAM INDONESIA
FAKULTAS ILMU AGAMA ISLAM

SUPERVISOR'S APPROVAL

The undersigned s the thesis supervisor, certifying that:

Student Name : Fairuza 'Alima Fardindaputri
Student Number : 21421010
Thesis Title : **Legal Efforts in Fulfilling Children's Right after Divorce
Based on Single Mother in Malang Regency**

According to the process and the result of supervising among several months, and being made necessary improvements, then the concerned person can register herself to join the Munaqasah Trial of the Ahwal Syakhshiyah International Program Department, Faculty of Islamic Studies, Universitas Islam Indonesia.

Supervisor

Yogyakarta, 11th November 2024

Fuat Hasanudin, Lc., MA

ACKNOWLEDGMENT

“I dedicate this thesis as a form of my responsibility to my parents that I have completed my undergraduate journey to the best of my ability. My biggest motivations are smiles, happiness, and pride for my parents. Thank you for all the love, support, trust, and prayers that Ayah and Ibu have given to Dinda. Hopefully, this will be the first step for your last child to go on the path of success in the future. And, of course, I dedicate this thesis to all single mothers who are struggling and surviving for themselves and their children. I am amazed and proud to see that all of you can survive this far to ensure the lives of your children after divorce. This may be a small token of my appreciation to all of you. I just want to say that you are all great, even though you are a single mother.

May Allah give long life, health, blessings, and abundance of mercy and love to my parents, my family, my friends, and all single mothers who are struggling for their lives and their children.”

Aamiin Yaa Rabb...

MOTTO

اَللّٰهُمَّ يَسِّرْ وَلَا تُعَسِّرْ

“Allahumma Yassir wa Laa Tu’assir”

-Ya Allah, mudahkanlah dan janganlah Engkau persulit-

ARABIC LATIN TRANSLITERATION GUIDELINES
JOIN DECISION
MINISTER OF RELIGION AND MINISTER OF EDUCATION AND
CULTURE OF THE REPUBLIC OF INDONESIA

Number: 158 of 1987

Number: 0543b//U/1987

Transliteration is the transfer of letters from one alphabet to another. Arabic-Latin transliteration here is the copying of Arabic letters with Latin letters and their devices.

A. Consonant

In the Arabic writing system, Arabic consonant phonemes are symbolized by letters. In this transliteration, some are symbolized by letters, and some are symbolized by signs.

The following is a list of the Arabic letters in question and their transliteration with Latin letters:

Table 0.1: Consonant Transliteration Table

Arabic letters	Name	Latin letters	Name
ا	Alif	Not symbolized	Not symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	Śa	ś	es (with a dot on top)
ج	Jim	J	Je

ح	Ḥa	ḥ	ha (with dot below)
خ	Kha	Kh	ka and ha
د	Dal	d	De
ذ	Ḍal	ḏ	Zet (with a dot on top)
ر	Ra	r	er
ز	Zai	z	zet
س	Sin	s	es
ش	Syin	sy	es dan ye
ص	Ṣad	ṣ	es (with dot below)
ض	Ḍad	ḍ	de (with dot below)
ط	Ṭa	ṭ	te (with dot below)
ظ	Ẓa	ẓ	zet (with dot below)
ع	`ain	`	Inverted comma (above)
غ	Gain	g	ge
ف	Fa	f	ef
ق	Qaf	q	ki
ك	Kaf	k	ka
ل	Lam	l	el
م	Mim	m	em
ن	Nun	n	en

و	Wau	w	we
هـ	Ha	h	ha
ء	Hamzah	‘	apostrophe
ي	Ya	y	ye

B. Vowel

Arabic vowels, like Indonesian vowels, consist of single vowels or monophthongs and double vowels or diphthongs.

1. Single vowel

Single Arabic vowels whose symbols are signs or *harakat* are transliterated as follows:

Table 0.2: Single Vowel Transliteration Table

Arabic letters	Name	Latin letters	Name
َ	Fathah	a	a
ِ	Kasrah	i	i
ُ	Dammah	u	u

2. Double Vowels

Arabic double vowels whose symbols are a combination of harakat and letters, transliterated in the form of a combination of letters as follows:

Table 0.3: Double Vowels Transliteration Table

Arabic letters	Name	Latin letters	Name
يَ...	Fathah and ya	ai	a and u
وَ...	Fathah and wau	au	a and u

Examples:

- كَتَبَ kataba
- فَعَلَ fa`ala
- سَأَلَ suila
- كَيْفَ kaifa
- حَوْلَ haula

C. Maddah

Maddah or long vowels whose symbols are harakat and letters, transliterated in the form of letters and signs as follows:

Tabel 0.4: *Maddah* Transliteration Table

Arabic letters	Name	Latin letters	Name
أَ...إِ...	Fathah and alif or ya	ā	a and line above
إِ...	Kasrah and ya	ī	i and line above
وُ...	Dammah and wau	ū	u and line above

Examples:

- قَالَ qāla
- رَمَى ramā
- قِيلَ qīla

- يَقُولُ yaqūlu

D. *Ta' Marbutah*

There are two transliterations for *ta' marbutah*, namely:

1. *Ta' marbutah* live

Ta' marbutah live or which gets *fathah*, *kasrah*, and *dammah* *harakat*, transliteration is “t”.

2. *Ta' marbutah* die

Ta' marbutah dies or which gets a *sukun* *harakat*, the transliteration is “h”.

3. If the last word with *ta' marbutah* is followed by a word that uses the article *al* and the two words are read separately, then the *ta' marbutah* is transliterated with “h”.

Examples:

- رَوْضَةُ الْأَطْفَالِ raudah al-atfāl/raudahtul atfāl
- الْمَدِينَةُ الْمُنَوَّرَةُ al-madīnah al-munawwarah/al-madīnatul munawwarah
- طَلْحَةَ talhah

E. *Syaddah (Tasydid)*

Syaddah or *tasydid*, which in Arabic writing is symbolized by a sign, the *syaddah* sign or *tasydid* sign, is transliterated with a letter, which is the same letter as the letter marked with the *syaddah*.

Examples:

- نَزَّلَ nazzala
- الْبِرُّ al-birr

F. The Article

T

he article in the Arabic writing system is symbolized by a letter, namely ال, but in this article followed by a shamsiyah letter is distinguished above:

The article followed by shamsiyah letters is transliterated according to its sound namely the letter “l” is replaced by the letter that directly follows the article.

2. The article followed by qamariyah letters

The article followed by qamariyah letters is transliterated by the rules outlined in front and by its sound. Whether followed by a shamsiyah or qamariyah letter, the article is written separately from the word that follows and is connected without a gap.

Examples:

- الرَّجُلُ ar-rajulu
- الْقَلَمُ al-qalamu
- الشَّمْسُ asy-syamsu
- الْجَلَالُ al-jalālu

G. Hamzah

Hamzah is transliterated as an apostrophe. However, this only applies to hamzah located in the middle and at the end of words. Hamzah, located at the

beginning of the word, is symbolized because in Arabic writing, it is in the form of alif.

Examples:

- تَأْخُذُ ta'khuẓu
- شَيْئٌ syai'un
- النَّوْءُ an-nau'u
- إِنَّ inna

H. Word Writing

Basically, each word, whether fail, *isim* or letter is written separately. Only certain words whose writing in Arabic letters is commonly combined with other words because there are letters or *harakat* that are omitted, then the writing of the word is also combined with other words that follow it.

Examples:

- وَ إِنَّ اللَّهَ فَهُوَ خَيْرُ الرَّازِقِينَ Wa innallāha lahuwa khair ar-rāziqīn/
Wa innallāha lahuwa khairurrāziqīn
- بِسْمِ اللَّهِ مَجْرَاهَا وَ مُرْسَاهَا Bismillāhi majrehā wa mursāhā

I. Capital Letters

Although capital letters are not recognized in the Arabic writing system, they are used in this transliteration. The use of capital letters is like what applies in EYD, including the use of capital letters to write the initial letter of proper names and the beginning of sentences. When an article precedes a proper name,

the initial letter of the proper name is written with a capital letter, not the initial letter of the article.

Examples:

- الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ Alhamdu lillāhi rabbi al-`ālamīn/
Alhamdu lillāhi rabbil `ālamīn
- الرَّحْمَنُ الرَّحِيمُ Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

The use of initial capital letters for Allah only applies when the Arabic writing is complete and if the writing is combined with other words so that there are letters or harakat that are omitted, capital letters are not used.

Examples:

- اللَّهُ غَفُورٌ رَحِيمٌ Allaāhu gafūrun rahīm
- لِلَّهِ الْأُمُورُ جَمِيعًا Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

J. Tajweed

These transliteration guidelines are an inseparable part of Tajweed Science for those who want fluency in reading. Therefore, the inauguration of these transliteration guidelines needs to be accompanied by Tajweed guidelines.

ABSTRACT

Legal Efforts in Fulfilling Children's Right after Divorce Based on Single

Mother in Malang Regency

Fairuza 'Alima Fardindaputri

(21421010)

This study aims to analyse and examine the legal force of the implementation of the fulfilment of child needs after divorce by the former husband and the efforts made by single mothers in fulfilling children's rights. The research methodology used is field research, which uses qualitative methods. Through purposive technique (non-probability sampling), researchers conducted in-depth interviews with respondents based on the criteria of living divorce widows who still had minor children when the divorce verdict was handed down. In addition, the perspective of expert practitioners, namely judges, is also needed to see this case. Based on Article 41 of the Marriage Law and Article 156 of the Compilation of Islamic Law, the responsibility for child needs rests with the father until the child is 21 years old or has married or lived independently. But in reality, many ex-husbands are negligent in fulfilling this child support, making single mothers have to survive on their own. From the point of view of single mothers, the factors that cause the non-fulfilment of child needs by the ex-husband include the absence of responsibility for the child, the inability to provide child needs, the unknown whereabouts of the ex-husband, and the influence of other parties. Indeed, single mothers can file a lawsuit in the form of execution for this case. However, several

factors influence this, including the poor relationship between the ex-husband and wife and protecting children's mental health, as well as several existing legal issues.

Keywords: Divorce, Child Needs, Children's Right

PREFACE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

إِنَّ الْحَمْدَ لِلَّهِ نَحْمَدُهُ وَنَسْتَعِينُهُ وَنَسْتَغْفِرُهُ وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا، مَنْ يَهْدِهِ اللَّهُ فَلَا مُضِلَّ لَهُ وَمَنْ يَضِلَّ فَلَا هَادِيَ لَهُ. أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ. اللَّهُمَّ صَلِّ وَسَلِّمْ وَبَارِكْ عَلَى مُحَمَّدٍ وَعَلَى آلِهِ وَصَحْبِهِ وَمَنْ اهْتَدَى بِهَذَا إِلَى يَوْمِ الْقِيَامَةِ.

All praise to Allah SWT, who has given health, grace, and guidance so that this research and thesis can be completed on time. Shalawat and Salam for the Prophet Muhammad SAW, whom we always look forward to his intercession on the last day.

The process of preparing and completing this thesis entitled “Legal Efforts in Fulfilling Children's Right after Divorce Based on Single Mother in Malang Regency” cannot be separated from the support, guidance, advice, and supervision of various parties involved until this thesis can be completed properly. Therefore, my deepest gratitude goes to the honorable ones:

1. Prof. Fathul Wahid, S.T., M.Sc., Ph.D., as the Rector of Universitas Islam Indonesia.
2. Dr. Drs. Asmuni, M.A, as the Dean of the Faculty of Islamic Studies Universitas Islam Indonesia.
3. Dr. Anton Priyo Nugroho, S.E., M.M., as the Head of the Department Islamic Studies Faculty of Islamic Studies Universitas Islam Indonesia.
4. Krismono, SHI., MSI., as the Head of the Diploma Program in Family Law (Ahwal Syakhshiyah).

5. As the thesis supervisor, Fuat Hasanudin, Lc., MA, has supervised me comprehensively and patiently during these several months.
6. As the academic supervisor and study program secretary, Ahwal Syakhshyah Internasional Program, Muhammad Miqdam Makfi, Lc., MIRKH, supervised and advised me in my educational journey as well as direction and support, starting from the beginning of the semester to the final project.
7. To Miss Frances Annmarie Duffy, who has been willing to be my discussion lecturer on international laws in the discussion of this thesis.
8. All lectures of the Study Program in Family Law (Ahwal Syakhshiyah) Faculty of Islamic Studies Universitas Islam Indonesia and Academic Civitas of Faculty of Islamic who have been giving helpful knowledge until this thesis can be finished.
9. For the Judge of the Religious Court of Malang Regency, the noble Mr. Drs. H. Shobirin, M.H., who has helped me in the data search process, as well as expert respondents to my research.
10. For all single mother respondents in Malang Regency who have been willing to be the source of my research.
11. Special thanks to my parents, Mrs. Dra. Umi Farida and Mr. Dr. Catur Wahyudi, MA, for all their love, blessings, and endless prayers for me. All the advice that has become the provision of life for me, the support, both material and non-material, that has been given, and also the trust for the youngest to be able to migrate to Yogyakarta so that she can complete her studies well.

12. To my beloved brothers and sisters, Faris Rusydi Aliyverdana, Nurmita Arum Sari, Firdananda Fikri Jauharany, and Nauval Rifqy Ramadhan, who have given attention and channeled their own spirit and discussion partner for their little sister. Of course, also for my one and only nephew at this time, Arissena Abhimata Salahuddin, who always provides cheerfulness in the middle of my mind.
13. For the owner of NIM 21421056, thank you for all your attention, patience, and understanding in always accompanying me in every difficulty or anxiety while living life overseas. Thank you for enduring and continuing to accompany me.
14. My closest friends, Nikita Priya Izzatulhikmah and Nurhasna Nugrahini, always take the time to vent, encourage, support, and understand each other's situation in all conditions. Thank you for being my best friend in this lecture period. And, of course, my friends in arms AS IP 2021 also have a role and provide color in my university period.
15. Last but not least for myself, thank you for sticking it out this far and continuing to work on everything. Cheers to stepping into real life. You are strong and you are great!

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CHAPTER I INTRODUCTION

A. Research Background

A human is created from the formation of *nutfah* (semen) then becomes a clot of blood and is in the womb for nine months. And it's born a baby whom Allah has given various extraordinary pleasures, that's mind. The only thing that distinguishes humans from all of Allah's creations is that humans have the pleasure of being able to think through their minds. A super function of the mind can control every behavior in human life. One of the concepts of human creation is not merely without a purpose that Allah wants. Humans are equipped with spirit, heart, lust, and mind as a privilege and control of human life. Allah created humans with all their perfection and enjoyment, intending to worship Him cause, in essence, all humans will return to the Creator, Allah SWT. Worship means an act is done willingly as a form of devotion to God. As a Muslim, the worship rituals of Allah have many kinds. In Islam, we know about the concept of *Mu'āmalah*, which is a behavior of interaction between fellow humans in the circle of sharia. Marriage is one of the examples of the *Mu'āmalah* concept. Allah has said in the Quran that if a man and a woman are creatures as a pair, the union of these two creates a bond through a legal marriage. Allah says:

سُبْحَنَ الَّذِي خَلَقَ الْأَزْوَاجَ كُلَّهَا مِمَّا تُنْبِتُ الْأَرْضُ وَمِنْ أَنْفُسِهِمْ وَمِمَّا لَا يَعْلَمُونَ

It means, “Glory to Allah who has created everything in pairs, both of what the earth and themselves grow and of what they do not know” (QS. Yasin:36)

In Islam, the Syafi’iyyah explains that “Marriage is a contract that contains elements of permissible (*ḥalāl*) for a man and woman to have conjugal relations with the presence word of *nikāḥ* in a previous contract.”¹ Marriage is an action that depends on the interaction between two beings who are different both in gender and character to be forced to unite and build a family that serves Allah. Marriage is also one of the most protracted acts of worship. So, it’s not easy to get through in daily life. Sometimes, some problems must be overcome to strengthen the bond of this marriage. But in fact, there are a few couples who fail to get through marriage problems; it feels like they can’t live together and maintain their household again, and it makes them take part in divorce. Divorce certainly has an impact on the children, families, and also each other’s spouses. Divorce in Islam is known as *ṭalaq*, which is a breaking relationship that’s established from a contract (*ḥall al-‘aḳāid*) with a specific word (*lafaz*). The act of *ṭalaq* is allowed in

¹Kumedi Ja’far, *Hukum Perkawinan Islam Di Indonesia*, ed. Ulil, 1st ed. (Bandar Lampung: CV Arjasa Pratama, 2021), <https://books.google.co.id/books?id=2NkzEAAQBAJ&lpg=PR1&pg=PR1#v=onepage&q&f=false>.

Islam, but it's *makruh* (highly hated) from the perspective of Islamic law.

This is stated based on Hadith from Ibn Majah and Abu Daud,

أبغض الحلال إلى الله الطلاق (رواه أبو داود و ابن ماجة و الحاكم)

It means, "The most permissible action that Allah hates is *ṭalaq*(divorce)"

(HR.Ibn Majah and Abu Daud and others).

When a married couple is divorced in a religious court, the judge will decide cases such as child custody (*ḥaḍanah*), child needs, 'Iddah maintenance, *Mut'ah*, etc. The broken bond between husband and wife cannot make a change to break the bond between parents and their children. Following Article 41 of Law No. 1 of 1974 concerning Marriage, divorced parents are still obliged to maintain and educate their children. The cost of a child's needs is the responsibility of the Father.² Furthermore, the Religious Court can decide by obliging the ex-husband to provide living expenses for the ex-wife during her 'Iddah period (*naḥqah 'Iddah/naḥqah Mut'ah/naḥqah Maḍiyah*). However, the Judge's decision, especially regarding child needs, is not consistently implemented. In a society, a father is not responsible for what is imposed on him. This makes the strength of the Judge's decision seem weak and ignored by the perpetrator's divorce. And it forces the ex-wife to bear all the burdens related to her and her

²Nadia Rizkiah Latupono, Barzah Latupono, and Sabri Fataruba, "Kewajiban Ayah Menafkahi Anak Setelah Putusnya Perkawinan," *PATTIMURA: Law Study Review* 1, no. 1 (August 2023): 142–50, doi:10. 47268/palasrev.v1i1.10838.

children following the dissolution of the marriage. It's crucial to recognize that the responsibility for providing the material and non-material has the portion and well-being of the child shared between the father and mother. From a legal standpoint, single mothers have the option to pursue litigation against their former spouses for child support arrears, which may ultimately result in the initiation of execution proceedings. However, this effort is not considered to be running optimally, as evidenced by the minimal number of these lawsuits and even the infrequent encounters. So, it can be said that this effort is not enough to provide a solution for the situation of single mothers who do not get a share of needs from their ex-husbands.

Indonesia is still identified with a high rate of divorce. Based on data from the last three years indicates that the divorce rate has been on the rise. In 2021, there were 447,743 cases; in 2022, there were 448,126 cases; and in 2023, there were 463,654 divorce cases. The dominant factors of divorce are economic problems and continuous quarrels between husband and wife.³ East Java is the largest area on Java Island, second with the highest range of divorce after West Java, which had 89,093 cases. East Java has nine cities and 29 regencies, and Malang Regency had the highest divorce cases in East

³Badan Pusat Statistika, "Jumlah Perceraian Menurut Provinsi Dan Faktor," *BPS-Statistics Indonesia*, accessed June 4, 2024, <https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTlZwRFVUMDkjMw==/number-of-divorces-by-province-and-factors--2022.html?year=2022>.

Java from 2020 to 2023. By the last data it's counted, there were 8,195 cases.⁴ This data attracts the researcher's attention to learn more about the divorce case decision in Malang Regency, especially the decision about child support that is obligated to the ex-husband or father of the children. To investigate the extent of a father's responsibility in fulfilling his obligation to provide alimony to his child and the extent to which single mothers, whether legally or otherwise, engage in efforts to pursue their children's alimony rights. To understand this phenomenon comprehensively, the researcher engages a local Judge as an expert respondent and decision-maker. With this background, the researcher examines writing the final project titled **“Legal Efforts in Fulfilling Children's Rights after Divorce Based on Single Mothers in Malang Regency.”**

B. Research Focus

Based on the study background, to focus this research needs several problems that discussed in this research as follows:

⁴Badan Pusat Statistika, “Jumlah Talak Dan Cerai Menurut Kabupaten/Kota Di Provinsi Jawa Timur 2020-2022,” *Statistics Jawa Timur*, accessed June 4, 2024, <https://jatim.bps.go.id/statictable/2023/07/25/3029/jumlah-talak-dan-cerai-menurut-kabupaten-kota-di-provinsi-jawa-timur-2020-2022.html>.

1. What is the extent of the realization of child support and the role of single mothers in seeking the right to fulfillment of their children's rights?
2. What is the Judge's role in realizing compliance with providing child support after divorce?
3. How does the legal system protect the rights of children and single mothers in the case of divorce?

C. Research Objectives

Refer to the research focus, the objectives of this research are :

1. To find out the reality regarding the father's obligation to provide child support after divorce and the efforts of single mothers to pursue their children's support rights in Malang Regency
2. To ascertain the factors affecting the scarcity of needs claims by single mothers in Malang Regency
3. To find out the point of view of the judge as a decision maker and an expert respondent in this case and the degree of legal remedies applicable in this condition

D. Benefits of the Research

This research is expected to have theoretical and sociological benefits.

The benefits of this research are :

1. Theoretically

This research is expected to provide law enforcement with insights to inform policy reforms and strengthen legal enforcement by understanding society's reality. It also establishes a legal basis, specifically for instances of the ex-husband's negligence in fulfilling child needs after divorce, and reinstates the fundamental principles of law as a guarantee of protection and justice for society.

2. Sociologically

This research is expected to restore the legal force of the judge's decision, thereby providing a valuable reference for society to become more legally literate. Furthermore, it can help the public improve their social lives.

E. Discussion Systematics

For this research to be easily observed and examined, it needs coherent discussion systematics. In this chapter, the researcher makes a structured discussion of this research into five parts and several sub-chapters. The arrangement is as follows:

The first chapter introduces this research and concerns why the researcher wants to investigate and compile it. This chapter is divided into several sections: study background, research focus, research objectives, benefits of the research, and discussion system.

The Second Chapter presents the literature review and theoretical framework. A literature review is a section that contains previous research

by the conclusion of it. In this section, the researcher tries to explain the earlier study used the mind-mapping method to make it easy to understand the central part of the previous research. This chapter also contains the theoretical framework to support the research that will guide the analysis of the problem formulation.

The Third Chapter is a section on the research method used in conducting this research. It consists of the types of research, the location of the research, the research informant, the technique for determining informants, data collection techniques, data validity, and data analysis techniques.

The fourth chapter contains the results and a discussion of this research. It discusses the findings and analyses the reality of fulfilling child support after divorce and some efforts that involve the mother for her children's rights based on study cases in Malang Regency.

The Fifth Chapter contains the conclusion, a brief discussion of exciting findings, and suggestions based on this research. A bibliography also be included in this chapter. Furthermore, it may be necessary to include attachments crucial to presenting the result or any evidence of this research.

CHAPTER II

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

A. Literature Review

To find out the cause of the research presented in the title above, it's essential to conduct a comprehensive literature review on a similar research project on **“Legal Efforts in Fulfilling Children’s Rights after Divorce Based on Single Mothers in Malang Regency.”**

Divorce can occur with a marriage bond. Many factors can contribute to the reason for the marriage breakup. For a lot of reasons, economic problems and domestic violence are the most common causes of divorce. Before deciding on the divorce, the judge, as the decision maker, has an obligation and job to try to prevent the divorce because the dissolution of marriage will impact the family, children, and the individuals involved. From a legal perspective, the effect of divorce proceedings is primarily concerned with children's rights from that marriage. The rights of children have been legally protected by several laws, including Law Number 39 of 1999 Articles 52 to 66 concerning Human Rights, Law No. 16 of 2019 amending Law No. 1 of 1974 Articles 45 to 49 concerning Marriage, and Law No. 23 of 2002 (jo.). Legal provisions of Law No. 35 of 2014 concerning child protection rights, the compilation of Islamic law book I concerning marriage law, and some of the views from Fiqh Ulama are designed to protect children's rights physically and mentally, especially in divorce cases. Based on the provisions of the applicable law, a child should

not be a victim, whether educational, psychological, life necessities or others, in the aftermath of the dissolution of their parents. This means that the parents must fulfil all their children's material or non-material needs until their children reach adulthood or can support themselves independently. This is based on a journal written by:

- Sandi Matahati dan Markoni (2023) entitled “*Akibat Hukum Dari Perceraian Terhadap Anak Menurut Hukum Yang Berlaku*”,⁵
- Ayu Isfany Fachry Azis, Syahrudin Naw, dan Ahyuni Yunus (2021) entitled “*Analisis Yuridis Terhadap Nafkah Anak Akibat Perceraian: Studi Kasus Pengadilan Agama Maros*”,⁶
- Afrinal dan Aldy Darmawan (2022) entitled “*Pemenuhan Nafkah Anak Pasca Perceraian*”,⁷
- Rahma Pramudya Nawang Sari, Syarif Idris Pua Surabaya, Umi Kalsum, Nurhayati Natonis dan Ari Sutantriyati (2024) entitled

⁵Sandi Matahati and Markoni Markoni, “Akibat Hukum Dari Perceraian Terhadap Anak Menurut Hukum Yang Berlaku,” *Jurnal Multidisiplin Indonesia* 1, no. 5 (January 2023): 1308–27, doi:10.58344/jmi.v1i4.134.

⁶Ayu Isfany Fachry Azis, Syahrudin Naw, and Ahyuni Yunus, “Analisis Yuridis Terhadap Nafkah Anak Akibat Perceraian: Studi Kasus Pengadilan Agama Maros,” *Journal of Lex Generalis (JLS)* 2, no. 2 (February 2021): 724–34.

⁷Afrinal and Aldy Darmawan, “Pemenuhan Nafkah Anak Pasca Perceraian,” *Sakena: Jurnal Hukum Keluarga* 7, no. 1 (2022): 59–70.

“Perspektif Hukum Islam Dalam Pelaksanaan Nafkah Anak Setelah Perceraian Di Desa Nanga”,⁸

- Haijan, Ahmad Subekti, dan Dwi Arikurniawati (2020) entitled *“Tinjauan Hukum Islam Terhadap Perceraian Dengan Alasan Ekonomi Dan Kekerasan Dalam Rumah Tangga (Studi Kasus Di Pengadilan Agama Kota Malang 2019)”*,⁹
- Muhammad Nasrul Munir, Ibnu Jazari, dan Humaidi (2021) entitled *“Analisis Terhadap Tingginya Angka Gugat Cerai Terhadap Lembaga Hukum Di Pengadilan Agama Kabupaten Malang Kelas 1A”*.¹⁰

The implementation of divorce in court has been legally regulated in Positive Law. The Compilation of Islamic Law (KHI) has a legal status that's valid and clear and can be coercive to prevent negligence and unwanted outcomes in the future. Fulfilment of child needs after divorce has been legally imposed, with the obligation of the father of the children. After

⁸Rahma Pramudya Nawang Sari et al., “Perspektif Hukum Islam Dalam Pelaksanaan Nafkah Anak Setelah Perceraian Di Desa Nanga,” *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 14, no. 1 (November 24, 2024): 1–12, https://jurnal.ucy.ac.id/index.php/agama_islam.

⁹ Haijan, Ahmad Subekti, and Dwi Arikurniawati, “Tinjauan Hukum Islam Terhadap Perceraian Dengan Alasan Ekonomi Dan Kekerasan Dalam Rumah Tangga (Studi Kasus Di Pengadilan Agama Kota Malang 2019,” *Hikmatina: Jurnal Ilmiah Hukum Keluarga Islam* 2, no. 3 (2020): 1–8.

¹⁰ Muhammad Nasrul Munir, Ibnu Jazari, and Humaidi, “Analisis Terhadap Tingginya Angka Gugat Cerai Terhadap Lembaga Hukum Di Pengadilan Agama Kabupaten Malang Kelas 1A,” *Hikmatina: Jurnal Ilmiah Hukum Keluarga Islam* 3, no. 2 (2021): 169–80.

the divorce verdict, there are still many fathers who are negligent and irresponsible in fulfilling child support due to a lack of effective communication, limited understanding of religious pieces of knowledge, and economic constraints which make the father's inability to support his child, the unknown whereabouts the father, a new marriage that makes him focus on a new family, and the prohibition of his new wife. It can be argued that the reality of child support practice is still ineffective, which makes the children lose their rights, and single mothers have to struggle to support their children. Legally, the aggrieved party can file a lawsuit in the form of execution related to child needs based on Article 1365, which is included in the Unlawful Act based on Default (Wanprestasi). However, in some cases, due to the complexity of legal procedures, the length of time required, and the cost not proportional to the amount of value set, the aggrieved party will not file a lawsuit again. This is based on a journal written by:

- Abdurrahman Adi Saputera dan Masniyati (2023) entitled “*Analisis Terhadap Kelalaian Pemenuhan Nafkah Anak Pasca Putusan Pengadilan Agama Gorontalo*”,¹¹

¹¹Abdurrahman Adi Saputera and Masniyati, “Analisis Terhadap Kelalaian Pemenuhan Nafkah Anak Pasca Putusan Pengadilan Agama Gorontalo,” *Tamaddun Journal of Islamic Studies* 2, no. 1 (2023): 1–22, doi:<http://journal.scimadly.com/index.php/tajis>.

- Amelin Heranti (2022) entitled “*Dampak Perceraian Di Luar Pengadilan Terhadap Hak Nafkah Anak (Studi Kasus Di Desa Mendala Kecamatan Sirampog)*”,¹²
- Intan Puspita Sri dan Hariyo Sulistiyantoro (2023) entitled “*Implementasi Pemberian Nafkah Anak Pasca Perceraian Di Pengadilan Agama Surabaya Studi Putusan Nomor 2669/PDT.G/2023 PA Surabaya*”,¹³
- Ahmad Zulfahmi, Annikmah Farida, Ika Trisnawati A, dan Ikhwanudin (2023) entitled “*Hak Anak Pasca Perceraian Perspektif UU No. 16 Tahun 2019 Dan Kompilasi Hukum Islam (Studi Kasus Desa Qurnia Mataram Kec. Seputih Mataram Lampung Tengah)*”,¹⁴
- Nadiyah (2022) entitled “*Nafkah Anak Pasca Perceraian*”,¹⁵

¹²Amelin Heranti, “Dampak Perceraian Di Luar Pengadilan Terhadap Hak Nafkah Anak (Studi Kasus Di Desa Mendala Kecamatan Sirampog),” *KHULUQIYYA: Kajian Hukum Dan Studi Islam* 4, no. 1 (January 2022): 18–49.

¹³Intan Puspita Sari and Hariyo Sulistiyantoro, “Implementasi Pemberian Nafkah Anak Pasca Perceraian Di Pengadilan Agama Surabaya Studi Putusan Nomor 2669/PDT.G/2023 PA SBY,” *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 2, no. 6 (2023): 275–88, <http://jurnal.anfa.co.id>.

¹⁴Ahmad Zulfami et al., “Hak Anak Pasca Perceraian Perspektif UU No. 16 Tahun 2019 Dan Kompilasi Hukum Islam (Studi Kasus Desa Qurnia Mataram Kec. Seputih Mataram Lampung Tengah),” *IJSH: Indonesian Journal of Social and Humanities* 1, no. 1 (October 2023): 20–31, <https://jurnal.academiacenter.org/index.php/IJSH>.

¹⁵Nadiyah, “Nafkah Anak Pasca Perceraian,” *Journal of Islamic Law El Madani* 1, no. 2 (July 2022): 103–10.

- Rufia Wahyuning Pratiwi (2020) entitled “*Perlindungan Hukum Terhadap Kelalaian Pemenuhan Pembayaran Nafkah Anak Pasca Perceraian Berdasarkan Putusan Pengadilan Agama Blitar*”.¹⁶
- Anas Makruf Maulidi (2022) entitled “*Pelaksanaan Putusan Cerai Talak Atas Nafkah Istri Dan Anak Di Pengadilan Agama Kabupaten Malang (Studi Putusan Nomor 5410/Pdt.G/2019/PA Kab. Malang)*”.¹⁷

The role of parents (ex-husband and ex-wife), the community, and the government can participate in enforcing the fulfilment of child needs obligations. This includes reducing selfishness (egoism), supervising and supporting children of divorce victims, addressing legal complaints (lawsuits and executions), protecting against discrimination, etc. Several efforts are made to emphasise the father's fulfilment of child support after divorce, including Litigation, such as confiscating the ex-husband's property, imposing court fees on the respondent, and waiving court fees for low-income citizens. Also, there are in terms of Non-Litigation, such as

¹⁶Rufia Wahyuning Pratiwi, “Perlindungan Hukum Terhadap Kelalaian Pemenuhan Pembayaran Nafkah Anak Pasca Perceraian Berdasarkan Putusan Pengadilan Agama Blitar,” *Jurnal Negara Dan Keadilan* 9, no. 2 (August 2020): 99–111.

¹⁷Anas Makruf Maulidi, “Pelaksanaan Putusan Cerai Talak Atas Nafkah Istri Dan Anak Di Pengadilan Agama Kabupaten Malang (Studi Putusan Nomor 5410/Pdt.G/2019/PA Kab. Malang),” *DINAMIKA* 28, no. 3 (January 2022): 3454–66.

limited population administration registration (for cases when conducting a new marriage), No social assistance for poor ex-husbands, the restriction of access to public services, especially police administration matters, and increasing taxes for ex-husbands who have sufficient economy. Those who fail to fulfil their obligations may be subject to criminal prosecution under the Article on Child Neglect. Despite these efforts, however, they remain underutilised and do not run optimally, and it is still something that is rarely done by the community. Therefore, it's hoped that reforms and more robust legal measures will be implemented to address this matter, focusing on the benefits for society and the parties concerned. This is based on a journal written by:

- Muhammad Holid (2024) entitled *“Implementasi Pemenuhan Hak Anak Pasca Perceraian di Desa Kembang Tlogosari Bondowoso ditinjau dari Kompilasi Hukum Islam Dan Undang-Undang Perlindungan Anak Nomor 23 Tahun 2002”*,¹⁸
- Gilang Favian Pratama dan Ahmad Suryono (2023) entitled *“Analisis Hak-Hak Anak Pasca Perceraian Orang Tua Menurut Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan Atas*

¹⁸Muhammad Holid, “Implementasi Pemenuhan Hak Anak Pasca Perceraian Di Desa Kembang Tlogosari Bondowoso Ditinjau Dari Kompilasi Hukum Islam Dan Undang-Undang Perlindungan Anak Nomor 23 Tahun 2002,” *Jurnal Pendidikan Tambusai* 8, no. 1 (2024): 3055–63.

Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak”,¹⁹

- Alfi Bariroh dan Aulia Muthiah (2022) entitled “*Eksekusi Terhadap Kewajiban Pemberian Nafkah Anak Pasca Perceraian Menurut Hukum Positif*”,²⁰
- Masrukhin dan Meliana Damayanti (2020) entitled “*Hukum Progresif Penanganan Hak Nafkah Anak dalam Kasus Perceraian di Pengadilan Agama (Studi di Pengadilan Agama Karesidenan Surakarta)*”,²¹
- Bunga Nur Fauziyah, Yono, dan Ahmad Mulyadi Kosim (2022) entitled “*Sanksi Hukum Bagi Ayah Yang Menelantarkan Anak Pasca Perceraian: Studi Komparatif Antara Hukum Islam dan Hukum Positif*”.²²

¹⁹Gilang Favian Pratama and Ahmad Suryono, “Analisis Hak-Hak Anak Pasca Perceraian Orangtua Menurut Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak,” *Journal of Contemporary Law Studies*, no. 1 (2023): 1–8, doi:<https://doi.org/10.47134/lawstudies.v1i1.1946>.

²⁰Alfi Bariroh and Aulia Muthiah, “Eksekusi Terhadap Kewajiban Pemberian Nafkah Anak Pasca Perceraian Menurut Hukum Positif,” *Jurnal Jantera Hukum Borneo* 5, no. 2 (July 2022): 77–94.

²¹Masrukhin and Meliana Damayanti, “Hukum Progresif Penanganan Hak Nafkah Anak Dalam Kasus Perceraian Di Pengadilan Agama (Studi Di Pengadilan Agama Karesidenan Surakarta),” *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 5, no. 1 (2020): 25–36.

²²Bunga Nur Fauziyah and Ahmad Mulyadi Kosim, “Sanksi Hukum Bagi Ayah Yang Menelantarkan Anak Pasca Perceraian: Studi Komparatif Antara Hukum Islam Dan Hukum Positif,” *MIZAN Journal of Islamic Law* 6, no. 2 (2022): 293–306, doi:<https://doi.org/10.32507/mizan.v6i2.1427>.

This phenomenon shows an injustice for divorced women. From a collection of previous research references, it can be seen that existing legal policies cannot be positioned as a basis for protection, convenience, and trust for the community and it is not yet clear enough about the extent of the efforts made by single mothers to defend the rights of their children.

Based on this, researchers carry out research that is different from the previous one, namely finding out the reality regarding fulfilling child support in Malang Regency and the extent to which single mothers make legal or non-legal efforts to uphold their children's rights.

B. Theoretical Framework

1. Divorce

Following the definitions provided in the Indonesian Dictionary (KBBI), divorce is separate or break up which means dissolution of the bond between a husband and wife.²³ In Islam, divorce is referred to as *ṭalaq*, which means the dissolution/severance of the marital bond between a husband and wife. The term divorce also can defined as the dissolution of ties or an attempt to break up the bond of marriage between husband and

²³Badan Pengembangan dan Pembinaan Bahasa, “Kamus Besar Bahasa Indonesia-Daring (Arti Perceraian),” 2016, <https://kbbi.kemdikbud.go.id/entri/cerai>.

wife for a certain reason.²⁴ According to Ibn Qayyim, *ṭalaq* is a right inherent to a married man as it pertains to the authority to bind his wife and is dependent on him. Furthermore, the implementation of *ṭalaq* doesn't require a witness.²⁵ Maliki, Shafi'i, and Hambali maintain that a woman may petition a judge for a divorce for reasons such as failure to provide maintenance or a wife who feels threatened and insecure due to domestic violence, distance from her husband, and imprisonment.²⁶

In Islam, divorce is permitted but is considered an act that is displeasing to Allah (hated by Allah), and it's not a solution for marital discord when someone is living in his household; there is a dispute and disharmony, so it's more advisable to use a third party as a mediator to facilitate reconciliation within the household. Divorce can be carried out either from the husband's side (*ṭalaq*) or the wife's side (Divorce Suit/Gugat); in Compilation of Islamic Law, Chapter XVI Articles 113 to 148 concern the breakdown of marriage. The law enumerates several fundamental reasons for a

²⁴Nibras Syafriani Manna, Shinta Doriza, and Maya Oktaviani, "Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga Di Indonesia," *Jurnal AL-AZHAR INDONESIA SERI HUMANIORA* 6, no. 1 (March 2021): 11–21, doi:10.36722/sh.v%vi%i.443.

²⁵Irham Zahir, "Comparative Analysis Of Talaq That Passed Outside The Court In The Perspective Of Islamic Law," *Jurnal Al-Dustur* 3, no. 2 (2020): 1–18.

²⁶Dahwadin et al., "Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam Di Indonesia," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 11, no. 1 (June 2020): 87–104, <https://journal.iainkudus.ac.id/index.php/Yudisia/index>.

person to file for divorce, including the commission of immoral acts such as adultery, gambling, drunkenness, one of the parties living for two consecutive years without reason, one of the parties being imprisoned for at least five years or other more severe penalties, one of the parties engaging in persecution, disability, and continuous disputes between the two, and also by the reason that the husband violates the *taklik talaq* and apostasy (*murtad*). In addition, to the Compilation of Islamic Law, other legal documents also mention about divorce. These include Law No. 1 of 1974 Chapter VIII Article 38 to 41; Minister of Religious Affairs Regulation (PERMA) No. 3 of 1975; and Government Regulation (PP) No. 9 of 1975.²⁷ In the event of a divorce between a husband and wife who has children, the divorce decree does not automatically result in the dissolution of the marriage. However, both parties retain a duty towards the child. This entails that both parents are still obliged to maintain and educate the child and that the father is still obliged to fulfill all the aspects of the child's needs until they reach adulthood (child needs); this was based on Law No. 1 of 1974, Article 41.

2. *Nafqah*

²⁷Ibid.

Naqkah in Arabic is *an-nafaqah* which is taken from *al-infaq* whose origin is *anfaqa-yunfiqu* which means exhausted or need or loss. *Nafqah* is also defined as an obligation that one must give to another who is dependent on him. According to Syafi'iyah, “*Nafqah* is food given by the husband in an amount sufficient for his wife and servant or others besides them such as children, parents, slaves, and pets”.²⁸ In fact, the term *nafqah* has a fairly broad meaning. Syeikh Muhammad Ali Ibn Allan also states this in the book *Dalil al-Falihin li Thuruqi Riyadi al-Shalihin*, where he defined *nafqah* as “a need in the form of money, *kiswah* (clothing), food, and *maskan* (shelter) needed by someone who is borne.”²⁹ by the aim of this need is to ensure survival.

Nafqah is distributed for three reasons: (1) because of marriage, (2) because of kinship, which must be distributed to parents and children, although some scholars also extend the scope of kinship causes to those who have a *maḥram* relationship and inheritance, (3) because of ownership, which must be distributed to

²⁸Muhammad Zakaria and Nurhadi, *Nafkah Anak Perspektif Dual Sistem Hukum Di Indonesia*, ed. Nurhadi, 1st ed. (Pekanbaru: Guepedia Group, 2021), https://books.google.co.id/books?hl=en&lr=&id=ValMEAAQBAJ&oi=fnd&pg=PA3&dq=nafkah&ots=UL2QePm6R9&sig=Nj3ek58ocEz_1AxtgwP-a3kIgXk&redir_esc=y#v=onepage&q=nafkah&f=false.

²⁹Muhammad Ali Ibnu Allan, *Dalil Al-Falihin Li Thuruqi Riyadi al-Shahilin*, vol. 3 (Beirut: Dar Kutub Ilmiyah, 2009).

slaves and livestock or pets.³⁰ In the event of a divorce between a husband and wife, *nafqah* has its regulatory rights, which are part of the rights of the ex-wife. These include *Nafqah 'Iddah*, which is the *nafqah* that is given during the wife's 'iddah period after divorce; *Nafqah Maḍiyah*, which is the previous *nafqah* that a husband is obliged to provide to his wife during the period of their legal marriage; *Nafqah Mut'ah*, *Nafqah* that given as a form of consolation; and *Nafqah Haḍanah*, which is the financial support that a father must continue to provide to his child, even in the event of a divorce from the child's mother.³¹

All of these are entitled to be obtained by the wife unless the wife commits *nusyuz*, in which case the husband is free of this *nafaqah*. This is by SEMA No. 3 of 2018, Point 3.³² Furthermore, the Compilation of Islamic Law contains numerous articles regulating *nafqah* arrangements, such as Article 80, Article 104, Article 136, and Article 149. The Marriage Law No. 1 of 1974,

³⁰Husnul Khitam, "Nafkah Dan Iddah: Perspektif Hukum Islam," *Az-Zarqa* 12, no. 2 (December 2020): 189–205.

³¹Devi Yulianti, R Agus Abikusna, and Akhmad Shodikin, "Pembebanan Mut'ah Dan Nafkah 'Iddah Pada Perkara Cerai Talak Dengan Putusan Verstek," *Mahkamah: Jurnal Kajian Hukum Islam* 5, no. 2 (December 2020): 286–97.

³²Riyan Ramdani and Firda Nisa Syafithri, "Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah Dan Mut'ah Dalam Perkara Perceraian Di Pengadilan Agama," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 15, no. 1 (March 31, 2021): 37–50, doi:10.15575/adliya.v15i1.11874.

Articles 30 to 34 and Article 41, also address this topic.³³ Also, there is from the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia (SK-KMA) Number KMA/032/SK/IV/2006, is address the determination of 'iddah maintenance (*nafqah 'iddah*) obligations on husbands in cases of contested divorce.³⁴

3. Child Rights

Children are a gift from Allah entrusted to His servants so that they receive the best care and education from their parents. Parents are obliged to fulfill their children's rights and the obligations they must give them. In Islam, children's rights are included in the Human Rights section, which is a gift from Allah that must be guaranteed and fulfilled by parents, families, communities, and the state.³⁵ As in Islam is called *maqasid al-syari'ah*, these include *hifz ad-dīn* (the right to religion); *hifz an-nafs* (the right to reserve the soul); *hifz an-nasl* (the right to reserve lineage); *hifz al-'aql* (the right to reserve reason); and *hifz al-māl* (the right to reserve property).

³³M Yusuf Nur Rohim, Muh Saleh Ridwan, and Misbahuddin, "Pemberian Nafkah," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 12 (January 2024): 693–99, doi:10.5281/zenodo.10458739.

³⁴Heniyatun, Puji Sulistyarningsih, and Siti Anisah, "Pemberian Mut'ah Dan Nafkah Iddah Dalam Perkara Cerai Gugat," *PROFETIKA: Jurnal Studi Islam* 21, no. 1 (2020): 39–59.

³⁵Sri Mulyani, "Hak-Hak Anak Dalam Perspektif Hukum Islam," *SYARIAH: Journal of Islamic Law* 3, no. 1 (2021): 20–31.

Several statutes have been enacted in Positive Law to regulate the fulfillment of children's rights. These include Law No. 4 of 1979 concerning Child Welfare, Law No. 3 of 1997 concerning Juvenile Court, and Law No. 35 of 2014 amending Law No. 23 of 2002 Article 54 concerning Child Protection, Presidential Decree (*Keppres*) No. 36 of 1990 concerning Ratification of the Convention on the Rights of the Child.³⁶ Child protection is defined as all activities that guarantee and protect children's rights to live, grow, develop, and participate optimally by human dignity and protection from violence and discrimination.

In the context of divorce, children are not considered victims of their parents until their rights are not fulfilled. In Islamic Jurisprudence (*Fiqh*), the term of fulfillment of children's rights after divorce is called *ḥaḍānah*, which is the fulfillment of children's rights and maintenance to prevent something terrible. This is also regulated in the Compilation of Islamic Law. Thus, even after a divorce, a husband and wife remain obligated to fulfill their children's rights, as stipulated in Law No. 1 of 1974 Article 41 and Law No. 23 of 2004 concerning the Elimination of Domestic

³⁶Nabilla Suci Ramadhani et al., "Hak Asasi Manusia Terhadap Anak," *IJEDR: Indonesian Journal of Education and Development Research* 2, no. 1 (January 2024): 109–14.

Violence, Article 49. This is considered a criminal offense for a father who neglects his obligations to his children.³⁷ Various legal instruments have been enacted to fulfill and protect children's rights. In 2021, Indonesia continues to experience a prevalence of violence against children, with rates of 34% for boys and 41.05% for girls in the age range of 13-17 years old.³⁸

³⁷Ondra Aiko, "HAK Anak Pasca Perceraian (Studi Kasus Di Nagari Pakan Rabaa Timur Kec. Koto Parik Gadang Diatesh Kabupaten Solok Selatan)," *Journal Al-Ahkam* 22, no. 1 (2021): 53–70.

³⁸Tri Afandy and Yati Sharfina Desiandri, "Tinjauan Implementasi Kebijakan Perlindungan Dan Pemenuhan Hak Anak," *IURIS STUDIA: Jurnal Kajian Hukum* 4, no. 3 (January 2023): 145–55, <http://jurnal.bundamedia grup.co.id/index.php/iuris>.

CHAPTER III RESEARCH METHODS

A. Types of Research and Approach

The research methodology employed is field research, which involves on-site observations and interviews to collect data on legal or non-legal efforts to fulfill children's rights among single mothers after a divorce in Malang Regency.

This research uses qualitative methods with a sociological approach, This sociological approach was initiated by Max Weber in the theory of social action. It highlights the importance of values, culture and meaning in understanding social behavior. Because the researcher seeks to ascertain the reality of this decision and adopt the respondent's point of view in understanding this phenomenon. In so doing, the researcher utilizes sociological and legal expertise on the nature, behavior, and development of society, with a view to understanding, awareness, and protection in the context of positive and Islamic law.

B. Location of the research

The research location utilized to obtain the desired data result is the Malang Regency area in East Java. This region has the highest number of divorce cases in East Jawa. Thus, the researchers selected the Religious Court of Malang Regency as the primary location for the data sources. Furthermore, field research was conducted with people of Malang Regency

who met the criteria of research respondents, which included individuals from several sub-districts, including:

Table 3. 1 Respondent Data by Region of Malang Regency

NO	DISTRICT	TOTAL NUMBER OF RESPONDENTS
1	Kepanjen District	4 people
2	Tumpang District	2 people
3	Pakis District	2 people
4	Singosari District	1 people
5	Poncokusumo District	1 people
6	Karangploso District	1 people

C. Research Informants

In this research, the researcher aims to determine the extent of the realization of the father's responsibility in carrying out his obligations regarding post-divorce child support and to examine the efforts of single mothers in seeking to provide for their children's maintenance. To gain a deeper understanding of the lived experiences of a divorced widow with minor children at the time of the divorce decision. Additionally, the researcher consult with a local judge as an expert respondent to gain insight into the legal perspective on the high divorce rate in Malang Regency and

the implementation of the father's responsibility regarding the fulfillment of child needs. Furthermore, the researcher examine the legal efforts to maximize child needs fulfillment after parental divorce.

D. Informant Determination Technique

Researchers used a purposive technique, non-probability sampling. The initial step involves the researcher determining the appropriate sample criteria, which in this case is a divorced widow who still has or ever had minor children at the time of the divorce decision. This criterion was selected based on the researcher's understanding of the research topic. The researcher interviewed the respondents to obtain detailed information about this topic.

Furthermore, interviews were conducted with the expert, the Judge from the Religious Court of Malang Regency. The judge who got an interview with the researcher was selected by the Head of the Court and deemed suitable to assist the researcher in gathering data.

E. Data Collection Technique

1. Interview

The interviews conducted for this research are flexible to the respondents' preferences. They are performed using various methods, including in-person (face-to-face) interviews, video calls, and chat

messages. The objective of the interview is to obtain detailed information and supporting data.

2. Documentation

The documentation comprises several recorded interviews and evidence of existing chat messages. In addition, several documents from the Religious Court of Malang Regency are included as research material.

F. Data Validity

The process of ensuring the accuracy and reliability of data involves a series of analytical and examination techniques. This involves steps including the organization of data, the identification of patterns, the determination from the critical data until additional data, and the decision about the data that can be published as a form of accountability for the result of this research. This process also entails the assessment of the data's credibility through the extension of observation and the enhancement of persistence, thus strengthening the validity of the data and enhancing its accountability.

G. Data Analysis Technique

The process of analyzing this data was done in several steps:

1. The process of sorting and selecting between data containing high information value and data with low or additional information.

2. Following the screening process, the data were grouped according to this study's problem formulation.
3. The process of analysis and conclusion. In this analysis, researchers use several sources from previous data processing and filtering to reinforce the results obtained from the data in this research.

CHAPTER IV

RESULT AND DISCUSSION

A. Result

1. The Overview of Divorce Data in Malang Regency

Based on Article 38 of Marriage Law No. 1 of 1974 stipulates the ground for the dissolution of marriage, which may be attributed to three primary factors:

- a) Because of death
- b) Because of divorce
- c) Because of a court decision

The dissolution of a marriage caused by death is a marriage that breaks up due to the death of one of the parties, either the husband or the wife. Meanwhile, the cause of divorce is a marriage due to the divorce of a husband to his wife. The reason for a court decision is that a court may decide to divorce during a court session.

Malang Regency has the highest number of divorce cases in East Jawa. In 2023, East Jawa ranked second in the number of divorces, with 79,248 cases reported. Malang Regency has been the leading region for divorces in East Jawa for the past three years, with an increasing trend in cases reaching 8,195 divorces and contested divorces.³⁹

³⁹ Badan Pusat Statistika, "Jumlah Perceraian Menurut Provinsi Dan Faktor," *<https://www.bps.go.id/Id/Statistics->*

Table 4. 1 Divorce Data for the last 4 (four) years in Malang Regency

REGION	NUMBER OF DIVORCE <i>talaq</i> AND DIVORCE LAWSUIT			
	2020	2021	2022	2023
Malang Regency	6.707	6.370	8.195	7.038

Source: Data from the Central Bureau of Statistics of East Java Province accessed on Tuesday, 17th September 2024⁴⁰

The data indicate that the number of divorces in Malang Regency has increased and then decreased over the past four years, with a notable peak in the number of divorces occurring in the most recent year. A comparison of the data from 2020 and 2021 reveals a decrease of 337 divorce cases in 2021. However, there was a significant increase in 2022, with a 1,825 case increase in divorce cases. This was followed by a decrease in 2023, with a 1,157 case decrease. As of now, Malang Regency still has the highest rate of divorce cases in East Java.

Table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTlZwRFVUMDkjMw==/Number-of-Divorces-by-Province-and-Factors--2022.Html?Year=2022, 2023.

⁴⁰ Badan Pusat Statistika, "Jumlah Talak Dan Cerai Menurut Kabupaten/Kota Di Provinsi Jawa Timur 2020-2022," *Https://Jatim.Bps.Go.Id/Id/Statistics-Table/1/MzAyOSMx/Jumlah-Talak-Dan-Cerai-Menurut-Kabupaten-Kota-Di-Provinsi-Jawa-Timur-2020-2022.Html*, 2023.

According to the Judge of the Religious Court of Malang Regency regarding the high divorce rate in Malang Regency, Drs. H. Shobirin, M.H. revealed that the court is passive in its approach to divorce cases. Rather than actively seeking out cases, the court must handle and resolve those that come to its attention. On the other hand, from a demographic point of view, the large area of Malang Regency and its large population also affect the high divorce rate. In addition, the development of the times through technology or things rampant today, such as online gambling, also affects family harmony.

The Judge of the Religious Court in Malang Regency himself revealed that despite the high divorce rate in Malang Regency, judges still sought a case to be decided in its entirety through the mediation process and the advice given by the court, which has the effect of influencing actors involved in divorce cases to reconsider their decisions and withdraw their lawsuits.

Cases accepted for resolution are not limited to those seeking a divorce. In addition to terminating or dissolving the marriage, the parties may also prioritise maintaining harmony through mediation, withdrawing the lawsuit after input or advice from the court, or considering the impact of the divorce on the perpetrator. However, not all cases are accepted for resolution. Some are rejected due to insufficient formal requirements or proof to substantiate the claims.

The elevated incidence of divorces in Malang Regency can be attributed to many contributing factors. In the Compilation of Islamic Law, Article 116 enumerates eight factors that may result in a divorce, including (1) One of the parties engages in adultery, is a drunkard, a junkie, a gambler, or engages in any other act that cannot be cured, (2) One of the parties leaves without an apparent reason or for other reasons beyond his ability for 2 (two) consecutive years, (3) One of the parties is subject to a prison sentence of 5 (five) years or a heavier sentence after the marriage, (4) One of the parties may commit severe maltreatment that endangers the other party. (5) One of the parties may be physically disabled or affected by a disease that results in an inability to carry out marital obligations. (6) There may be continuous quarrels and disputes between the two parties. (7) The husband may violate talk talak. Eighthly, one of the parties may change religion, which may cause a breakdown in the household.

The Malang District Religious Court has identified and catalogued the factors that cause divorce, with data collection spanning the previous three years. The qualifications of the factors causing divorce are more detailed than the eight items mentioned above. This data was obtained by directly requesting it from the Malang Regency Religious Court through the established procedures.

**Table 4. 2 Factors Causing Divorce in Religious Courts in Malang Regency
per year 2021-2023**

FACTORS	2021	2022	2023
Zina	0 cases	1 case	5 cases
Drunk	11 cases	5 cases	5 cases
Madat	0 cases	2 cases	1 case
Gambling	5 cases	8 cases	5 cases
Abandoning one of the parties	518 cases	620 cases	586 cases
Sentenced to prison	8 cases	21 cases	15 cases
Polygamy	1 case	3 cases	3 cases
Domestic violence	11 cases	14 cases	11 cases
Disability	0 cases	3 cases	0 cases
Continuous dispute	3442 cases	3328 cases	2450 cases
Forced marriage	4 cases	2 cases	3 cases
Change of religion (apostasy)	24 cases	72 cases	19 cases
Economic problems	2405 cases	2475 cases	3048 cases

Other	0 cases	0 cases	0 cases
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Source: Data taken from the Religious Court of Malang Regency on Tuesday, 17th September 2024

The data indicate that most divorces are precipitated by ongoing discord or contention between spouses. From 2021 to 2023, there were 9,220 cases. These ongoing disputes often result in the loss of love, affection, and harmony within the household.

The second highest factor is economic factors. The data shows an increase in numbers every year. In 2022, it increased by 70 (seventy) cases from the previous year. Similarly, in 2023, there was an increase of 573 (five hundred and seventy-three) cases compared to 2022.

The third most prevalent cause was the unilateral departure of one party without a clear rationale or other justifiable circumstances beyond their control. The Malang District Court has adjudicated 1,724 (one thousand seven hundred and twenty-four) divorce cases involving the abandonment of one of the parties over 2021-2023. The aggrieved party may only file for divorce after a two-year waiting period from the date of the other party's departure from the marital home.

2. Fulfillment of Child Needs after Divorce in Malang Regency

The consequences of the breakdown of marital relations significantly affect children. A child is the fruit of a married relationship that also has its rights; this is regulated in the Compilation of Islamic

Law Chapter XVII. Despite the dissolution of the marriage, the rights of the child should not be revoked or disregarded. The legislature has enacted several legal instruments to safeguard the child's interests, including Law Number 23 of 2002, as amended by Law No. 35 of 2014 on Child Protection Rights, and Law No. 1 of 1974 on Marriage, in Chapters IX and X.

The Child Protection Rights Law and the Marriage Law (Chapters IX and X) contain articles that regulate a legal effort to protect children, including children's rights after their parents' divorce. This law is designed to safeguard and protect children through the rule of law that exists and applies to the entire community.

This research searched field data obtained through interviews or exchanging messages with 11 respondents, either conducted directly or via the exchange of messages. Various methods provide respondents with comfort and ease in delivering the desired information. Furthermore, expert respondents, specifically judges at the Malang Regency Religious Court, have provided insights into the practical aspects of child support. It is taking the judge's point of view as the decision maker regarding the strength or weakness of the verdict that has been decided, as well as knowing the legal remedies relevant to the fulfillment of child needs after divorce. There are also related literature studies.

a. Realization of Child Support Fulfillment after Divorce

In the context of a divorce trial, there are four distinct categories of the wife's rights concerning the distribution of maintenance. These include (1) *Maḍiyyah* alimony, which is alimony in the past (2) *'Iddah* alimony, which is alimony given to the ex-wife to undergo her *'iddah* period (3) *Mut'ah* alimony, which is alimony intended to minimize the sadness and suffering of the ex-wife after the divorce (4) Child alimony, which is alimony intended for children until they reach the age of 21 years. The maintenance arrangement mentioned above has been codified in the Compilation of Islamic Law (KHI) and SEMA Number 3 of 2018.⁴¹

Should the verdict chosen have solid and permanent legal force (*Inkrach*), matters that the Religious Court Judge has decided will be contained in the ruling. This implies that the parties must comply with the decision and that subsequent submissions or modifications are not permitted.

This research found a reality in the community: the fulfillment of a post-divorce child. The data shows an increase in numbers every year. In 2022, it increased by 70 (seventy)

⁴¹ "SEMA Nomor 03 Tahun 2018," Ketua Mahkamah Agung Republik Indonesia § (n.d.).

cases from the previous year. Similarly, in 2023, maintenance in Malang Regency is mostly not fulfilled by the former husband or father of the child. Despite the legal requirement, former husbands or fathers often fail to fulfill their financial responsibilities. This presents a legal weakness in enforcing the ruling, as the punishment alone is insufficient. The researcher interviewed critical informants on the implementation and challenges of fulfilling post-divorce child needs to gain further insight. The findings revealed the following:

Table 4. 3 Data on Research Related to the Realization of Fulfillment of Child Needs

RESPONDENTS	YEAR OF DIVORCE	IMPLEMENTATION OF CHILD NEEDS	REASON	SINGLE MOTHER EFFORT
Respondent 1	2024	Rp. 500.000 was decided, but this was not implemented	No sense of responsibility for the children	Factory workers
Respondent 2	2024	Rp. 500.000 was decided, but this was not implemented	No sense of responsibility for the children	Not yet working, so their life is

				borne back to their parents
Respondent 3	2024	It was not decided because of the ex-husband's disappearance and unknown whereabouts.	Missing and unknown whereabouts of ex-husband	Helping in food production
Respondent 4	2024	Rp. 1.000.000 was decided but implemented in the first month after the divorce.	Feeling incapable of providing the children	Not working
Respondent 5	2024	No child needs lawsuit	There was no sense of responsibility for the children, and the ex-husband was addicted to	Buying and selling Antam gold

			online gambling.	
Respondent 6	2023	Rp. 500.000 was decided, but this was not implemented	Influenced by a third party (new wife from the ex-husband)	Factory worker
Respondent 7	2023	Rp. 1.000.000 was decided, but this was not implemented	An irresponsible and lazy ex-husband, so the household economy was unstable for a long time before their divorce	Stone business
Respondent 8	2022	Rp. 1.000.000 was decided, but this was not implemented	No sense of responsibility and have marriage again	Online selling and getting help from the parents

Respondent 9	2022	It was not decided because of the ex-husband's disappearance and unknown whereabouts.	Missing and unknown whereabouts of ex-husband	Not working
Respondent 10	2021	Only provide money for children's education but also a few months	Influenced by a third party (new wife from the ex-husband)	Food business
Respondent 11	2021	Rp. 1.000.000 was decided, but this was not implemented	No sense of responsibility	SPG

Source: Data collected from Religious Court of Malang Regency by visiting respondents house to house on Tuesday, 17th September until Friday, 20th September 2024

From the data, 11 respondents indicated that they had not received financial support for their children from their ex-husband. The verdict clearly states that it punishes the ex-husband to pay a certain amount of maintenance for his child every month until the child is mature and independent. In addition, there is a

10-20% increase from the initial amount set for each year. This is consistent with the legal provisions outlined in SEMA Number 3 of 2015.⁴²

Furthermore, Judge Drs. H. Shobirin, M.H., has stated that the amount of child needs is determined based on the feasibility and appropriateness of the child's life and the former husband's ability to finance child needs. This is by legal policy, namely SEMA Number 7 of 2012, refined with the Appendix to SEMA Number 3 of 2018.

The realization that most of these conditions are not met indicates the inherent weaknesses of the verdict. This is because the parties convicted or charged with child needs underestimate the sentence in the ruling. From the perspective of single mothers or ex-wives who are researcher respondents, several reasons become the background for the non-fulfillment of child needs by the ex-husband. This reason is supposed to contribute to the non-realization of child needs.

The reason is the former husband's lack of responsibility for his children. Respondent 1, respondent 2, respondent 5,

⁴² Harvin and Liza Priandhini, "Pengaturan Hukum Pemberian Nafkah Anak Setelah Perceraian Orang Tua Dalam Undang-Undang Perkawinan," *Jurnal Kertha Semaya* 9, no. 12 (2021): 2466–78, doi:10.24843/KS.2021.v09.i12.p17.

respondent 7, respondent 8, and respondent 11 expressed this feeling before the filing of the divorce lawsuit. This lack of responsibility was also a contributing factor to the dissolution of the marriage.

Another reason was the unknown whereabouts of the ex-husband during this time. The ex-husband has disappeared since they were still a married couple. By Article 116 (b) of the Compilation of Islamic Law (KHI) regarding the cause of divorce, where one party is abandoned for two consecutive years, the remaining party may file for divorce.

In the trial process, the Court has attempted to search for the missing party through various mass media over a long period. In cases where the husband's whereabouts are unknown, the court cannot decide on the child needs obligation to the former husband. Consequently, the verdict does not include any provision for child needs, which consequently falls upon the ex-wife or, in this case, the abandoned party.

The last reason was the interference of a third party, namely the new wife, in the case where the former husband had remarried. The assumption of Respondent 6 and Respondent 10 was that the third party intervened by prohibiting them from meeting and providing for the children of the previous wife. Additionally, some felt compelled to assume responsibility for

their new family at the expense of their ex-wife's children, as illustrated by Respondent 8's actions.

Furthermore, disharmony after divorce between the husband and wife affects the child's relationship with the father. Some of the reasons for this condition are several factors, including (1) the ex-wife's prohibition of a relationship with the child, (2) the ex-husband's lack of desire and sense of responsibility towards the child, and (3) the influence and prohibition of a third party, namely the ex-husband's new wife in the event of remarriage.

From the perspective of Judge Drs. H. Shobirin, M.H., the Court has endeavored to ensure the continued enforcement of this child needs. The court has attempted to ensure that the defendant is bound to the plaintiff through (1) the payment of *nafqah madhiyyah*, *nafqah 'iddah*, and *nafqah mut'ah* before the pronouncement of the divorce decree,(2) If in a contested divorce by PERMA Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women Against the Law, then to provide legal protection for women's rights after divorce, the verdict in the case of divorce lawsuit can add the page “which is paid before the defendant takes the divorce certificate, provided that the amendment is narrated in the article and petitum of the lawsuit” as SEMA Number 2 of 2019.

In the context of child needs, the Court's authority is limited to withholding the divorce certificate from the husband, provided that the initial child needs payment has not been fulfilled. However, because this child needs obligation must continue to be fulfilled until the child is 21 years old or married, the required verdict for the defendant will last for quite a long time. This is what makes the gap for the former husband's negligence in maintaining child support. Recognized by Judge Drs. H. Shobirin, M.H., the judge does not have a supervisory obligation to oversee the implementation of child needs. For the procedural law to be effective, the injured party must be able to submit the implementation of the contents of the decision by force (execution).

A request for execution may be submitted to the local Religious Court, provided that there are assets that can be executed (in other words, wealth or assets belonging to the former husband). It would be prudent, therefore, to allow a period of several months or years to elapse before attempting to enforce the payment of alimony. Only after this period has passed should an application for execution be submitted. So that the costs incurred in filing for execution with the value that will be obtained are comparable. As the viewpoint of the suggestion from the Judge of the Religious Court of Malang Regency, Drs. H. Shobirin, M.H.

b. Single Mothers and the Fulfillment of Children's Right After Divorce in Malang Regency

Apart from having an impact on children, divorce also has an impact on the perpetrators, either husband or wife. Due to the unfulfillment of maintenance for children from ex-husbands, single mothers must be able to meet all the needs of children, both in terms of care and financing. Following divorce, some single mothers face conditions within their households that require them to choose between returning to their parents or surviving alone to meet the needs of themselves and their children.

In cases where the child in question is below the age of 12, or has not yet reached the age of maturity, the responsibility for child custody will be assigned to the mother. In the event that the child has reached the age of *mumayyiz*, the right of maintenance will be granted to the child, who is then at liberty to choose to follow either his mother or father. As stipulated in the Compilation of Islamic Law (KHI) Article 105.⁴³

⁴³ Mohamad Faisal Aulia, "Analisis Hukum Terhadap Hak Asuh Anak (Hadhanah) Akibat Perceraian," *Jurnal Pro Justicia* 2, no. 1 (2022): 49–59.

There is a condition that makes single mothers feel unable to finance themselves and their children. Not to mention if you have more than 1 (one) child. Respondent 3, for instance, has four children, all of whom are relatively underage. The financial burden of supporting four children, particularly when the mother is unable to meet their needs, can be overwhelming.

A single mother who returns to her parent's home tends to receive material and non-material support for her and her child. Including financial assistance, emotional and practical assistance, and other forms of support. Nevertheless, single mothers who are solely responsible for supporting themselves and their children may resort to any means of generating income, including taking on any form of work, in order to secure the financial resources necessary for their children's well-being and their own. The typical respondent is situated within a middle- to lower-income bracket. They engage in a range of occupations, including factory work, sales promotion, food service, and more. By pursuing full-time employment, single mothers inevitably relinquish care and time with their children. This has a particularly detrimental impact on the child, who is the most vulnerable in such circumstances.

This situation arises from the ex-husband's loss of responsibility for child needs. So, here the researcher sees a

weakness and is underestimated by the convicted party in the ruling that the judge has decided in a divorce trial.

3. Factors Causing the Lack of Child Needs Lawsuit Cases in Malang Regency

The ruling that has been determined has permanent legal force, which means it is binding for each party. Thus, in the existing legal policy, if the convicted party does not carry out the contents of the verdict, it is included in the Unlawful Act based on default (*Wanprestasi*). Thus far, no specific legal regulation governs the measures that may be taken if the convicted perpetrator fails to implement the ruling on divorce.

It is taken from the Religious Courts Law Article 54, which states that a procedural law applies in the Religious Courts environment, namely the Civil Procedure Law that applies in the Courts in the General Court environment. Therefore, the applicable legislation in this case is the *Herzien Inlandsch Reglement (HIR)* Articles 196-197.⁴⁴

⁴⁴ Siti Rahmah Nurul Aulia and Elan Jaelani, “Akibat Hukum Tentang Kedudukan Gugat Cerai Terhadap Hak-Hak Istri (Komparatif BW Dan Convention On The Recognition Of Divorces And Legal Separations),” *Jurnal Hukum Dan Kewarganegaraan* 2, no. 6 (2024): 1–11, doi:10.3783/causa.v1i1.571.

This policy can provide legal protection to the aggrieved party, namely, in this case, the ex-wife or child who has the legal capacity to re-use the ex-husband or father of the child with the legal basis of Articles 196-197 Herzien Inlandsch Reglement (HIR). The existing rules serve as a form of legal protection for parties harmed by the irresponsible behavior of the convicted party. Yet, there needs to be more awareness of how these rules align with societal expectations. Researchers have identified a need for more clarity regarding the limitations of existing legal remedies. The following research data aims to examine public perceptions of the efficacy of these legal remedies.

Table 4. 4 Data on Research Results Related to Efforts Made by Single Mothers (Legal or Non-Legal) about the Fulfillment of Child Support

RESPONDENTS	EFFORTS MADE BY SINGLE MOTHERS	REASON
Respondent 1	Had contacted back and communicated regarding child needs, but the same.	Poor and unheeded communication makes respondents reluctant to rebuild communication.

Respondent 2	Had contacted back and communicated regarding child support, but the same.	Want to process the lawsuit again.
Respondent 3	Have searched for the ex-husband's whereabouts through family and media such as radio, newspapers, magazines, etc.	The ex-husband's whereabouts remain unknown, so she cannot file a lawsuit.
Respondent 4	Always contacted and communicated regarding child needs, but everything stayed the same.	The respondents need to learn about a lawsuit for child support and the burden of expensive legal fees, and it takes quite a long process.
Respondent 5	Had contacted back and communicated	The condition of her ex-husband being

	regarding child needs, but the same.	addicted to online gambling makes the respondent have no hope of expecting child needs from him.
Respondent 6	Had contacted back and communicated regarding child needs, but the same.	Poor and unheeded communication makes respondents reluctant to rebuild communication.
Respondent 7	Never attempted either legally or non-legally	The Ex-husband gave the respondent a problematic condition: he wanted to provide alimony on the condition that one of the children follow him.

Respondent 8	Never attempted either legally or non-legally	The burden of expensive legal fees takes quite a long process.
Respondent 9	Never attempted either legally or non-legally	The ex-husband's whereabouts remain unknown before their divorce
Respondent 10	Never attempted either legally or non-legally	Poor and unheeded communication makes respondents reluctant to rebuild communication.
Respondent 11	Never attempted either legally or non-legally	The Ex-husband gave the respondent a problematic condition: he wanted to provide alimony on the condition that one of the children followed him.

Source: Data collected from Religious Court of Malang Regency by visiting respondents house to house on Tuesday, 17th September until Friday, 20th September 2024

From the interviews conducted with several respondents, it can be concluded that several factors influence a single mother's reluctance to take legal action in fulfilling her child's maintenance. In cases where the fulfillment of child needs is the responsibility of a former husband in terms of material financing, the father's inability to fulfill the costs of child needs results in the mother or ex-wife assuming the role of financing the maintenance. This is by the stipulations outlined in Article 41 of the Marriage Law.

The results of the interviews revealed the existence of several factors, including:

- a. Poor relations between the former spouses.

Some respondents indicated that they continued to experience internal personal problems with their former spouses even after the dissolution of their marriages. This study revealed that former wives were often pressured to relinquish custody of their children to their former husbands. This demand was frequently made by former husbands as a condition for obtaining child support.

This situation makes it uncomfortable and threatening for single mothers as holders of custody and mental rights between mother and child to separate.

Furthermore, observing the reality before the separation of the ex-husband's situation, in which he did not care and was responsible for the family, has caused single mothers to doubt and worry about placing their children in the care of their father.

This form of concern is evident among single mothers regarding their children. From their perspective, relinquishing custody to the father poses a significant risk to the child's well-being. The potential for neglect and victimization is heightened in cases where the father and mother are separated, as observed in previous research on the impact of divorce on children. This is in line with previous research related to the effects of divorce on children, where children develop a sense of insecurity and discomfort.⁴⁵

According to Respondent 7 and Respondent 8, the instinct of a mother's heart makes them determined and try to fight for themselves to meet the needs of their children by doing everything that can be done rather than leaving their

⁴⁵ Miyah Salsabila and Ashwab Mahasin, "Dampak Percerain Bagi Anak Dalam Mencapai SDGs Di Indonesia," *Jurnal Pro Justicia* 3, no. 01 (2023): 1–10.

children to their fathers. They believe that every child has a unique source of sustenance.

In addition to the conditions mentioned above, there is another reason, namely poor communication between the two parties due to issues that arose during their marriage. This lack of communication creates a sense of discomfort between the two or one of the parties, which impedes the ability to communicate effectively, even when discussing matters related to their children.

The problems between the two were part of the factors that caused the divorce between them. As experienced by Respondent 4 and Respondent 7, namely Domestic Violence (KDRT) committed by the ex-husband repeatedly. The experience of violence by women is not limited to physical injury; it also leaves deep psychological scars. When a woman should have received kind and loving treatment from her partner but was ignored, she received harsh and painful treatment. This behavior has the effect of

making women afraid, insecure, and traumatized by men. Even the worst possible outcome of this behavior is death.⁴⁶

Especially if the child sees the act, it is sure to traumatize the child against his father, as happened to the child of Respondent 4, who saw his mother being beaten by his father at an early age to see such disgraceful behavior from his parents and making the child reluctant to establish a relationship and communication with his father because he feels afraid and traumatized. Psychologically, a child will feel frightened and stressed about what he has experienced. From a psychological perspective, a child may experience feelings of fear and distress as a result of the traumatic event. Such behavior hurts the mental and psychological health of the child, engendering a sense of trauma and emotionality towards the abuser. Furthermore, this behavior affects the child's social development, potentially leading to adverse outcomes in the future. Children may exhibit aggressive

⁴⁶ Wahidah Zein Br Siregar, "Causes and Impacts of Domestic Violence against Women: Cases in Indonesia Penyebab Dan Dampak Kekerasan Dalam Rumah Tangga Terhadap Perempuan: Kasus Di Indonesia," *Jurnal Sosiologi Dialektika* 19, no. 1 (2024): 77–88, doi:10.20473/jsd.v19i12024.77-88.

behavior, experience depression, encounter difficulties in social interaction, and may even engage in self-harm.⁴⁷

All issues that arise within the household will result in disagreements and disputes between the husband and wife. These disputes will persist if the couple fails to identify and solve the underlying problem. Frequent and unresolved disputes are a primary cause of divorce, with the number of cases in Malang Regency reaching 9,220 (nine thousand two hundred and twenty) between 2021 and 2023.

As experienced by Respondent 2, this dispute often occurs with her ex-husband. Until the Respondent felt tired of what happened and there was no change even though she had tried to be given a solution to the problems in her household. Until the Respondent had enough of all the issues in her household and chose divorce as a way out.

Another form of household breakdown was the presence of a third party, namely another woman who attracted the ex-husband. This situation was experienced by respondent 1, respondent 6, respondent 8 and respondent 10.

⁴⁷ Gusni Dian Suri et al., “Bagaimana Kekerasan Dalam Rumah Tangga Berefek Pada Kondisi Psikologis Anak? : Analisis Pendahuluan Intervensi Pendidikan,” *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia* 9, no. 2 (December 30, 2023): 1072–78, doi:10.29210/1202323434.

In this condition, respondent 1 experienced a mental disorder, namely depression, for quite a long time, the expression of the respondent's mother. In contrast, Respondent 10 only became aware of the other woman's pregnancy after the child was believed to be the child of the respondent's ex-husband. Understandably, the respondents found it challenging to accept that their husbands had turned to other women.

Furthermore, there was the issue of the ex-husband's disappearance or departure from the marital residence, with no subsequent return to his family. This situation is particularly distressing for the individual who has been abandoned, as they are forced to shoulder the burden of life independently while remaining uncertain about their spouse's whereabouts. For approximately one year, Respondent 3 has been attempting to ascertain her husband's whereabouts through various mass media channels. Until she elected to file for divorce in January 2024, the whereabouts of her former spouse remained unknown. Similarly, Respondent 9 endured a prolonged period of uncertainty, during which she struggled to cope with the demands of raising two children. On the other hand, because of the Respondent's condition, she is blind. One day, the

respondent wanted to be proposed to by another man, so the respondent's parents asked for a condition to take care of a divorce suit with her previous husband; only then was she allowed to remarry.

All wrong actions start with curiosity; try until they have an addictive effect. One example is online gambling. Respondent 5's ex-husband had a good job and a good salary. However, due to his gambling addiction, he became complacent and lost control of the responsibilities he had to carry, namely his children and wife. The respondent attempted to remind and make a promise to her former spouse. The promise was never kept, and he continued to engage in this harmful behavior, which ultimately affected himself and his family.

The practice of gambling has a significant impact on the management of a household. This can have a detrimental effect on the financial stability of the family unit, as the loss of funds resulting from gambling can lead to heightened stress levels and even conflict with one's spouse.⁴⁸ When an

⁴⁸ Dara Khoerunisa et al., "Judi Online Sebagai Faktor Penyebab Permasalahan Perceraian Di Kabupaten Bekasi (Studi Kasus Pada Kecamatan Cikarang Utara Kabupaten Bekasi)," *Kultura: Jurnal Ilmu Hukum, Sosial Dan Humaniora* 2, no. 2 (2024): 63–70.

individual becomes addicted to gambling, it can become a challenging habit to break.

There is no rationale for awareness or sensitivity on the part of the former spouse, who has effectively disappeared and thus evades any sense of responsibility to fulfill the rights of his children, even after the dissolution of the marriage. This behavior commenced before the dissolution of the marriage. The loss of a sense of responsibility towards the family results in disappointment with former husbands among single mothers. This included the individual she had initially trusted and selected as her life partner, who was expected to demonstrate responsibility. This condition was felt by respondent 4 and respondent 5. I don't know what happened to her husband out there to lose his love, affection and responsibility for his family. Unfortunately, a change in a person's behavior impacts those around them.

b. Protection against Child Mentality

In a marital dissolution between a husband and wife with children, the dissolution will significantly impact both parties. The progeny of the marriage between the two will be materially and non-materially dependent on both parents. This has been regulated in the Marriage Law Chapter X

regarding the rights and obligations between parents and children.

Parents should try to make their children not impact the decisions both have made of them. The objective is to ensure that the children's rights are upheld and that they can flourish. A single mother may choose to relinquish circumstances that she deems unfair to her former spouse's treatment, primarily to safeguard the child's mental and psychological well-being.

As indicated by Respondent 7, she was profoundly concerned about the mental and psychological well-being of her two children following her divorce from her former spouse. The ex-husband's desire to consider one of the children when contemplating the potential consequences of separating these siblings is understandable. Given the significant psychological impact that the divorce has already had on the children, it is crucial to avoid further distress by preventing the separation of these siblings.

Respondent 7's first child's relationship with his father was not good, and he was reluctant to see him again. This is a clear example of the psychological impact that a child experiences after witnessing violence in his family that leads to divorce. Indirectly, the child experiences emotional

violence caused by his father because the memory is stored in the child's mind and stored to cause anger, hatred and a sense of trauma in itself.⁴⁹

However, the condition of parents who are not intact is still a conversation and shame in the community, which is a concern for a single mother for her child who has parents in a divorced condition. Mental and psychological protection of children is always the primary guardian of single mothers in the child's educational environment and the surrounding community. It also maintains the child's growth and development to run optimally.

In their growth, children may experience a deep sense of sadness because they do not have a complete family. Until the maturation process, children who come from broken home families have the potential to have resentment, hatred, and anger towards their parents. This has an impact on the child's emotional and self-control that is out of control.⁵⁰

⁴⁹ Ella Suzanna et al., "Kekerasan Pada Anak Dalam Keluarga," *Journal of Psychology* 1, no. 1 (2024): 33–40.

⁵⁰ Berlia Sukmawati and Nancy Dela Oktora, "Dampak Perceraian Orang Tua Bagi Psikologis Anak," *JSGA* 3, no. 2 (December 26, 2021): 24–34, doi:10.33222/pelitapaud.v4i1.841.

The child's well-being is the primary factor for a single mother to consider when making decisions regarding her child. For single mothers, however, the behavior of their ex-husband only breaks the relationship between them as husband and wife. Still, it cannot break the blood relationship between the father and his child.

c. Legal problems

Indonesia is a constitutional republic, yet a considerable proportion of the population needs to be made aware of the legal procedures within their own country. Laws are made to bring order and maintain peace in society life.

1) Lack of Legal Understanding in the Community

For example, in the case of child needs, some respondents, such as Respondent 4 and Respondent 8, were unaware that the conditions they experienced could be legally pursued by filing a child needs lawsuit against their former spouse. It was found that, in reality, the ex-husband did not carry out the ruling that had been determined.

The lack of legal understanding in the community leads some to perceive the legal realm as intimidating and complex. This is due to the lack of legal

transparency for ordinary people. Legal conversations are often initiated when there are problems in the community or when individuals hear about issues experienced by those close to them. However, it is easier for people to understand existing legal policies if they capitalize on internet information.

However, after knowing that there is a law, it still does not make respondents apply for legal remedies, because seeing from the experience of divorce trials, in fact the legal process is quite costly and the procedures are quite long. Which makes single mothers try to take non-legal channels such as trying to build communication with their ex-husband. Although from the field data conducted by researchers, the non-legal efforts made by single mothers did not produce the expected results.

Thus, making single mothers choose to focus on trying themselves in fulfilling their children's livelihoods rather than spending time and energy with legal issues and their ex-husbands. Because according to single mothers, if a communication has been tried to be built but there is still no movement from the ex-

husband's side, it means that there is no sense of father's responsibility for his child.

2) Complicated Legal Litigation Process with Expensive Costs

Some people are reluctant to deal with legal policies. According to them, the legal process has complicated procedures, is quite time-consuming, and also costs a lot of money, making respondents discourage taking care of the problems they experience to be brought into the realm of law.

It is better to focus on meeting the needs of children which is more certain to produce results and benefits for children. It is better to focus on meeting the needs of the child, which is more certain to produce results and benefits for the child, rather than spending money on legal efforts or wasting energy and energy dealing with irresponsible people, which may not necessarily produce the expected results.

B. Discussion

1. Efforts to Protect Children's Rights After Divorce

The divorce of a married couple certainly has an impact on the family, namely the perpetrators themselves, both husband, wife, and of

course children. The impact of parental divorce on children is inevitable. Many children are affected by their parent's divorce and experience a loss of fulfillment in terms of their rights, which can have a significant impact on their psychological well-being. Their rights as children to continue receiving protection, maintenance, and financial support are not fully realized. However, the potential negative consequences of divorce can be mitigated to a certain extent.

In a divorce case, in addition to granting the petition of the applicant or plaintiff, the Judge will decide several matters related to this family bond, namely between the husband, wife, and child. Among other things, the judge will regulate the following:

- a. *Mut'ah* maintenance
- b. *'Iddah* maintenance
- c. *Maḍiyah* maintenance for the ex-wife

Children who are still minors, namely the age of 12 years or not yet mumayyiz, their custody rights will be given to the biological mother. However, children who have mumayyiz are given the right to choose between the mother or father as the custody holder. Mumayyiz is a condition in which the child can distinguish words, actions, and things

that are good and bad.⁵¹ This is by the Compilation of Islamic Law (KHI) Article 105. The financial responsibility for the child's upkeep will be the father's until he is no longer capable, or until the child reaches adulthood or can support himself (21 years of age). This is in alignment with the Marriage Law Article 41 (b) and the Compilation of Islamic Law (KHI) Article 156.

In the perspective of the Ulama according to Imamiyah, a father is obliged to provide maintenance for his child. If the father is unable to do so, then the responsibility can be transferred to the paternal grandfather. However, if the paternal grandfather is also unable, the maintenance is borne by the mother, then the maternal grandfather and grandmother, then the father's mother (paternal grandmother). If the aforementioned parties are in an equal economic situation, they are obliged to share equally in the fulfillment of the maintenance of the child. Nevertheless, if one of the parties is economically disadvantaged, the responsibility for providing maintenance falls upon the party with the higher economic status.⁵²

⁵¹ Muhammad Hamizan Ab Hamid et al., "A Systematic Literature Review (SLR) Study On The Level Of Eligibility Of Al-Ahliyyah For Muslim Individuals With Disabilities," *Al-Qanatir: International Journal of Islamic Studies* 30, no. 2 (2023): 225–36, <http://al-qanatir.com>.

⁵² Ramlah, "Tanggungjawab Orang Tua Terhadap Hak Hadhanah Dan Nafkah Anak Pasca Perceraian: Perspektif Hukum Islam Dan Putusan Pengadilan Agama," *Jurnal Studi Gender Dan Anak* 1, no. 1 (2021): 1–12.

Despite divorce, the obligations of parents towards children cannot be interrupted. It is the obligation and responsibility of parents to continue to fulfill children's rights both materially and non-materially, as regulated in Article 14 and Article 26 of Law Number 35 of 2014 concerning Child Protection. Children's rights are integral to the broader concept of human rights, and it is the responsibility of all individuals and entities within their immediate and extended social circles, including parents, family members, community members, state actors, and government officials, to guarantee, fulfill, and protect these rights.⁵³

Thus, getting material and non-material maintenance is a child's right that must be fulfilled regardless of the circumstances that occur with both parents. This right includes care, maintenance, education, financing, and protection during child development and all forms of protection from other things that have been regulated in the Child Protection Law. Gushairi asserts that unfulfilled children's rights impact the child's education, morals, and overall well-being.⁵⁴

⁵³ Imma Indra Dewi Windajani, Cunduk Wasiati, and Bagus Anwar Hidayatullah, "Kewajiban Ayah Terkait Nafkah Anak Setelah Terjadinya Perceraian Di Pengadilan Agama: Perspektif Hak Asasi Manusia," *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia*, 2023, 11–21.

⁵⁴ Gushairi, "Pemenuhan Nafkah Anak Pasca Perceraian Di Provinsi Riau," *Hukum Islam* 22, no. 1 (2022): 23–52, <https://badilag.mahkamahagung.go.id/laptah/laptah/laptah,.>

The dissolution of a family unit has a profound impact on children. They are forced to navigate a complex social environment where their needs are often overlooked. The divorce of their parents, in particular, can have a significant and detrimental effect on their well-being. It is crucial for the divorced couple to prioritize their children's needs, as they are often the most vulnerable in such circumstances. The phenomenon of juvenile delinquency is a testament to the adverse effects of disharmonious and unstable family structures. One such example is the impact of parental divorce. This phenomenon has been extensively studied, with findings indicating that children of divorced parents are more likely to engage in antisocial behaviors compared to their counterparts from intact families.⁵⁵

It is also recognized by Michael E. Lamb, Kathleen J. Sternberg, and Ross A. Thompson that this divorce will have an impact on the perpetrator's family, namely husband, wife, and children. Each of them will experience mental shock, depression, loneliness, regret, and helplessness. Even for the children themselves, it is enough to have long-term effects, such as decreased performance at school, low self-

⁵⁵ Ramlah, "Tanggungjawab Orang Tua Terhadap Hak Hadhanah Dan Nafkah Anak Pasca Perceraian: Perspektif Hukum Islam Dan Putusan Pengadilan Agama."

esteem, and difficulties in intimate heterosexual relationships in adulthood.⁵⁶

This study found that the father's realization of fulfilling the child's needs was not fully implemented by the existing divorce verdict. The father or former husband neglects his obligation to maintain his children, including expenses related to living, education, and other necessities, despite the Court's decision to impose maintenance on the former husband based on *maslahah mursalah* or the provision of welfare and benefits.

In neighboring Malaysia, the law also regulates child needs in The Islamic Family Law Act 1984 (IFLA) Section 72, which stipulates 5 (five) aspects of the father's responsibility: accommodation, clothing, food, health, and education. The decision on the amount of child support is also based on the child's needs, the father's ability, and a decent living.⁵⁷ In the Compilation of Islamic Law (KHI) Article 156 letter (d) and SEMA Number 7 of 2012, which was refined by SEMA Number 3 of 2018, the determination of the amount of child needs has been based

⁵⁶ Michael E Lamb, Kathleen J Sternberg, and Ross A Thompson, "The Effect of Divorce and Custody Arrangements on Children's Behavior, Development, and Adjustment," *Family and Conciliation Courts Review* 35, no. 4 (1997): 393–404, <https://digitalcommons.unl.edu/psychfacpubhttps://digitalcommons.unl.edu/psychfacpub/334>.

⁵⁷ Nurhidayah Muhammad Hashim et al., "Child Maintenance after Divorce: Review on the Practices in Malaysian Shariah Courts," in *Environment-Behaviour Proceedings Journal*, vol. 9 (e-IPH Ltd., 2024), 63–67, doi:10.21834/e-bpj.v9i29.6024.

on a sense of justice and the ability of the former husband to provide maintenance based on his work and income. A fair decision, taking into account the circumstances of the convicted person, the researcher believes that it is fair enough for the judge to decide whatever amount is determined. In addition, it will make each convicted person aware of their responsibilities. In line with Arwin Dunggio, Nur Mohammad Kasim, and Dolot Alhasni Bakung, who revealed that the decision regarding the amount of maintenance was based on legal considerations from various factors. Both factors are the child's needs, the convicted party's financial condition, and the standardization of living standards.⁵⁸

Except for specific jobs regulated regarding the amount of alimony issued in the event of divorce. Namely, for divorcees with jobs for Civil Servants (PNS), the salary distribution is as follows: one-third to the former spouse, one-third to the child or children, and one-third to the former spouse, by Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, Article 8, paragraph (1).

⁵⁸ Arwin Dunggio, Nur Mohamad Kasim, and Dolot Alhasni Bakung, "Pengaturan Dan Tanggung Jawab Hukum Pemberian Nafkah Anak Setelah Perceraian Orang Tua Dalam Undang-Undang Perkawinan Berdasarkan Putusan Pengadilan Agama Kota Gorontalo," *INNOVATIVE: Journal Of Social Science Research* 3, no. 2 (2023): 4712–22.

Moreover, members of the National Police must allocate one-third of their salary to maintaining their children, although their former spouses hold custody rights. This is by the rules of Article 26, paragraph (3) letter b of the Regulation of the Chief of State Police Number 9 of 2010 concerning Procedures for Submitting Marriage, Divorce, and Referral for Civil Servants in the Indonesian National Police.

For Indonesian National Army (TNI) members of the Ministry of Defense (Kemhan) employees, the applicable legislation is Regulation of the Minister of Defense Number 31 of 2017 concerning Marriage, Divorce, and Reconciliation for Employees within the Ministry of Defense. Namely, in Article 21, paragraphs (1) and (2), it is obliged to provide maintenance to the ex-wife and her children by the court decision that has been determined.

However, Gushairi asserts that the implementation of child needs after divorce encounters obstacles. On the one hand, the convicted party's lack of volition in providing for children's needs from their salary represents a significant challenge. On the other hand, problems come from agencies that do not want to deduct the perpetrator's salary because

the salary treasurer does not dare to do this to the perpetrator convicted of fulfilling the child's needs.⁵⁹

Apart from Civil Servants, Police, and TNI, the provisions for the amount of maintenance for ex-wives and children have been decided by the Judge with consideration of the ability and salary of the perpetrator of divorce. Despite an increase of 10% to 20% per year from the initial amount set, except for education and health costs, this is by SEMA Number 3 of 2015. This is intended to provide stability for children's needs in subsequent years.

In light of the established regulations and a commitment to fairness in determining maintenance amounts, it is reasonable to conclude that former husbands can provide for their children just and sustainably. A case in point is that of Respondent 4, who sought child needs for his three children at the rate of Rp. 9,000,000. The court rejected this because it did not correspond to the husband's income. The matter was ultimately settled at the husband's ability, namely Rp—1,500,000 for his three children.

This example shows that the court considered the ability and fairness of both the husband and wife. However, the ex-husband, who has been

⁵⁹ Gushairi, "Pemenuhan Nafkah Anak Pasca Perceraian Di Provinsi Riau."

decided with all the considerations that can be said to be not burdensome, still does not fulfill his child support obligations.

In Malang District itself, this research found that 10 out of 11 respondents interviewed showed that the respondent's ex-husband did not carry out the child needs decision by the ruling that had been determined. One respondent indicated they provided financial support for the child's education. Following the research conducted at the Pekanbaru Religious Court by Muhammad Azani and Cysillia Aggraini Novalis,⁶⁰ it was found that 7 out of 10 respondents were not fulfilling their children's maintenance needs.

Various reasons were taken from the respondent's point of view as an ex-wife, including (1) The loss of a sense of responsibility for the child because the child goes with his mother, (2) The unknown whereabouts of the husband so that it cannot be decided from the start (3) Feeling unable to provide maintenance for the child, and (4) The existence of prohibitions from other parties, namely his new wife. His finding is consistent with the findings of Muhammad Azani and Cysillia Aggraini Novalis,⁶¹ who identified economic factors, poor

⁶⁰ Muhammad Azani and Cysillia Anggraini Novalis, "Pelaksanaan Putusan Pengadilan Agama Mengenai Pemenuhan Hak Nafkah Anak Pasca Perceraian Di Pengadilan Agama Pekanbaru," *Jotika Research in Business Law* 1, no. 2 (2022): 46–59.

⁶¹ Ibid.

communication between the two parties, the remarriage of the former husband, and the cost and time requirements of the legal process as key obstacles to the former husband's fulfillment of his child's maintenance.

Additionally, research conducted by Lutfi Yana and Ali Trigiyatno in Mulyorejo Village, Pekalongan Regency, indicates that four out of seven respondents have never received child support from their former spouses. Therefore, single mothers are compelled to engage in employment to fulfill the needs of their children.⁶² Also, from examining 2 (two) rulings of the Jambi Religious Court Decision Number 803/Pdt.G/PA.Jmb and Decision Number 593/Pdt.G/PA.Jmb regarding child needs, it is clear that it is also not carried out by the ex-husband, the convicted party.⁶³

Amitri Dinar Sari posits that child needs are a fundamental right of the child, and its non-fulfillment constitutes a form of negligence and neglect. This act is, therefore, included in the category of child neglect. From the Ecological Theory approach perspective, which identifies the factors influencing child neglect, one such factor is the lack of support

⁶² Lutfi Yana and Ali Trigiyatno, "Pemenuhan Hak Nafkah Anak Pasca Perceraian," *Al Hukkam: Journal Of Islamic Family Law* 2, no. 2 (2022): 114.

⁶³ Armevya Sepma and Yeni Erwita, "Pemberian Hak Nafkah Anak Pasca Perceraian Di Pengadilan Agama Jambi," *Zaaken: Journal of Civil and Bussiness Law* 1, no. 2 (2020): 344–58, <http://online-journal.unja.ac.id/zaaken>.

from the outgoing party. This theory prioritizes the health and well-being of children.⁶⁴

This situation makes the position of the ex-wife, namely the single mother, the disadvantaged party. Because she has to bear a burden that should not be her primary responsibility, indirectly, a single mother must fulfill the maintenance for her child. She must work hard to finance her life and also her children. She is compelled to exert considerable effort to fund her livelihood and her children's. The responsibilities include financing education, health, living expenses, and other related costs. Conversely, the father is obliged to ensure the continued well-being and growth of the child. This aligns with research findings indicating that the fulfillment of child needs by the ex-husband is not consistently implemented. A significant proportion (53.33%) of cases did not adhere to the decision.⁶⁵

2. Strengthening the Law Regarding Fulfillment of Child Support that is not by the Judge's Decision

⁶⁴ Amitri Dinar Sari, "Pengabaian Nafkah Anak Pascaperceraian Orang Tua Sebagai Penelantaran Anak," *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 6, no. 3 (2022): 2598–9944, doi:10.36312/jisip.v6i3.3299/http.

⁶⁵ Kholid Masyhari and Akhmad Nurasikin, "Implementasi Putusan Pengadilan Agama Tentang Nafkah Anak Dan Hadlanah," *Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 10, no. 1 (June 20, 2023): 17–36, doi:10.31942/iq.v10i1.8508.

This condition presents a significant challenge for single mothers. Indeed, there are legal avenues that single mothers may pursue in such circumstances. The nature of the decision rendered is punitive (condemnation). If the punished party fails to comply with the verdict, the injured party may file a lawsuit with the court to enforce the judgment by the existing ruling. This is a legal effort that can be made by the ex-wife or her child who has legal capacity in this condition.⁶⁶

Single mothers may file a lawsuit based on Law No. 3/2006 on Religious Courts, Article 49 (a), and the provisions outlined in Articles 196 to 197 of the *Herzien Inlandsch Reglement* (HIR). This legal framework outlines the procedural steps that single mothers can undertake to seek the fulfillment of maintenance for their children through legal channels.

This stage begins with (1) making an application or filing a lawsuit to the Religious Court, (2) the court giving a warning letter to the convicted person, namely the former husband, to warn him of his responsibility in carrying out child needs by the ruling of the divorce verdict, (3) If within an interim period of 8 (eight) days, there is no change and remains ignored, then (4) the President of the Court will give

⁶⁶ Ibid.

the order to execute by confiscating movable and immovable objects owned by the convicted party (former husband) by the nominal amount of maintenance he is charged.

The procedural aspects of initiating a child needs lawsuit, including the filing process, remain largely unknown to the general public. The public's lack of familiarity with the execution process, the relatively complex procedures, and the high financial costs involved are not comparable to the economic implications of the child support decision. Such an approach may inadvertently disadvantage the applicant. Whereas the applicant, as the aggrieved party, wants to take this step to seek protection and justice, it is even more disadvantaged because of the expensive financing. It is not commensurate with what will later be obtained.

This is also supported by the findings in this study, namely several factors that cause single mothers to be reluctant to take legal or non-legal channels to seek the fulfillment of child support from their ex-husband. These include (1) Poor relations between the ex-husband and wife, (2) Protection of the child's mentality, (3) Lack of understanding of the law in the community, and the costly legal process with a long process.

Relationships that are not well established after divorce are due to the problem factors that cause the divorce itself. Either due to the wounded heart of a former wife or no longer seeing the responsibility of

the former husband, making it feel futile to continue to ask and expect child support from her ex-husband. It was sufficient to attempt to re-establish communication on several occasions. However, this was still ignored, and there was no alteration in the ex-husband's attitude. Therefore, it was necessary to establish relations and communication with the ex-husband.

In addition, single mothers are mindful of the psychological well-being of their children. The separation of two parents can have a profound psychological impact on children, particularly if one parent's behavior is perceived as detrimental. So, if the legal process continues, single mothers feel that it will have an increasingly unfavorable psychological impact on their children.

This legal procedural complexity also occurs in Malaysia; this was revealed by Nurhidayah Muhammad Hasyim, Tim Lindsey, Zuliza Mohd Kusrin, and Aisyah Mohd Nor that the process of filing a child needs lawsuit by a single mother has a complicated procedure in the Syariah Court. This complicated procedure lies in the filing of an application, which must be accompanied by relevant supporting documents of the children's expenses, evidence of the ex-husband's capacity to pay, proof of the ex-husband's pay slips, and applications for

other court orders to disclose the ex-husband's documents or other subpoenas requesting a person to testify.⁶⁷

Furthermore, in alignment with the insights shared by Alfi Bariroh, the implementation of this legal process continues to face significant challenges that impede its effective realization. These include: (1) The value of execution is less than the cost of carrying out the execution process itself, which leads the ex-wife to reconsider her intention to pursue this course of action. It would be more beneficial for the money to be allocated towards meeting the child's needs. (2) Due to a prolonged separation, The ex-wife is unaware of her ex-husband's assets. (3) The ex-husband has stated that he cannot fulfill his child support obligations.⁶⁸

Indeed, it is a prevalent phenomenon in contemporary society for fathers or former spouses to evade their responsibilities of fulfilling child needs. Despite the availability of legal remedies, they often fail to provide a solution for the aggrieved party, the ex-wife. It is uncommon for a lawsuit related to child needs from the ex-wife to be filed. Even in

⁶⁷ Muhammad Hashim et al., "Child Maintenance after Divorce: Review on the Practices in Malaysian Shariah Courts."

⁶⁸ Bariroh and Muthiah, "Eksekusi Terhadap Kewajiban Pemberian Nafkah Anak Pasca Perceraian Menurut Hukum Positif."

Malang Regency, during the last 3 (three) years, there has only been 1 (one) lawsuit related to child needs efforts, namely in 2024.

According to Muhammad Azani and Cysillia Aggraini Novalis, “The state must be able to uphold and seek the fulfillment of rights for its people. Especially the court, which has the judicial principle that determines a case quickly, simply, and cheaply for the applicant. The Court should be able to uphold these principles to fulfill the community's rights.” Amitri further asserts that the 1945 Constitution, Articles 28 B and 34, paragraph (1), which emphasises the state's guarantee of children's rights and survival, growth, and development, and protection from violence and discrimination, as well as the state's obligation to uphold the Convention on the Rights of the Child (KHA) regarding child support in cases of divorce, must be considered.⁶⁹

The objective is to reinforce the legislation to create a deterrent effect for those not accountable for the outcome of the case. This appears to be at odds with one of the theories, namely the carrot-and-stick theory. A journal article titled “Do Carrots Work Better than Sticks? The Results of the National Child Support Noncustodial Parent Employment Demonstration” indicates that the effectiveness of using sticks and

⁶⁹ Dinar Sari, “Pengabaian Nafkah Anak Pascaperceraian Orang Tua Sebagai Penelantaran Anak.”

carrots is attributed to punishment and reward for irresponsible offenders. Similarly, a person riding a donkey can direct the donkey to walk by either striking it with a stick or luring it with carrots in front of the donkey. This metaphor gives rise to a theory pertinent to the case of the law for perpetrators who disobey the law. The question thus arises as to whether the objective is to impose harsh penalties to deter future offences or provide incentives or assistance in the form of a forum to facilitate the perpetrator's rehabilitation and avoidance of further violations. The findings of this journal provide substantial evidence that severe laws do not always yield the anticipated outcomes. Instead, it is evident that with the provision of legal assistance that is not unduly burdensome, the desired outcomes can be effectively achieved.

The complexity of legal procedures and expensive financing make the injured party feel even more disadvantaged by undergoing existing efforts. This is inversely proportional to the existing legal policy in Australia. In Australia, if an ex-husband does not fulfill his child support after divorce, his life will be disrupted by state administrative affairs. For example, he will be banned from traveling abroad, and financial accounts cannot be accessed until he fulfills his child support. This is stated by Drs. H. Shobirin, M.H., a Judge of the Religious Court of Malang Regency, when comparing legal remedies in Indonesia with Australia regarding this case.

In Australia, most separating couples can reach an independent agreement regarding the decision-making authority for the children and the custody arrangement. A specialist family mediation service can assist if an agreement cannot be reached independently. If the specialist family mediation service cannot decide, the Family Court Judge will intervene. The judge's decision will be based on the child's best interests, by Australian family law legislation. Concerning maintenance, Australia has two types of child needs: joint custody, in which both parents retain shared responsibilities and authority over significant aspects of their children's lives, and sole custody, in which one parent has the legal authority to make crucial decisions for the child without consulting the other parent.⁷⁰

The financing of child needs in Australia is also characterized by a diverse system encompassing two distinct types. In cases where sole custody is awarded, the government plays a role in facilitating the fulfillment of child support obligations. This is typically done through the Department of Social Services of Australia, which serves as a mediator between the former husband and wife. In practice, the former husband is responsible for making the child support payment to the

⁷⁰ Services Australia, "Recovering Child and Spousal Support Payments," *Services Australia*, July 10, 2024, <https://www.servicesaustralia.gov.au/recovering-child-and-spousal-support-payments?context=21911>.

government agency, which then transmits it to the former wife. A child support assessment, agreement, or court order sets the amount to be paid. Services Australia administers the child support payments. Services Australia tells the parents how and when to pay, collects the money from the paying parents, and transfers the money to the receiving parent. This is also done in several countries that apply both types of child support fulfillment, such as New Zealand, Norway, Spain, Belgium, etc. Research in 13 countries is written in the book *Shared Physical Custody* by Laura Bernardi and Dimitri Mortelmans.⁷¹

If a charged perpetrator fails to provide child support, statutory consequences allow government authorities to recover the overdue child and spousal support through several means. These include the deduction of income support payments, the increase of tax liabilities, cooperation with other parties such as debt collection agencies, the deduction or direct withdrawal of funds from bank accounts, and litigation, which ultimately returns the matter to the court for the perpetrator to fulfill his or her obligations.⁷² However, if Joint Custody because custody is in both parties, the dependents of the child's needs are charged to both when the

⁷¹ Laura Bernardi and Dimitri Mortelmans, *Shared Physical Custody Interdisciplinary Insights in Child Custody Arrangements*, vol. 25 (Springer, n.d.), <http://www.springer.com/series/5940>.

⁷² Services Australia, "Recovering Child and Spousal Support Payments."

child is with either the father or the mother. This fulfillment is without any role from the government.

The reality of the field is not based on the ruling that has permanent legal force, which proves the weakness and behavior of people who simplify the law. It is important to note that the state must still consider existing legal remedies when implementing the law in society. There are still missing points in the legal policy, which result in a lack of deterrent effect for convicted parties who do not carry out the responsibilities of the punishment stated in the verdict, particularly in cases related to child support.

CHAPTER V

CONCLUSION AND SUGGESTION

A. Conclusion

The findings of this study suggest that a significant number of convicted individuals, particularly former spouses, evade their financial obligations by refusing to provide child support by the court's decision. This consequently forces single mothers to become self-sufficient and to work assiduously, not only in caring for their children but also in financing their maintenance. This situation is influenced by several factors, including (1) the absence of a sense of responsibility on the part of the former husband, (2) the lack of knowledge regarding the whereabouts of the former husband before the divorce, and (3) the influence of a third party, in this case the wife or the new family.

As an aggrieved party, a single mother or her child who has legal capacity can sue for execution related to unfulfilled child needs to the Religious Court. However, it is still rare to find an incoming lawsuit regarding this case. This is due to several factors that prevent this existing legal effort from running optimally. Among them are (1) Poor relations between the ex-husband and wife, (2) Protection of children's mentality, and (3) Legal problems, namely the lack of legal understanding in the community and the complicated legal litigation process with expensive financing. The existing legal efforts are not considered the best way out because there is no specific legal policy regarding this condition.

B. Suggestion

It is necessary to reassess the existing law to consider the field conditions of single mothers when implementing the law. In addition, it is needed to seek a special policy related to controlling the fulfilment of child needs, both from the court and outside the court, can curb this as a form of deterrent effect on the former husband in carrying out the responsibilities that have been imposed on him by the ruling. In addition, there is empowerment for single mothers from the smallest scope, such as the Regional Government, to play a role in alleviating the circumstances experienced by single mothers.

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APPENDIX

Appendix 1. Research Permit Letter



FAKULTAS
ILMU AGAMA ISLAM

Gedung K.H. Wahid Hasyim
Kampus Terpadu Universitas Islam Indonesia
Jl. Kaliurang km 14,5 Yogyakarta 55584
T. (0274) 898444 ext. 4511
F. (0274) 898463
E. fiai@uii.ac.id
W. fiai.uui.ac.id

Nomor : 956/Dek/60/DAATI/FIAI/VI/2024
Hal : Izin Penelitian

Yogyakarta, 25 Juni 2024 M
18 Zulhijjah 1445 H

Kepada : Yth. Pimpinan Pengadilan Agama Kab. Malang
Jln. Raya Mojosari No. 77, Dawukan, Mojosari
Kec. Kepanjen, Kab. Malang, Jawa Timur. 65163
di Jawa Timur

Assalamu 'alaikum wr. wb.

Dengan ini kami sampaikan dengan hormat kepada Bapak/Ibu, bahwa bagi mahasiswa Program Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta yang telah menyelesaikan teori, diwajibkan menulis karya ilmiah berupa skripsi.

Sehubungan dengan hal tersebut di atas, mahasiswa kami:

Nama : FAIRUZA 'ALIMA FARDINDAPUTRI
No. Mahasiswa : 21421010
Program Studi : S1 - Hukum Keluarga (Ahwal Syakhshiyah) Program Internasional

mohon diizinkan untuk mengadakan penelitian di instansi/lembaga yang Bapak/Ibu pimpin, dengan judul penelitian:

Pemenuhan Nafkah Anak Pasca Perceraian dan Upaya dalam Menegakkan Hak Nafkah Anak Berdasarkan Ibu Tunggal di Kabupaten Malang

Demikian, atas perhatian dan kerjasamanya diucapkan terima kasih.

Wassalamu 'alaikum wr. wb.



Dr. Irfan Asmuni, MA

Appendix 2. List of Question and Interview Process (Respondent Expert)

Day/date : Wednesday, 17th July 2024

Time : 3 pm - 6 pm

Place : Religious Court in Malang Regency

Respondent : Drs. H. Shobirin, M.H

Job : Judge of the Religious Court in Malang Regency

Judge: Ms Fairuza, what do you want? Can we help you?

Researcher: Yes sir, so... I'm continuing my final project, planning to research the fulfillment of child needs in Malang District.

Judge: Oh yes, PA Malang District.

Researcher: Yes, that's right. That's why I need data from here. Apart from the divorced respondents, I also need an expert respondent, namely the Judge.

Judge: Oh yes. That's right. I'm not an expert.

Researcher: But knowledgeable, sir.

Judge: I'm just an actor. Performer Judge. Oh, okay. What's the name? Yes, case-breakers. Then what was in WA yesterday?

Researcher: Yes sir, more or less about that. That's it.

Judge: Where did it come from?

Researcher: Oh yes. Yes sir, I'm originally from Malang, sir. But I studied in Jogja. That's why yesterday I apologised a bit, the timing was a bit back and forth.

Judge: That's okay.

Researcher: Okay, so here I'll start the interview right away, sir. Especially as I know, the data in Malang Regency includes a lot, sir. The divorce data. Even if you look at the BPS, East Java is number two or three, and Malang District is the first. That is the position. Now, according to you, sir, as a judge who decides these cases, seeing this phenomenon in Malang Regency, the divorce rate is quite high. How is that, sir?

Judge: Yes, that is indeed the situation as it happened. That's the fact. Yes, we, the court, are passive. We don't hear cases. If a case comes in, we handle it. Even if it's a divorce case, the point is that we as, what's the name, the court can't refuse. If a case comes in, we accept it. We handle it, we settle it. The cases that come in, the ones that register. And there are many cases. It just so happens that maybe in terms of demographics, Malang is probably large. It also has the largest population. Therefore, it is only natural that it is stated, found that Malang is the largest. Yes, I think that is natural. In addition, nowadays this is the development of this era. Gadgets and so on also affect online gambling and so on. Therefore, yes, our court is not looking for cases, not looking for cases. But if a case comes in, we solve it. So if many cases come to PA Malang, we are ready to always resolve the case. And the settlement of the case is not solely for the marriage to be terminated, or resolved. Divorce is not, but many can eventually be reconciled, and reconciled again.

Researcher: From the mediation process, yes sir?

Judge: Through mediation, there are also many. Through their initiative, after we gave them advice during the trial, they finally revoked it. There are also many like that. Also, because he saw the pictures in the rooms, how come the pictures of believers are like this? Many to children, to families. That's why many of them also took it down. So it means that it was revoked itself. So the cases that enter here are still handled according to procedural law. We cannot refuse but must accept and adjudicate. Some eventually reconciled because the case was revoked by the parties. Some go through mediation. Some were also revoked by the non-litigants themselves. Some cases were rejected. The case was rejected because it was not divorced, because it was rejected.

Researcher: Who rejected it from the judge's side?

Judge: Because the case did not fulfill the formal requirements. The formal requirements are that if a person is by petition number 3 of 2023, a divorced person must be in a continuous quarrel. Continuous quarreling is characterized by separation. Separate house. At least six months. So if a person registers that they have not been separated for 6 months, then this case can be formally defective. Then the case cannot be accepted. So it is decided by NO, meaning in the Indonesian

language that it cannot be accepted because of formal defects. If something is rejected, it means that they cannot prove their claim. Stating that he quarrels every day or constantly, it turns out that according to witnesses it is still a good law. That means it is disproved. So it was rejected. Although there are many cases, actually many cases are not all granted. It could be rejected, not accepted. Or even canceled. The parties did not attend the trial. Two times in a row can be canceled. The P, because the one who has the case is the P. P is the applicant or plaintiff. If P doesn't come, it doesn't matter. We still decide on the verdict.

Researcher: For example, if the case is revoked, does that mean it was revoked before the mediation process?

Judge: The withdrawal could have been not losing, even before the trial. Not losing after the list, you can regret it. It was withdrawn outside of the trial. It has not yet reached the ongoing case. Maybe it's just in the registry. Then regret it. Or his wife comes home. The one who didn't come home yesterday came home. It turns out that it can be good, or revoked. It can be revoked outside the trial. Can be revoked in court. The trial means in the trial. After going through the trial process, many answers were revoked. There are also many.

Researcher: Well, my research will focus more on the child, sir. The condition of the child. Which, from what I know, if there is a divorce, then the judge also determines ... Let me continue. Regarding the child's maintenance. Which, what I know is, if for example, a divorce occurs, the judge also decides on how much child needs the father must fulfill. If we follow the law, it is indeed this, sir. The child is still materially the responsibility of the father, even though the husband and wife are divorced. Now, regarding the amount, the judge also decides on that matter, sir.

Judge: So, this is SEMA, that it is adjusted to the ability and appropriateness. See, the letters from the Supreme Court are here. So it must be adjusted to appropriateness or decency and ability. So how much does the husband earn, the maintenance to punish this child can be one-third. Three for child support. Half for the wife, like that. Then the other half is for the child, meaning also three, the child is one-third. And the important thing is appropriateness. If it's not appropriate, what does that mean? Appropriate, appropriate, that language is appropriate. So worthy

to meet his future children. Worthy. So worthy means enough. Enough for the child. Plus another consideration is the ability. What is the husband's ability? Sometimes it may exceed his ability. If he is a farmer, how much will he give? If he is an employee, how much is his salary? So that contains the principle of appropriateness and the ability of the applicant or husband. Does that mean that if it's related to the consideration of how much it is, it only looks at the husband's income or only the wife's as well?

Researcher: Suppose the wife also works, sir, is it also seen from the husband alone or also the wife?

Judge: Looking at the husband because the one who is obliged to see the child is the husband or father. Unless the mother or father is incapable, then it can be burdened actually. But we will say that because of this divorce, on average, we will look at the husband's ability. What is his ability? His ability will be feasible for the child's life. Because it is seen by the father, what is the husband's take-home pay or net income? How much does he live on? Yes, divide it by three maybe sir. For the children, three are given. If the husband wants to remarry, we will still provide enough for him. I don't know if we'll give all of it to the children. There is *idāh* maintenance, *mut'ah*, *Hadonah*. *Hadonah* yes. There is *idāh* maintenance, *mut'ah*. This is also adjusted to the husband's ability. These three items are usually a series of consequences of divorce or divorce. Therefore, it is certainly adjusted to the ability that the husband will pay.

Researcher: It means that the judge has adjusted according to the feasibility of the child, which can also be calculated from the husband's ability. But sir, it turns out that in fact in our society many husbands do not implement it. Oh yes. What do you think about that, sir?

Judge: It means that they don't comply with the decision. Well, the court has tried in various ways. For example, a husband who wants to divorce his wife, while he is burdened with the support of paying '*iddah*, *mut'ah*, for example, there is also *madhiah*, child support, then he pays ABC, not the child, ABC is paid shortly before the divorce is pronounced. From this, yes, SEMA No. 1 of 2017, number 1, is that if the burdened Even if it is '*iddah* *mut'ah*, or even *maḍiah*, *maḍiah* is past-due

maintenance that has not been paid, then it must be paid before the pronouncement of the vow of divorce. We know that the divorce begins when the vow is made. Before the pronouncement of the vow, he must first pay it to his wife, through the court. In front of the court, he brings 5 million money to his wife, he pays her, then he can say the pledge. That is one way to bind the applicant to the decision. Secondly, if this divorce comes from a lawsuit, then by PERMA number 3 of 2017, concerning guidelines for trying cases of women facing the law. So to provide legal protection, to provide legal protection for women's rights after divorce, the amar in the case of a lawsuit divorce, can add the sentence 'which is paid before the defendant, so the husband yes, takes the divorce certificate, yes, the bondage is like that, there are two bondage, the defendant, takes the divorce certificate, provided that, the amar is narrated in the posita and petitum of the lawsuit' based on SEMA number 2 of 2019, number 1 letter B, You can google it later, so that the parties comply with the decision, if the divorce, the applicant is burdened immediately, to pay immediately before the pledge of divorce, pronounced by him, that's the first, if the case departs from a gugat divorce, from the wife, the wife at the same time asks for divorce, at the same time demanding child needs, then it is permissible, then the defendant's divorce certificate, will still be detained by the court, or not given, as long as he has not paid, the contents of the child needs decision earlier,

Researcher: But isn't the child needs going to continue, until the child is 21 years old, sir?

Judge: There is also something about that, this child is obliged to be borne by the husband, or ex-husband, ex-husband to be precise, until the age of 21, or before that, or married, married means the dependents of her husband, before the age of 21, or married, means, if it is, the following years, the following months, what was supervised was the first month alone, or before taking the divorce certificate, if it is, what is it called, supervision, whether the judge can supervise, that the answer is, the judge cannot supervise, whether it is implemented or not, and the judge is not obliged, to supervise the decision, The judge is not obliged, not an angel, not a supervisor, therefore, this judge, against the decision, gave, the procedural law yes, provides rules, that if, who has rights, or who feels aggrieved, about the payment of

child needs, is not implemented by the former husband, then he can apply for the implementation of the contents of the decision by force, or execution, the name is, the implementation of the contents of the decision by force, or execution, can submit a request for execution, to the local court, submission of a request for execution, to this local religious court, with the provisions, Of course, the goods must be available, the executed goods must be available, the ex-husband, what kind of wealth does he have, does he have a car that can be sold, does he have a house that can be sold, or a garden that can be sold, or whatever, because the application for execution, or execution, later if it turns out that the executed goods are empty, the executed goods are empty, illusoir is the name, illusoir or empty goods, which cannot succeed, it is useless, even though the execution is paid, because it is easy, let it wait for several months, not counting up to years, not counting the totality, then just submit an application for execution, let kubuk in Javanese, kubuk is the same cost as the result, the result of the execution, balanced, there is a result, do not make the peg bigger than the pole, secondly, there must be goods, there must be collateral, what you want to confiscate, what you want to confiscate, houses, cars, gardens, or rice fields, players, it must be there, if not, If it's not there, for example, if the husband doesn't have any income, he doesn't have any wealth, would he want to go to jail, not really, in Indonesia we don't recognise that, we don't recognise that if the ex-husband doesn't pay maintenance for the children, that means he's reneging on the decision, so put him in jail, in Indonesia we don't have that.

Researcher: But it can't be, sir, if it's subject to the law, I read some articles, yes sir, it says that actually if you really want to force it, then the husband will be subject to the law, the criminal law, the child neglect law, can you sir?

Judge: Yes, I think it is possible if the wife wants to, but the problem is, the husband has nothing, put up, put up, what is the benefit for him, the husband does not pay, put up, he goes to jail, it is not done, but what is the benefit for the wife, for the ex-wife, for the child, regarding the income, what is the output, can be expected to come in, can be expected to not exist. Now this is the weakness, on the one hand, that Indonesia, the legal politics is still like that, there is still a loophole for those who defy, otherwise, for example in Australia, everywhere, yes, there is already an

integrated relationship, so people who do not comply with this decision, can be charged, charged with what, administration, His life will be disrupted, for example, he will be banned, not allowed to go abroad, not allowed to immigrate, or he can't get on the plane, because he has something like what, if he gets on the plane, there is money like an ATM or his account money is blocked, as long as he cannot implement the contents of the decision, it is blocked. So he can't do anything.

Researcher: Does that mean they have a supervisory body?

Judge: Yes, there is a supervisory body as well as, what do you call it, a monitor, yes, it can impose. But this is, especially if the governments are already integrated, maybe from the bank, from immigration, from the ministry, especially, if in Saudi Arabia for example it is like that, in Arab countries there are also models, there is a guarantee, there is a guarantor, a guarantor institution, then the wife's needs are paid for by the guarantor, After that, the guarantor, the state guarantor, guarantees it, after that, but you don't need to look for anything, this is just information, just comparing, I don't have it, if you have a job, you can look for it, this is just information, I was talking to Mr Deputy who has studied in the Middle East, yes, in Arabia, in Banding, to Arabia, to Qatar, that's right, once, he searched for State Banding, it's like that, so there are several state guarantors, then later, his wife later, who reported earlier, was paid by the state, paid by the state guarantor earlier, after that, her husband will be fined to pay, later the state will later ask her husband, which means that the husband pays it to the institution, so this guarantor institution pays the wife who sues, reports, to the court, then it is paid by him, the guarantor asks the ex-husband, somehow he can get caught by the husband, the state can't do anything to the authorities.

Researcher: Yes sir, that's what makes me see a lot of single mothers, single mothers who have to survive on their own to survive, especially for their children and their lives, yes sir, well, in your opinion with so many of our people in the sense that maybe it can be said that they don't feel protected by the law, or feel disadvantaged because as you said earlier, execution is a complicated procedure, secondly the cost is expensive, sometimes what we apply for and what we get is not comparable.

Judge: I would also add that the guarantee must be that there is a person who wants to be executed, what is it that wants to be seized, if there isn't one, the husband is destitute.

Researcher: But if, for example, the husband is available, even if forced, it can't be done, right?

Judge: Forced how? What if there is no will?

Researcher: For example, from her husband's point of view, it is true, but it is indeed a problem.

Judge: Of course, if there is money that can be executed, then the plaintiff, the applicant for execution, yes, is requesting that his assets be confiscated to pay child support which has not been paid for many years, the applicant collected 50 million. Yes, the house could be confiscated by the court. If it is confiscated, it means the house is being sold, it is being sold at auction, then the money will be taken from it, from the proceeds of the auction. 50 million given to wife to pay child support. That's technically, the theory is like that. However, the practice is rare.

Researcher: And it turns out that many ex-wives don't do that, sir? But is there a case here where they are requesting execution?

Judge: I don't think I'm here yet, I don't exist yet. Has anyone ever included this? Everywhere I've never been. Yes, sir, it's rare.

Researcher: I had the opportunity to chat with only 1-2 judges at PA Sleman. Very rarely.

Judge: Because of that, yes, coincidentally his legal awareness is not small either. While also having economic capabilities. That's why now there has been a breakthrough by this, PERMA number 3 of 2017 regarding adjudicating women in conflict with the law. At the same time, he can sue for iddah and mut'ah income and past income. She sued for divorce, not just divorce but she asked that her husband also pay for her housekeeping, living expenses, and past unpaid living. If he can prove it, it can be granted. This is part of protecting the single mother woman. So efforts in that direction continue to exist. There are still those directions. So far, the court has also accommodated women's aspirations for emancipation. So our laws, the laws in this judiciary, are more in favor of women. For example, if a woman

files a case, it may be in her area. If the potential is relative, he can litigate in his area. Even though her husband is outside the court, where he is domiciled. On the other hand, if a man has to permanently register another story in the jurisdiction whose court is the jurisdiction of the woman's respondent. So this woman is legally protected because she is protected like that. From the beginning. So it's enough for us to admit that legal efforts to protect women are already good enough. Although it may not be as expected. According to expectations. Because the law is like that, it involves interests.

Researcher: Not to mention that people don't understand the law either. Lastly, in your opinion, the best solution to this phenomenon, would it be possible for you to hope that our country has an institution like the one you mentioned earlier in Australia. Or maybe there is no hope?

Judge: We are tied to the Corp. We are at the Supreme Court. Therefore, the organization that can propose it is the research and development agency. Therefore, I can submit these proposals to you at the Supreme Court. I don't have one, I can only hope. Don't have one, can't suggest this or that. So I hope that there will be integration between various agencies related to immigration, and banking, we have been working together for a long time. For example, in this decision, if a husband is in the civil service, then he divorces his wife, then the existing regulations are that the salary is deducted for the wife who has been divorced or divorced. The husband's salary should be deducted every month through the treasurer of the agency where the husband works, so that the deduction from his salary should be directly included in his account, requested or requested by the wife. The thing is, some don't apply it. Some don't apply it. So, some apply, some don't. The problem is this, sometimes the divorcing party doesn't want to come. Oh. Her opponent, sometimes only her husband comes, he is the applicant. If his wife or the respondent does not appear at the hearing, then it can be decided by Verstek, without the presence of the opponent or the respondent. Therefore, if the party is not present, then he loses his rights. Because he did not appear at the hearing, he lost his rights. Yes. Unless the judge is aware of the rights of women who hope for this law. PERMA No. 3 of 2017, he realized that helping parties who were not present were

also given a living wage, idah, mut'ah, it was possible. Then, his salary could be cut. That is if the judge is aware of this. There is this rule. It's just that this isn't mandatory. It's not mandatory to apply that earlier, bypass that. Since there are two opinions, let's say that yes. Is there an obligation for a husband to pay alimony to his ex-wife? He's already his ex. So the only thing that is required is to pay the Idah, the waiting period. If there is a waiting period, you must pay. So there are also judges who have an opinion. Livelihood is still provided. Support during the waiting period or iddah period is still provided. Keep giving it. But it seems that with salaries for future welfare, so far there has been no emphasis. So therefore it is also said that the opponent or finding was not present at the trial. Even if he is present, and he asks seriously, for various reasons, there is proof that she is indeed his wife, he proves that the source is a civil servant, he could be considered for a deduction from his monthly salary. But here, as far as I know, there is no trend in that direction. Due to coincidence, enlightenment does not exist. As long as I serve here, no one asks. When I broke the fast in Ngawi, no one asked.

Researcher: For example, if most of the respondents were not present, what does this mean regarding their demands, for example regarding Idah maintenance, mut'ah, and child support, the judge's decision means that it is affected because the respondent was not present. What influence does it have to the point that it can fall? Or maybe it just doesn't match the nominal value as proposed?

Judge: Fallen. Because the woman or opponent was not present at the trial, he was deemed to have waived. After being summoned obediently, several times, at least twice when he came to court, he was deemed to have let go. In my opinion, that's why it's said that. So because the respondent was not present at the trial, this case could be resolved without his presence. Considering that there was a failure to appear at the hearing, it was deemed to have been released. Because it's not serious. When given, fight for their rights, don't want it. There continues to be an increase in what these judges are called, who do not grant decisions that are not requested. It's called Ultra Petita. We must not be ultra petite. Therefore, just as it is paid before the defendant takes the divorce certificate, there must be provisions. Furthermore, some provisions are narrated in the posita and petitum of the lawsuit. This means

that if it is not narrated in the posita and petitum of the lawsuit, it cannot be filed. Because later ultra petita will not be asked for but bought. That's not allowed. It's like cutting wages, just fight it, don't ask for it, give it. It's called ultra petite. It copies procedural law. Ultra petita, which is permissible, is not ultra, because the husband is mentally rejecting the wife, so you have to ask a lot. One petitum is 1. To grant the petitioner's request, 2. To permit the petitioner, 3. To impose one divorce, roj'i on the petitioner, 4. In front of a religious court session 5. To distribute expert fees according to law. That's the petitum later. Later in the dictum or decision, it could emerge. The verdict, what is it called, which punishes this applicant, the verdict could be 4, it could be 5. It seems to sentence the applicant to pay black maintenance to the respondent, including the children. Because the opponent is present. Then this opponent filed and submitted a counterclaim. Then there will be a decision called a convention. The decision in the convention, the convention is the main thing. Then the decision in reconvention is a counterclaim. From the wife, a counterclaim. So in reconvention, granting the reconvention lawsuit. For two, punish the defendant for reconvention. The defendants in the reconvention are all plaintiffs, the applicants. Punish the reconvention defendant by confining the reconvention applicant to pay the reconvention defendant. The claimant's reconvention is in the form of one idah income, one mutah income, one *Maḍiyah* income, and one child's income who does not come. It appears. Because it is allowed. But that's not ultra petita. Ultra petita means accepting something that is not desired. But this is through convention.

Researcher: But is there a distance or not, sir? Before the reconvention, when the wife started the counterclaim, did that mean how many months did she have to wait?

Judge: No, straight away. That's the field of direct answers. There was an application read at the trial. There is an answer from the opponent. Then there is another answer to the previous answer called replica. Then his opponent submitted a duplicate. So each stage of the trial changes. Answer his name. Answer answer. I keep repeating that the verdict cannot be ultra petita.

Researcher: OK, thank you sir for all the knowledge you have provided. For data collection, God willing, I will come here again in September, sir, because I have to

do KKN first in August. God willing, if I can go home in September, I will plan to collect data from PA.

Judge: OK sis, hopefully you'll finish your research and thesis soon.

Appendix 3. Outline of Interview Process (Single Mother in Malang Regency)

a. Respondent 1

Name : FN (Initials)
Address : Kepanjen
Occupation : Factory Worker
Date of Interview : 17th September 2024
Place of Interview : House of FN (Initials)

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent is divorcing in 2024 as stated in the divorce decree regarding child support in the amount of 500,000 rupiah, but this is not fulfilled by the ex-husband with the estimated reason being that according to the respondent there is no sense of responsibility towards the child.

2) Efforts made by single mothers and the reasons

The respondent had made non-legal attempts, namely contacting (communication) with her ex-husband, but was always ignored and never made another attempt

b. Name : MN (Initials)
Address : Tumpang
Occupation : -
Date of Interview : 4th July 2024
Place of Interview : Chat Message WhatsApp

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent is divorcing in 2024 as stated in the divorce decree regarding child support in the amount of 500,000 rupiah, but this is not met by the ex-husband, with the estimated reason being that according to the respondent there is no sense of responsibility towards the child.

2) Efforts made by single mothers and the reasons

The respondent has made non-legal efforts, namely contacting (communication) with her ex-husband and plans to file a lawsuit again

c. Respondent 3

Name : YT (Initials)

Address : Singosari

Occupation : Staff food production

Date of Interview : 19th September 2024

Place of Interview : House of YT (Initials)

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent divorced in 2024 with no mention in the divorce decision regarding child support, because the husband's whereabouts were unknown before the divorce.

2) Efforts made by single mothers and the reasons

The respondent had already made non-legal efforts, namely by searching for the whereabouts of her ex-husband but was still not found so the child's maintenance could not be decided.

d. Respondent 4

Name : DN (Initials)

Address : Karangploso

Occupation : -

Date of Interview : 19th September 2024

Place of Interview : House of DN (Initials)

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent is divorcing in 2024 as stated in the divorce decree regarding child support in the amount of 1,500,000 rupiah, but this was fulfilled in only 1 month by the ex-husband for the estimated reason that according to the respondent he was no longer able to support it.

2) Efforts made by single mothers and the reasons

The respondent has made non-legal attempts, namely contacting (communication) with her ex-husband but there has been no change.

The respondent himself was not aware of any legal action that he could take, on the other hand, the cost factor made him think twice about taking legal action.

e. Respondent 5

Name : DD (Initials)

Address : Kepanjen

Occupation : Entrepreneur

Date of Interview : 22nd September 2024

Place of Interview : Chat Message WhatsApp

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent is divorcing in 2024 with no mention in the divorce decision regarding child support, because the husband's irresponsibility is a factor in the respondent's feeling that he is able to support his child.

2) Efforts made by single mothers and the reasons

Respondents have made non-legal attempts, namely contacting (communication) with their ex-husband, but the respondent doesn't have much hope because the ex-husband is addicted to online gambling.

f. Respondent 6

Name : WL (Initials)

Address : Kepanjen

Occupation : Factory Worker

Date of Interview : 21st September 2024

Place of Interview : Chat Message WhatsApp

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent divorced in 2023, as stated in the divorce decree regarding child support in the amount of 500,000 rupiah, but this was never met by the ex-husband, with the respondent assuming the reason being interference from a third party (new wife).

2) Efforts made by single mothers and the reasons

The respondent has made non-legal attempts, namely contacting (communicating) with her ex-husband, but this was ignored until the respondent never made another attempt.

g. Respondent 7

Name : AT (Initials)

Address : Pakis

Occupation : Limestone sales business

Date of Interview : 11th September 2024

Place of Interview : House of AT (Initials)

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent divorced in 2023 as stated in the divorce decree regarding child support in the amount of 1,000,000 rupiah, but this was not met by the ex-husband due to the estimated reason according to the respondent being the ex-husband's inability since before the divorce.

2) Efforts made by single mothers and the reasons

The respondent never made any legal or non-legal efforts with her ex-husband because the ex-husband provided conditions that he was

willing to provide for her as long as one of the children was brought by him. And respondents are reluctant to take the risk of separating these siblings.

h. Respondent 8

Name : UO (Initials)

Address : Kepanjen

Occupation : Online Shop

Date of Interview : 17th September 2024

Place of Interview : House of UO (Initials)

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent divorced in 2022, as stated in the divorce decree regarding child support in the amount of 1,000,000 rupiah, but this was not fulfilled by the ex-husband, with the estimated reason being that according to the respondent he had no sense of responsibility towards the children and had remarried.

2) Efforts made by single mothers and the reasons

The respondent never made any legal or non-legal efforts with her ex-husband because the ex-husband provided conditions that he was willing to provide for her as long as one of the children was brought by him. And respondents are reluctant to take the risk of separating these siblings. Apart from that, there is indeed a lack of knowledge

regarding the legal process and the consideration of expensive legal costs.

i. Respondent 9

Name : WT (Initials)

Address : Poncokusumo

Occupation : -

Date of Interview : 18th September 2024

Place of Interview : House of WT (Initials)

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent divorced in 2022 with no mention in the divorce decision regarding child support due to the unknown whereabouts of her ex-husband.

2) Efforts made by single mothers and the reasons

The respondent had already made non-legal efforts, namely by searching for the whereabouts of her ex-husband but was still not found so the child's maintenance could not be decided.

j. Respondent 10

Name : ES (Initials)

Address : Tumpang

Occupation : Food Selling

Date of Interview : 16th September 2024

Place of Interview : House of ES (Initials)

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent divorced in 2021 with no mention in the divorce decree regarding child support but the ex-husband only provided education costs.

2) Efforts made by single mothers and the reasons

The respondent never made any legal or non-legal efforts with his ex-husband because their communication was not good and his new wife prohibited it.

k. Respondent 11

Name : DW (Initials)

Address : Pakis

Occupation : Sales Promotion Girl

Date of Interview : 14th September 2024

Place of Interview : House of DW (Initials)

1) Year of divorce and amount of child support as well as realization of fulfillment of child support by ex-husband

The respondent divorced in 2021 as stated in the divorce decree regarding child support in the amount of 500,000 rupiah, but this was not fulfilled by the ex-husband, with the estimated reason being that according to the respondent there was no sense of responsibility towards the children.

2) Efforts made by single mothers and the reasons

The respondent never made any legal or non-legal efforts with her ex-husband because the ex-husband provided conditions that he was willing to provide for her as long as one of the children was brought by him. And respondents are reluctant to take the risk of separating these siblings.

Appendix 4. Documentation



Interview with a Judge of the Religious Court in
Malang Regency, Mr. Drs. H. Shobirin, M.H.

CURRICULUM VITAE

FAIRUZA DINDA

Kaliurang Street KM.14,5 No.40A, Sleman, Yogyakarta

0821-4166-0707

dindaumif@gmail.com

PROFILE SUMMARY

My name is Fairuza 'Alima Fardindaputri. I was born in Malang, on 9th September 2000. Currently studying at the Islamic University of Indonesia, Islamic Law study program (UII, Yogyakarta). I am a personal figure who has an interest in the development and analysis of the world of education. Apart from that, I have an active spirit and like to learn about new things to hone my potential skills. Because my goal in life is to contribute and benefit as much as possible for the people around me and the wider community.

PROFESSIONAL SKILL

Analysis
Public Speaking
English and Arabic Language

TECHNICAL SKILL

Microsoft Office
Photogenic
Writer

EDUCATION

Senior High School (Boarding School)

2016 – 2021

PP. Daarul Ukhuwwah, Malang

Carry out 1 year of language school and continue formal senior high school for 3 years plus a dedicated period of 1 year thereafter

Undergraduate Studies

2021 – now

Islamic University of Indonesia

last semester

Study Program of Islamic Law especially International Program,,
Faculty of Islamic Studies

EXPERIENCES

Study Abroad

November, 2023

International Short Course to Program Fiqh and Fatwa, University Sains Islam Malaysia (USIM)

- Participate in international discussions of Syariah and Law
- Attend lecture sessions at USIM
- Sharing session about law, culture, and policies with USIM student and organization

Moderator of Conference

July, 2023

The Third International Conference on Islamic Family Law

- Theme of agenda "Navigating Islamic Family Law and Humanity Issues in the Digital Era"
- Opening the paper presentation session by the speakers Invite the speaker to present the results of his paper
- Interact with speakers and the audience in discussing the papers presented

- Moderator of Conference** November, 2022
International Conference on Islamic Studies & Social Sciences
- Opening the paper presentation session by the speakers
 - Invite the speaker to present the results of his paper
 - Interact with speakers and the audience in discussing the papers presented
- One of authors in a book** 2020
The book is called Cherish
- Writing a manuscript in one of the title chapters in a book that has been published

WORK AND ORGANIZATION EXPERIENCE

- Freelance Admin** August, 2022 – now
SEGARIS Management
- Make business proposals or partners needed by clients
 - Input data required by the management
 - Make receipt payments and invoices for clients in payment
- Admin Input Data** 2023
CV. Letlock Indonesia (Sertifikasi HALAL)
- Input product data for halal certification submission
- Division Coordinator** December, 2022
I-SAFE 2022 Faculty Event Committee as division coordinator
- Create rules or policies that apply during the event
 - Control the course of events and the performance of each member during the event
 - Make a budget plan needed for the running of an event
- Member of the 2022/2023 HMAS** 2022 – 2023
Organizational of HMAS Department of Science Division
- Carry out work programs that have been prepared to develop the quality of student affairs in the department
- Member of the Events division** August, 2022
University New Student Orientation Event Committee
- Create rules or policies that apply during the event
 - Control the course of events and Manage time management during the event
 - Make a budget plan needed for the running of an event
- Administrative Staff of Administration and Finance Division** July, 2022
Intern at BPA KM UII (Badan Pengelola Aset Keluarga Mahasiswa UII)
- Create invoices
 - Create training proposals
 - Record the results of work meetings (summary)
- Become a Private Tutor** 2020 – 2021
Rumah Belajar, Malang
- Help students understand the subjects given at school
 - Helping students in doing assignments
 - Provide private teaching to students at home