

FULFILLING CHILD RIGHTS POST-DIVORCE IN RELIGIOUS COURTS BASED ON PEOPLE'S ECONOMIC FACTORS AFTER PANDEMIC

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Abstract: This writing aims to understand and analyze the Implementation and Obstacles of the Letter of the Directorate General of the Religious Courts Number 1669/DJA/HK.00/5/2021 Concerning the Enforcement of Guarantees to Protect the Rights of Women and Children Post-Divorce, bearing in mind that the community's economy after the pandemic will impact post-divorce children's rights at the Tulang Bawang Tengah Religious Court. This writing uses normative qualitative research methods with rule and case study approaches. The results of the first study found that the Implementation of the Letter of the Director General of the Religious Courts Number 1669/Dja/Hk.00/5/2021 concerning Guarantees for the Fulfillment of Children's Rights Post-divorce at the Tulang Bawang Tengah Religious Court after the pandemic has fulfilled the spirit of fulfilling children's rights after divorce on a few notes. The results of the second study found inhibiting factors such as the Petition for divorce cases not entirely containing demands for fulfilling children's rights after divorce because the Petition for divorce cases did not include the fulfillment of the rights of women and children after divorce, Determining the value of living for wives and children due to divorce which still varies, Aspects of implementing the decision (execution) if one of the parties is not present, and the Judge's understanding of the Ultra Petition Partium Principle.

Keywords: *Implementation of Children's Rights, Inhibiting Factors, Post-Pandemic*

Abstrak: Tujuan penulisan ini adalah memahami dan menganalisis Implementasi dan penghambat dari Surat Direktorat Jenderal Badan Peradilan Agama Nomor 1669/DJA/HK.00/5/2021 Tentang Pemberlakuan Jaminan Perlindungan Hak-Hak Perempuan Dan Anak Pasca Perceraian, mengingat ekonomi masyarakat setelah pandemi akan berdampak dengan hak anak pasca perceraian di Pengadilan Agama Tulang Bawang Tengah. Penulisan ini menggunakan metode penelitian kualitatif normatif dengan pendekatan aturan dan studi kasus. Hasil penelitian pertama menemukan Implementasi Surat Direktur Jenderal Badan Peradilan Agama Nomor 1669/Dja/Hk.00/5/2021 tentang Jaminan Pemenuhan Hak-Hak Anak Pasca perceraian di Pengadilan Agama Tulang Bawang Tengah pasca pandemi adalah telah memenuhi semangat pemenuhan hak-hak anak pasca perceraian dengan beberapa catatan. Hasil penelitian kedua menemukan faktor penghambat seperti Petition gugatan perkara Cerai belum seluruhnya berisi tuntutan pemenuhan hak anak pasca perceraian, karena Petition perkara perceraian belum mencantumkan tentang pemenuhan hak-hak perempuan dan anak pasca perceraian, Penentuan nilai nafkah bagi isteri dan anak akibat perceraian yang masih bervariasi, Aspek pelaksanaan putusan (eksekusi) bila tidak dihadiri salah satu pihak, dan pemahaman Hakim Terhadap Asas Ultra Petition Partium

Keyword: *Implementasi Hak Anak, Faktor Penghambat, Pasca Pandemi*



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Introduction

A divorce is a displeased act by Allah SWT, but Allah SWT does not forbid His servants to get divorced with a note that those who are married are unhappy or even get violence that ends in misery.¹ In other words, divorce is the last resort, and there are no other options to improve a couple's relationship.² A divorce is not only a matter between husband and wife but involves a child from the fruit of their love,³ which should be a consideration for the two parents who are going to divorce.⁴

The impact that will occur in the future if both parents are separated is the lack of attention and affection of a child towards his biological parents makes the child more emotional, trying things that he thinks can get the attention of his parents even though his actions are wrong.⁵ Some children become more introverted, shy and do not like to socialize.⁶ A child will remember and re-implement what his parents did. A father or

mother is a role model for a child to follow the development of the child's character in the future.⁷

In some impacts such as psychological, mental, and behavioral, there are also legal consequences that will occur between children and parents.⁸ As stated in Law Number 1 of 1974 concerning Marriage Article 41 paragraphs 1 and 2, which states that both parents are obliged to care for and educate their children as well as possible.⁹ The parents' obligations referred to in paragraph 1 of this article apply until the child marries or can stand alone, which obligations continue even if the marriage between the parents is broken.¹⁰

The 1945 Constitution in Article 28 b paragraph 2 as the highest legal norm has explained, "every child has the right to survival, growth and development and the right to survival, growth and development and the right to protection from violence and discrimination".¹¹ By including the rights of

¹ Riyan Erwin Hidayat, 'PENDAPAT IMAM MAZHAB TENTANG HAK ISTRI PADA MASA IDDAH TALAK BA'IN DAN RELEVANSINYA DENGAN UNDANG-UNDANG PERKAWINAN DI INDONESIA', *Istinbath: Jurnal Hukum*, 15.1 (2018) <<https://doi.org/10.32332/istinbath.v15i1.1123>>.

² M. Vhize Jenna Afif El Imami, Amrullah Hayatudin, and Shindu Irwansyah, 'Analisi Hak Asuh Anak Akibat Pandemi Covid-19 Ditinjau Dari Hukum Keluarga Islam', *Jurnal Riset Hukum Keluarga Islam*, 2022 <<https://doi.org/10.29313/jrhki.vi.1206>>.

³ Putri Erika Ramadhani and Hetty Krisnani, 'ANALISIS DAMPAK PERCERAIAN ORANG TUA TERHADAP ANAK REMAJA', *Focus: Jurnal Pekerjaan Sosial*, 2.1 (2019) <<https://doi.org/10.24198/focus.v2i1.23126>>.

⁴ Loretta Capeheart and Dragan Milovanovic, *Social Justice: Theories, Issues, and Movements*, *Social Justice: Theories, Issues, and Movements*, 2007.

⁵ Ida Untari, Kanissa Puspa Dhini Putri, and Muhammad Hafiduddin, 'Dampak Perceraian Orang Tua Terhadap Kesehatan Psikologis Remaja', *Profesi (Profesional Islam): Media Publikasi Penelitian*, 15.2 (2018) <<https://doi.org/10.26576/profesi.272>>.

⁶ Erlina Harahap, Sukatno Sukatno, and Auliya Warzuqni, 'KESEHATAN MENTAL REMAJA PUTRI KORBAN PERCERAIAN ORANG TUA', *Ristekdik:*

Jurnal Bimbingan Dan Konseling, 6.2 (2021) <<https://doi.org/10.31604/ristekdik.2021.v6i2.268-272>>.

⁷ Mohamed A. Abdelaal, 'TAQLĪD V. IJTĪHĀD: THE RISE OF TAQLĪD AS THE SECONDARY JUDICIAL APPROACH IN ISLAMIC JURISPRUDENCE', *THE JOURNAL JURISPRUDENCE*, 2012.

⁸ Muhammad Yusril Alawi and Wiwiek Wahyuningsih, 'Akibat Hukum Perceraian Pernikahan Yang Diisbatkan Terhadap Hak Asuh Anak Menurut Hukum Islam (KHI) Dan Undang-Undang Perkawinan', *Private Law*, 2.2 (2022) <<https://doi.org/10.29303/prlw.v2i2.1188>>.

⁹ Amalia Damayanti and Mohammad Fajri Mekka Putra, 'Child Custody after Divorce (Case Study of Court Decision Number 242/Pdt.G/2019/PN.Tjk)', *Awang Long Law Review*, 4.2 (2022) <<https://doi.org/10.56301/awl.v4i2.378>>.

¹⁰ Nurrohmatul Jannah and Nurbaedah Nurbaedah, 'TINJAUAN YURIDIS KEWAJIBAN ORANG TUA TERHADAP NAFKAH ANAK PASCA PUTUSAN PERCERAIAN (Studi Kasus Di Pengadilan Agama Kediri)', *Mizan: Jurnal Ilmu Hukum*, 11.1 (2022) <<https://doi.org/10.32503/mizan.v11i1.2569>>.

¹¹ Taufik Hidayat Simatupang and others, 'The Supervision of the Heritage Hall of the Children's Asset under Guardianship towards the Legal

the child in the body of the constitution, it can be interpreted that the position and protection of children's rights is an important thing that must be implemented in life. One form of guarantee of all the rules regarding protecting children's rights contained in the constitution is through the decision of the Religious Court with the implementation of post-divorce children's rights.¹²

Based on the Supreme Court Year Report for 2018-2021, it is stated that the average divorce cases that have been submitted to the Religious Courts and District Courts by justice seekers totaled 462,841 cases, with details of 447,417 cases submitted to the Religious Courts, and 15,424 cases submitted to the General Courts, with the ratio of women filing for divorce amounting to 7 people out of 10 people in the Religious Courts, and 5 people out of 10 people in the General Courts. Nearly a million children experience the effects of divorce each year.¹³ It can be seen that 95% of the 450,000 divorce cases decided annually in Indonesia involve the rights of children under 18 years of age.¹⁴

On average, in Indonesia, every family has two children. Therefore it is estimated that more than 850,000 children are affected yearly by divorce cases filed in Indonesian courts. Furthermore, Law Number 23 of 2002 concerning Child Protection states that problem children are children who are victims of abuse and neglect and are entitled

to special protection. Therefore children who are victims of divorce, including problem children, must receive special protection¹⁵

Child Protection Law Number, 35 of 2014 amendment to Law Number 23 of 2002, is a consequence of Indonesia as a constitutional state and a consequence of the ratification of the Convention on the Rights of the Child.¹⁶ The responsibility of parents towards children is also regulated in Article 26 of Law Number 23 of 2002 concerning child protection, as follows¹⁷

- (1) Parents are obliged and responsible for the following:
 - (a) caring for, nurturing, educating, and protecting children;
 - (b) develop children according to their abilities, talents, and interests; And
 - (c) prevent child marriage.
- (2) If the parents are not present, or their whereabouts are unknown, or due to some reason, they are unable to carry out their obligations and responsibilities, then the obligations and responsibilities referred to in paragraph (1) can be transferred to the family, which is carried out under the provisions applicable laws and regulations

Equal obligations and rights between husband and wife even though they are divorced, namely to educate, foster, care for, protect, and maintain the growth and development of children.¹⁸ The obligations

System of Pancasila', *Journal of Legal, Ethical and Regulatory Issues*, 24.Special Issue 1 (2021).

¹² Amran Suadi, 'PROTECTION OF WOMEN'S AND CHILDREN'S RIGHTS BASED ON SYSTEM INTERCONNECTION: A New Paradigm of Execution of Women and Children's Rights after Divorce', *Jurnal Hukum Dan Peradilan*, 11.3 (2022) <<https://doi.org/10.25216/jhp.11.3.2022.499-522>>.

¹³ Mukhamad Sukur and Nurush Shobahah, 'SYIQAQ SEBAGAI ALASAN PERCERAIAN DI PENGADILAN AGAMA TULUNGAGUNG', *Ahkam: Jurnal Hukum Islam*, 9.1 (2021) <<https://doi.org/10.21274/ahkam.2021.9.1.175-192>>.

¹⁴ Laporan Tahunan Pengadilan Agama Tulang Bawang Tengah Tahun 2021. h.43.

¹⁵ Mursyid Djawas and others, 'The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi', *Ahkam: Jurnal Ilmu Syariah*, 21.1 (2021).

¹⁶ Wardah Berby Namirah and I Dewa Gede Dana Sugama, 'PERLINDUNGAN HUKUM TERHADAP ANAK DIBAWAH UMUR KORBAN KEJAHATAN SEKSUAL', *Kertha Semaya: Journal Ilmu Hukum*, 10.8 (2022) <<https://doi.org/10.24843/ks.2022.v10.i08.p18>>.

¹⁷ Ekasari Ekasari, Ema Fathimah, and Gibtiah Gibtiah, 'ANALISIS PERBANDINGAN PENETAPAN HAKIM TERHADAP DISPENSASI PERKAWINAN AKIBAT HAMIL DILUAR NIKAH', *Muqaranah*, 5.2 (2021) <<https://doi.org/10.19109/muqaranah.v5i2.10320>>.

¹⁸ Ahmad Nawawi, 'Perlindungan Terhadap Perempuan Dan Anak Dalam Rancangan Undang-Undang Ketahanan Keluarga Perspektif Hak Asasi Manusia', *Sakina: Journal of Family Studies*, 5.1 (2021).

that must be fulfilled are rights that children must obtain after the divorce.¹⁹ This is as regulated in Article 4 of Law no. 23 of 2002 concerning child protection, namely that children have the right to be able to live, grow, develop and participate fairly following human dignity and dignity and to receive protection from violence and discrimination.²⁰

Indonesian law provides a way for divorce, but Law No. 1 of 1974 on Indonesian Marriage tries to reduce the number of divorces. Legislators also realize that a divorce that is carried out will destroy the child who should be properly cared for so that the child is increasingly destroyed as a victim of divorce.²¹ Children's rights as a result of divorce should not be ignored, so efforts are made to guarantee the maintenance of children's rights post-divorce. Judicial institutions are important in guaranteeing children's rights through court decisions. The Supreme Court of the Republic of Indonesia, through the Directorate General of the Religious Courts, has issued a Decree of the Director General of the Religious Courts Number 1669/DJA/HK.00/5/2021 dated 24 May 2021 concerning the Implementation of the Policy Summary of Guarantees for the Protection of Women's and Children's Rights Post-divorce.²²

The Tulang Bawang Tengah Religious Court, as one of the courts under the Supreme Court exercising judicial powers with jurisdiction in West Tulang Bawang Regency, Lampung Province, has carried out the contents of the Decree of the Directorate General of the Religious Courts Agency Number 1669/DJA/HK.00/5/2021, which the

letter is a follow-up to the implementation of the Child Protection Act Number 35 of 2014 concerning Amendments to Law Number 23 of 2002.

The Implementation of Decree Number 1669/DJA/HK.00/5/2021 through the Tulang Bawang Tengah Religious Court has been carried out with several studies, including since the beginning of the registration of litigants it has been required to use an independent lawsuit application where the contents in the lawsuit can already include related rights, post-divorce children's rights in the form of child custody and child support. With the existence of new rules to guarantee post-divorce children's rights, an analysis is needed regarding the Implementation of the Decree of the Directorate General of the Religious Courts Number 1669/DJA/HK.00/5/2021 dated 24 May 2021 concerning Guarantees for the Fulfillment of Post-divorce Children's Rights carried out at the Tulang Bawang Tengah Lampung Religious Court.²³

Literature Review

A divorce is a legal event, so the consequences are regulated by law, or a legal event that is given legal consequences.²⁴ Divorce has legal consequences for breaking up a marriage; apart from that there are several further legal consequences of divorce as stipulated in Article 41 of the Marriage Law, namely as follows:²⁵

- a. Both mother and father are still obliged to look after and educate their children, only eyes based on the child's interests; if there is a dispute regarding the control of

¹⁹ Muhammad Azani Azani and Cysillia Anggaraini Novalis Cysillia, 'PELAKSANAAN PUTUSAN PENGADILAN AGAMA MENGENAI PEMENUHAN HAK NAFKAH ANAK PASCA PERCERAIAN DI PENGADILAN AGAMA PEKANBARU', *Jotika Research in Business Law*, 1.2 (2022) <<https://doi.org/10.56445/jrbl.v1i2.43>>.

²⁰ William Lucy, 'Access to Justice and the Rule of Law', *Oxford Journal of Legal Studies*, 40.2 (2020) <<https://doi.org/10.1093/ojls/gqaa012>>.

²¹ Ivar Berg and Phillip Selznick, 'Law, Society and Industrial Justice.', *Administrative Science*

Quarterly, 18.1 (1973) <<https://doi.org/10.2307/2391940>>.

²² Amrin Nurfieni, 'DINAMIKA REGULASI PERLINDUNGAN HAK KONSTITUSIONAL ANAK PASCA PERCERAIAN', *CITA HUKUM INDONESIA*, 1.2 (2022) <<https://doi.org/10.57100/jchi.v1i2.15>>.

²³ Azani and Cysillia.

²⁴ M. Vhize Jenna Afif El Imami, Amrullah Hayatudin, and Shindu Irwansyah.

²⁵ Aris Priyadi, 'Perlindungan Hukum Terhadap Hak-Hak Anak Dan Perempuan Pasca Perceraian', *Wijayakusuma Law Review*, 3.2 (2021) <<https://doi.org/10.51921/wlr.v3i2.183>>.

- the children Court boy makes his decision.
- b. The father is responsible for all maintenance and education costs the child needs; if the father is, in fact, unable to give the obligations mentioned, the court may determine that the mother shares these costs.
 - c. The court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife²⁶

The provisions of Article 41 letters (a) and (b) of the Marriage Law regulate the consequences of divorce on children, where both parents are obliged to care for and educate the child solely for the child's benefit. Furthermore, Article 45 of the Marriage Law contains binding provisions that both parents are obliged to look after and educate their children as well as possible. This obligation applies until the child is married or can stand alone, which continues even if the marriage between the parents is broken.²⁷

According to the provisions of Article 156 KHI, a result of the dissolution of a marriage due to divorce is:

1. Children who have not been mumayyiz have the right to get hadhanah from their mothers unless their mothers have passed away, then his position is replaced by:
 - a. The women in a straight line up from the mother;
 - b. Father;
 - c. The women are in a straight line

- d. upward from the father;
 - d. Sister of the child concerned;
 - e. Females are blood-related on the side of the father.
2. Children who are already mumayyiz have the right to choose to get hadhanah from their father or father her mother.
 3. If the hadhanah holder turns out to be unable to guarantee physical and spiritual safety child, even though the maintenance costs and hadhanah have been sufficient, then at the request of the relative concerned, the Religious Courts may transfer the hadhanah rights to other relatives who also have hadhanah rights.²⁸
 4. All costs of hadhanah and child support are the father's responsibility according to his ability. At least until the child is an adult, he can care for himself (for 21) years.
 5. If there is a dispute regarding hadhanah and child support, the Religious Courts will render a decision based on letters (a), (b), (c), and (d).
 6. The court can also, bearing in mind the father's ability, determine the costs for the maintenance and education of children who do not share with him.²⁹

Method

Research is field research.³⁰ The type of this research is descriptive-qualitative research.³¹ This research is descriptive

²⁶ Jannah and Nurbaedah.

²⁷ Armevya Sepma and Yenni Erwita, 'Pemberian Hak Nafkah Anak Pasca Perceraian Di Pengadilan Agama Jambi', *Zaaken: Journal of Civil and Business Law*, 1.2 (2020) <<https://doi.org/10.22437/zaaken.v1i2.9434>>.

²⁸ Irfan Islami and Aini Sahara, 'LEGALITAS PENGUASAAN HAK ASUH ANAK DIBAWAH UMUR (HADHANAH) KEPADA BAPAK PASCA PERCERAIAN', *ADIL: Jurnal Hukum*, 10.1 (2019) <<https://doi.org/10.33476/ajl.v10i1.1070>>.

²⁹ Anjar S C Nugraheni - C Nugraheni, Diana Tantri C, and Zeni Luthfiyah, 'KOMPARASI HAK ASUH DAN HAK NAFKAH ANAK DALAM PUTUSAN- PUTUSAN PERCERAIAN DI PENGADILAN NEGERI DAN PENGADILAN AGAMA

KOTA SURAKARTA', *Yustisia Jurnal Hukum*, 2.3 (2013) <<https://doi.org/10.20961/yustisia.v2i3.10158>>.

³⁰ Fera Zasrianita, Syukri Hamza, and Hadi Winata, 'Students' Perception Of Application In Writing Of Peer-Assessment: Before And After Revision', *Nusantara Education*, 1.1 SE-Articles (2022), 94-108 <<https://juna.nusantarajournal.com/index.php/nula/article/view/28>>.

³¹ Kurtubi, 'View of Child Playing Online Game in the Sadd Al-Zari'ah's Perspective', 2022 <<https://juna.nusantarajournal.com/index.php/juna/article/view/16/7>> [accessed 16 December 2022].

analysis,³² namely making systematic,³³ factual,³⁴ and accurate insights about facts.³⁵ In addition, it is also intended to provide as accurate data as possible about humans³⁶ and other phenomena³⁷.

Results and Discussion

Implementation of fulfilling Children's Rights According to the Letter of the Directorate General of the Religious Courts Number 1669/DJA/HK.00/5/2021 Post-Pandemic.

The Tulang Bawang Tengah Religious Court implemented the Letter of the Directorate General of the Religious Courts Agency Number 1669/DJA/HK.00/5/2021, which began in June 2022. The internal decision of the leadership of the Tulang Bawang Tengah Religious Court in fulfilling children's rights post-divorce is binding on all apparatus of the Tulang Bawang Tengah Religious Court, such as from Judges, Registrars, and other executors. The Tulang Bawang Tengah Religious Court, in implementing decree Number 1669/DJA/HK.00/5/2021 concerning Guarantees for the Fulfillment of the Rights of Women and Children Post-Divorce, also pays attention to the economics of the parties after the pandemic where the Tulang Bawang Tengah Religious Court has produced several effective steps to implement the decree to the fullest.³⁸

First, the Tulang Bawang Tengah Religious Court has provided information on post-divorce women's and children's rights in the media provided by the court in the form

of flyers, brochures, banners, TV media, and information on the website.

Second, there is a One-Stop Integrated Service (PTSP) which must provide the services and information the litigants need, including explaining the information in brochures and others regarding children's rights if asked or not by the parties.

Third, the Tulang Bawang Tengah Religious Court has selected and trained several professional officers and the Legal Aid Post (POSBAKUM) at the Tulang Bawang Tengah Religious Court. The officer does not only help to make a lawsuit or application but must understand all issues of religious law, especially regarding the rights of women and children who are victims of divorce, so that justice seekers can obtain comprehensive information about these rights. The officer is also obliged to maximize the services of providing information, consultation, legal advice, or assistance in making legal documents needed by the litigants under the priority fulfillment of children's rights.

Fourth, the Tulang Bawang Tengah Religious Court must also provide a template form for a lawsuit that includes claims for women's rights and the rights of children of divorce victims in the Service Room, Legal Aid Officers, and the Independent Lawsuit Application. In the service room, forms are given and explained regarding children's rights which are a priority. Legal aid officers are advised to make lawsuits in which there is the fulfillment of children's rights, and there is a table to be able to make independent lawsuits that are assisted to be free to make

³² Muhammad Kurtubi, "Child Playing Online Game in the Sadd Al-Zari'ah's Perspective," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 14, 2022): 9–20.

³³ Faiz Zainuddin and Imam Syafi'i, "Environmental Jurisprudence; Environmental Preservation Efforts In Islam," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 18, 2023): 23–30.

³⁴ Muhammad Fitri Adi, "Hadhonah Rights of Children (Not Mumayyis) Based on Compilation of Islamic Law and Child Protection Act," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 15, 2023): 9–22.

³⁵ suryaningsih, "Impact of Gadget Addicts on

Family Harmony Perspective of Islamic Law," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 50–64.

³⁶ Meta Riskia, "Implementation Of Mudharabah Financing On Baitul Maal According Majelis Ulama Indonesia," *Journal of Nusantara Economy* 1, no. 1 (December 9, 2022): 1–13.

³⁷ Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, ALFABETA, Cv, 2017.

³⁸ Eni Putri Sari, "Pemenuhan Hak Nafkah Anak Akibat Perceraian Di Kecamatan Ulu Talo Kabupaten Seluma Perspektif Hukum Keluarga," *Tesis*, 2021.

lawsuits containing children's rights on the lawsuit.

Fifth, the Tulang Bawang Tengah Religious Court has directed and trained all judges and their staff to implement all rules related to fulfilling women's and children's rights after divorce. The directions given by all employees are based on Article 41 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 3 of 2017 concerning Guidelines for Trying Cases of Women Face-to-face By Law, Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) concerning the Enforcement of the Results of the Plenary Meeting of the Supreme Court Chambers and other regulations.

Finally, the Tulang Bawang Tengah Religious Court has collaborated with the Ministry of Religion, the West Tulang Bawang District Population and Civil Registry Service, the West Tulang Bawang District Health Service, and the Commission for the Protection of Women and Children. The collaboration is carried out to ensure the implementation of the contents of the decision of the Religious Court, which can include and apply the rights of women and children after divorce by considering the people's economy after the pandemic.³⁹

Table 1. several effective steps to implement the decree to the fullest

No.	effective steps
1	provided information on post-divorce women's and children's rights
2	explaining the information in brochures and others regarding children's rights
3	select and train several professional officers and the Legal Aid Post (POSBAKUM)
4	provide a template form for a lawsuit that includes claims for women's rights and the rights of children of divorce

³⁹ Steven J. Lindsay, 'Timing Judicial Review of Agency Interpretations in Chevron's Shadow', *Yale Law Journal*, 2018.

⁴⁰ Husnatul Mahmudah, Juhriati Juhriati, and Zuhrah Zuhrah, 'HADHANAH ANAK PASCA

No.	effective steps
	victims
5	train all judges and their staff to implement all rules related to fulfilling women's and children's rights after divorce
6	collaborate with the Ministry of Religion, the West Tulang Bawang District Population and Civil Registry Service, the West Tulang Bawang District Health Service, and the Commission for the Protection of Women and Children

The Tulang Bawang Tengah Religious Court has also agreed on several points in resolving cases submitted by justice seekers in order to fulfill all the rights in the decree, such as:

1. In-Man Divorce Cases:
 - a. Mut'ah that is appropriate for her ex-husband, either in the form of money or goods, unless the ex-wife is Qabla al dukhul;
 - b. Support, maskan, and kiswah for the ex-wife during iddah, unless the ex-wife has been sentenced to divorce bain or nusyuz and is not pregnant;
 - c. Repayment of dowry that is still owed in full and in half if Qabla al dukhul;
 - d. Hadhanah costs for children who are not yet 21 years old;
 - e. Entitled to past maintenance, if, during the marriage, the husband did not provide maintenance;
 - f. Women are entitled to joint assets, divided according to the provisions as stated in articles 96 and 97 of the Compilation of Islamic Law;
 - g. Women also have the right to obtain hadhanah rights for children not yet 12 years old.⁴⁰
2. In Woman Divorce Cases :
 - a. Entitled to past maintenance, if, during the marriage, the husband did not provide maintenance;
 - b. Women are entitled to Joint Assets,

PUTUSAN PERCERAIAN (STUDI KOMPARATIF HUKUM ISLAM DAN HUKUM POSITIF INDONESIA)', *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum*, 2.1 (2019) <<https://doi.org/10.52266/sangaji.v2i1.263>>.

- divided according to the provisions referred to in articles 96 and 97 of the Compilation of Islamic Law;
- c. Women have the right to obtain hadhanah rights for children who are not yet 12 years old⁴¹
3. In Children's Rights Due to Divorce of Both Parents.
 - a. Every child has the right to receive good care, education, health, home, and living environment, including receiving outpourings of love.
 - b. All expenses for the child's life are the responsibility of the father and mother.
 - c. The right to meet the father and mother for every child after the divorce of the father and mother⁴²

Factors Inhibiting the Implementation of Post-Divorce Children's Rights in the Tulang Bawang Tengah Religious Court.

The subsequent analysis at the Tulang Bawang Tengah Religious Court will be an inhibiting factor in the implementation of the Letter of the Directorate General of the Religious Courts Number 1669/DJA/HK.00/5/2021, where the results of the research analysis state that in general, divorce cases are carried out for the sake of protecting human rights. The child has been carried out properly, except in the case of a lawsuit from the Divorce case or that filed by the husband. Filing a lawsuit by the husband often does not include the rights of the child because, in this case, the husband is burdened by the child's dependents, whereas not a few husbands refuse to be burdened by themselves for children's rights.⁴³

Another inhibiting factor is a divorce lawsuit filed by the wife that does not include

a request for children's rights due to divorce. The Religious Courts belong to the civil procedural law family even though they have special authority but have the same application in terms of trials, namely that they are passive. This nature makes law enforcers unable to grant decisions other than the lawsuit requested, even though an ultra-judgment can be made for the sake of justice.⁴⁴

The next factor is that even though they have provided various information about the conditions for litigation in the Religious Courts to explain the provisions regarding the consequences of divorce on children's rights because the lawsuit filed with the Court by the litigants is an advocate who does not understand the existence of a circular on children's rights and the plaintiff made it independently without the assistance of court officials, the Judge did not provide for children's rights due to the absence of the inclusion of claims for fulfilling children's rights after the divorce.⁴⁵

Furthermore, the living value for the wife and children is determined due to divorce, which still varies and does not yet have a clear regulatory basis. In general, no standard can be guided by judges to determine the values of livelihood for wives and children due to divorce that reflect decency and justice. In Indonesian law, there is no truth and error in a judge's Decision because, based on Thomas R Dye's theory of public policy, decisions or policies are made based on considerations from stakeholders bound by sociological, psychological, and social backgrounds. Moreover, geography may differ from one another. Different situations and conditions in the same case will make it possible to produce different decisions, even though they do not have a

⁴¹ Nyoto Nyoto and others, 'Pemenuhan Hak Anak Pasca Perceraian Orang Tua', *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi Dan Pemikiran Hukum Islam*, 11.2 (2020) <<https://doi.org/10.30739/darussalam.v11i2.626>>.

⁴² Nurfieni.

⁴³ Reza Fahlevi, 'Aspek Hukum Perlindungan Anak Dalam Prespektif Hukum Nasional', *Prenada Media*, 12 (2018).

⁴⁴ Udin Safala, 'NAFKAH ANAK PASCA PERCERAIAN MENURUT ABU< ZAHRAH DAN IMPLIKASINYA BAGI PELAKSANAAN HUKUM ISLAM DI INDONESIA', *Justicia Islamica*, 12.2 (2016) <<https://doi.org/10.21154/justicia.v12i2.330>>.

⁴⁵ Holan Riadi, 'SISTEM HUKUM KELUARGA ISLAM DI INDONESIA', *Minhaj: Jurnal Ilmu Syariah*, 2.1 (2021) <<https://doi.org/10.52431/minhaj.v2i1.370>>.

standard of certainty and hinder the rights of children who must be given rights even if their parents are not capable.⁴⁶

Furthermore, regarding implementing decisions (execution) related to the consequences of divorce, the implementation mechanism still refers to the execution provisions in the civil procedural law as stipulated in the HIR and R.Bg. The intended execution mechanism tends to be slow and expensive, while the execution value is not great. There are still many parties who are not aware of the existence of this mechanism, and there are also many women who do not ask their ex-husband to pay for the child's obligations because the Judge will not decide something that the plaintiff does not ask for or want.⁴⁷

The economic situation of the parties resulted in difficulty in carrying out the execution. Many women also did not want to apply for execution, especially because the value of the execution and the cost of execution were relatively the same. In addition to executions where the husband is not present, or his position is no longer known, then even if the Judge forces him to give a decision on fulfilling the rights of children if the husband's position is not known then the Decision is in vain.⁴⁸

Furthermore, regarding the Judge's understanding of the Ultra Petitum Partium Principle. There are still Judges who believe in the prohibition of Ultra Petita in a decision, and this cannot be blamed because Judges cannot decide other than what is required or what is requested. The Constitutional Court initially prohibited making ultra-petite decisions, but in the end, it was revised through Constitutional Court decisions Number: 48/PUU-IX/2011 and 49/PUU-IX/2011.⁴⁹

The two Decisions normatively allow for issuing ultra-petite decisions, even on a limited basis. However, the Supreme Court, in its Decision of the plenary meeting of the Religious Law Chamber, which was stipulated through the Supreme Court Circular Number 3 of 2018 concerning the Enforcement of the 2018 Formulation of the Plenary Meeting of the Supreme Court Chamber of Commerce as a Guideline for the Implementation of Duties for the Court, stated "Determination of hadhonah rights as long as they are not filed in a lawsuit/petition, the Judge may not determine ex deficit who is the guardian of the child. Determination of hadhonah and dwangsom without demands is included in ultra petita.

Table 2. Factors Inhibiting the Implementation of Post-Divorce Children's Rights in the Tulang Bawang Tengah Religious Court

No.	Factors
1	the Petition for divorce cases did not include the fulfillment of the rights of women and children after divorce
2	Determining the value of living for wives and children due to divorce which still varies
3	Aspects of implementing the decision (execution) if one of the parties is not present
4	no standard can be guided by judges to determine the values of livelihood for wives and children due to divorce that reflect decency and justice
5	the Judge's understanding of the Ultra Petitum Partium Principle
6	Many women also did not want to apply for execution, especially because the value of the execution and the cost of execution were relatively the same

⁴⁶ Nurhadi Nurhadi and Alfian Qodri Azizi, 'FILOSOFIS KEWAJIBAN NAFKAH ANAK DALAM UUP ISLAM INDONESIA', *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)*, 1.2 (2019) <<https://doi.org/10.33474/jas.v1i2.3707>>.

⁴⁷ Shafira Tsany Tsamara, 'Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten', *Journal of Chemical Information and Modeling*, 21.1 (2020).

⁴⁸ ratri novita erdianti, 'Hukum Perlindungan Anak Di Indonesia - Google Books', *Universitas Muhammadiyah Malang*, 1 (2020).

⁴⁹ Gushairi Gushairi, 'PELAKSANAAN PEMENUHAN NAFKAH ANAK PASCA PERCERAIAN DI PROVINSI RIAU', *Hukum Islam*, 22.1 (2022) <<https://doi.org/10.24014/jhi.v22i1.17198>>.

The thinking judges believe that any rights cannot be fulfilled if it is not included in a lawsuit. On the other hand, some judges can still fulfil rights without being asked, even though in a lawsuit, this is aimed at the Judge's beliefs because in deciding, the Judge has freedom. Moreover, in making policies, law enforcers refer to higher statutory regulations or decisions of the Constitutional Court, not only to decisions that are not at the level of statutory regulations. In this case, it is certainly difficult to implement Decree 1669/DJA/HK.00/5/2021 concerning Guarantees for the Fulfillment of Post-Divorce Children's Rights, so it must receive further attention. In fulfilling children's rights, legal rules must have certainty so that there is uniformity in applying the rights of children who are victims of divorce.

The spirit of fulfilling children's rights after divorce has a long way to go. Ultimately, the ideal results will be the implementation of the Letter of the Director General of the Religious Courts Number 1669/Dja/Hk.00/5/2021 Concerning Guarantees for the Fulfillment of Children's Rights after divorce and protection for the fulfilment of children's rights as expected can be implemented consistently.

Conclusion

The implementation of the Letter of the Director General of the Religious Courts Number 1669/Dja/Hk.00/5/2021 concerning Guarantees for the Fulfillment of Children's Rights Post-divorce at the Tulang Bawang Tengah Religious Court after the pandemic has fulfilled the spirit of fulfilling post-divorce children's rights with several notes. The results of the second study found inhibiting factors such as the petition for divorce cases not entirely containing demands for fulfilling children's rights post-divorce, because the petitum for divorce cases did not include the fulfillment of the rights of women and children after divorce, determining the value of living for wives and children due to divorce which still varies, Aspects of implementing the decision (execution) if one of the parties is not present, and the Judge's

understanding of the Ultra Petitem Partium Principle. Letter of the Directorate General of the Religious Courts Number 1669/DJA/HK.00/5/2021 dated 24 May 2021 Regarding Guarantees for the Fulfillment of Post-Divorce Children's Rights must be set forth in the form of a higher Law or at least in the form of a Supreme Court Regulation so that it is more have the force of law, then policy makers should make rules that have uniformity for the sake of certainty or should renew the procedural regulations for the Religious Courts which are more in line with the changing times, especially the protection of the rights of children of divorce victims, finally Law Enforcers must prioritize the spirit of protecting children's rights as a result divorce for the sake of law enforcement that benefits the future of the child

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