

**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**

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**Abstract**

The implementation of post-divorce decisions in the religious court demands great attention because the system for implementing decisions in divorce cases still needs to be stronger. The cost of executing the decision is not commensurate with the nominal (the ex-husband must pay “the obligation” to his ex-wife). As a result, court decisions become “useless”, which are only authoritative in writing but weak in implementation. Through this paper, the author wants to explain a new concept related to the fulfillment of the rights of women and children after divorce based on an interconnected system so that post-divorce women and children are guaranteed their fulfillment of rights without going through the process of execution in court. This research is normative research through a statutory approach and a conceptual approach. This research shows that ensuring the women's and children's rights fulfillment requires an interconnected system. Courts must involve non-judicial institutions in an integrated manner following their respective authorities. This new framework makes institutions outside the judiciary as external partners in implementing single identity-based court decisions.

**Keywords:** Rights, Women and Children, Interconnected Systems, Post-Divorce

## Introduction

The basic principle of law and human rights is equality before the law. It means that all human beings, whether rich or poor, young or old, male or female, have the right to the same legal protection without discrimination. Equal protection and treatment before the law is one aspect that is guaranteed in the Constitution of the Republic of Indonesia as regulated in Article 28 letter D paragraph (1) which states, "Everyone has the right to recognition, guarantee, protection, and legal certainty fair and equal treatment before the law." However, several groups are vulnerable to violence and discrimination in practice, including women and children.<sup>1</sup> Women and children are physically seen as entities belonging to a vulnerable group and often face the process of domestication by the patriarchal cultural system. This condition is vulnerable to making women and children the object of violence, and fundamental human rights are neglected. Based on data from the World Health Organization (WHO) (2019), one in three women in the world has experienced violence from their partner.<sup>2</sup> Likewise, in a report by the United Nations Children's Fund (UNICEF) (2017), it is estimated that nearly one billion children are affected by violence every year.<sup>3</sup>

In family law cases, women and children are often inferior to men. For example, not a few women file for divorce due to experiencing domestic violence from their husbands, whether in the form of physical, psychological, verbal, sexual, or economic violence,<sup>4</sup> even though the rules related to legal guarantees to protect women and children have been quite qualified through the ratification of various international agreements related to the protection of women and children into official state regulations, such as the Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW), Convention

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<sup>1</sup><https://www.kemenpppa.go.id/index.php/page/read/29/1390/perlindungan-kaum-perempuan-wujudkan-indonesia-hebat> accessed on March 31, 2021;

<sup>2</sup> World Health Organization (WHO). On evidence brief of Violence against women: Intimate partner and sexual violence against women, Hrp-Human Reproduction Program Research for Impact, Geneva, 2019

<sup>3</sup> United Nations Children's Fund (UNICEF). A Familiar Face: Violence in the lives of children and adolescents, UNICEF, New York, 2017

<sup>4</sup> Suadi, A., & Candra, M., *Political Law Perspective of Islamic Civil and Criminal Law and Sharia Economics* (Jakarta: Kencana Prenada Media Group, 2016), p. 123

Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment, International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), and various other international agreements.

The number of rules that have been ratified does not necessarily mean that women and children have easy access to justice.<sup>5</sup> Even though these two vulnerable groups have received justice through court decisions, often, the decisions given have no impact, like a *“toothless tiger”*. The decision does not have the power of execution to realize the obligations contained in the dictum of the decision it receives. Such a phenomenon can be found in the post-divorce decision, which contains the ex-husband's obligation to pay a certain amount of money to his ex-wife and children. In this case, there is still many ex-husbands' negligence in carrying out their obligations to pay *Iddah*, *Mut'ah*, *Madhya*, and maintenance for their children. Thus, this causes the ex-wife to become more miserable and can also make the children become private orphans.<sup>6</sup> Thus, the issue of implementing decisions is still homework that demands great attention, considering that the system for implementing decisions in divorce cases is still relatively weak. The execution process sometimes demands high costs and is not commensurate with the money that will be received, as stated in the decision to be executed. The amount of obligations the ex-husband must pay to his ex-wife is often not comparable to the execution costs incurred by his ex-wife. As a result, court decisions are seen as just 'nonsense', which is only authoritative in writing but weak in implementation.

From the Islamic perspective, protecting the rights of women and children in the concept of justice is important to realize. In Islam, having a sense of caring for vulnerable, weak and marginal groups is one of the religious commands. This is in line with the sustainable development goals echoed in Indonesia, which specifically places gender equality as

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<sup>5</sup> Committee on the Elimination of Discrimination against Women (CEDAW), *General Recommendation No 33 on Women's Access to Justice*, Geneva, 2015

<sup>6</sup> Private orphan is a new term that the author came up with based on the phenomenon that occurs in society when children who are victims of divorce do not get the attention and fulfilment of their father's rights. As a result, they become neglected and have the potential to harm their psychological development in the future.

one of the goals of the development program.<sup>7</sup> As one of the implementers of judicial power, the religious court faces two big expectations. First, religious courts are required to enforce law and justice as well as possible and to apply the law's normative aspects. Second, religious courts are required to pay more attention to the interests of women and children, who are often victims of disputes within the family.<sup>8</sup> One of the issues that surfaced in the context of court decisions within the religious courts and also related to the protection of the rights of women and children is the power of execution of decisions based on simple, fast, and low cost. Thus, to ensure the protection of the rights of women and children, it is necessary to have a justice system that is interconnected between legal structures (institutions and law enforcement), legal substance (laws and regulations), and legal culture (public views). In this case, the author calls it "the fulfilment of the rights of women and children based on system interconnection".

Based on this explanation, the formulation of the problem in this article is: How is the concept of fulfilling the rights of women and children based on system interconnection, and how is it implemented?

This research is normative research, namely legal research that examines the principles, norms, and legal rules relevant to the primary research theme.<sup>9</sup> In addition, normative research examines the legal doctrines related to the research theme. The approaches used in this research are the statutory and conceptual approaches. The author uses a statutory and conceptual approach in this study. The statutory approach is carried out by researching and reviewing regulations related to the main theme of the study. However, because the ideas proposed in this study are quite different from existing conceptions and norms, the legal approach is confirmed with a conceptual approach, namely an approach that seeks to offer a new concept so that the main ideas in research can be implemented in law enforcement that is oriented to the

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<sup>7</sup> Yulianti Muthmainnah, *Zakat Untuk Korban kekerasan terhadap Perempuan dan Anak* (Jakarta: QAF dan PSIPP ITB-AD, 2021), p. 25

<sup>8</sup> Irawan, M. dkk, *Perlindungan hak Perempuan dan Anak Melalui Putusan Pengadilan Agama* (Jakarta: Kencana Prenada Media Group, 2019), hlm. 9

<sup>9</sup> Soekanto, S. & Mamuji, S. *Penelitian Hukum Normatif* (Jakarta: PT Raja Grafindo Persada, 2004), 23-24

protection of the legal rights of women and children.<sup>10</sup> This study aims to determine the concept of fulfilling the rights of women and children based on the system interconnection and its implementation.

## **Legal Protection of the Rights of Women and Children in Indonesia**

Legal protection for women and children has been regulated in the constitution, which generally states the same position between men and women. For example, article 28D states, "*Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law*". The word "everyone" means equal treatment before the law applies to every man and woman. It shows no discrimination against gender. However, in the context of law enforcement, often the meaning "evaporates" so that the laws and regulations need to be written about men and women to show legal firmness.

The principle of equality before the law for all citizens can also be found in Article 27, paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which states that "*All citizens are equal before the law and government and are obliged to uphold the law and the government with there is no exception.*" This principle is in line with the provisions of Article 7 of the Universal Declaration of Human Rights (Human rights commission, 2018: 03), which states that "*All persons are equal before the law and are entitled to equal protection of the law without discrimination. All are entitled to equal protection from any form of discrimination contrary to this declaration and against any incitement to discrimination of this kind*".<sup>11</sup>

As explained above, the affirmation of "anti-discrimination" in the 1945 Constitution is a constitutional step to protect the rights of women and children, which are often violated because of discrimination as a trigger for injustice. Discussing the human rights of women and children in the 1945 Constitution means discussing the constitutional rights of women and children as Indonesian citizens and human beings with human dignity. Women's human rights are affirmations and guarantees of particular standards (natural differences) for women. The

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<sup>10</sup> Marzuki, P.M, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2013), hlm. 133

<sup>11</sup> Komisi Nasional Hak Asasi Manusia, *Kompilasi Instrumen HAM Internasional*, Jakarta: Komnas HAM Press, 2008, hlm. 3

rights of women and children are part of human rights guaranteed by the 1945 Constitution, so constitutional rights also apply to women and children. The validity of this constitutional right is textually stated in the phrases "everyone", "all citizens", "every citizen", or "every citizen", which indicates that every individual citizen owns constitutional rights without distinction of gender and age. These rights are recognized and guaranteed for every citizen, both men and women.<sup>12</sup>

In addition, Indonesia has also issued several other related regulations as a form of state commitment to protecting women and children, including Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 13 of 2003 concerning Manpower, Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Law 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and other regulations both national, regional and institutional.

Although the legal arrangements for legal protection for women and children in Indonesia are relatively capable, they often encounter various obstacles in their implementation, so the rights of women and children to obtain legal protection from the state are often neglected, for example, in the case of divorce, almost 50%<sup>13</sup> of the reasons for divorce are due to domestic violence committed by the husband.<sup>14</sup>

The reasons for this domestic violence only appear on the grounds of divorce without any action and punishment for the perpetrators. The divorce filed by the wife for reasons of Domestic

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<sup>12</sup> Afifah, A. (Agustus 2017). Hukum dan Konstitusi: Perlindungan Hukum atas Diskriminasi Pada Hak Asasi Perempuan di dalam Konstitusi. *DiH Jurnal Ilmu Hukum*, V(13), 26, hlm. 208

<sup>13</sup> The service agency/data collection form for the Women's Protection Commission obtained data for 8,234 cases. Based on these data, it is known that violence against women occurs in the private or private sphere (domestic violence), as much as 79% (6,480 cases). Among them is violence against wives, 3,221 cases (49%), followed by violence in dating, 1,309 cases (20%), then violence against girls, 954 cases (14%), and the other is violence by ex-husbands. to his wife, and violence against domestic workers.

<sup>14</sup> Commission for the Protection of Women, *Executive Summary Annual Report Notes on Violence Against Women*, Jakarta: National Commission Against Violence Against Women, 2020), p. 1-2,

Violence can be resolved through the connectivity court that connects the Religious Courts and the District Courts.<sup>15</sup> Thus, in addition to completing the divorce process in the religious court, the District Court can also take action against these actions in parallel. In resolving the process of criminal acts of Domestic Violence, the judge can give criminal penalties through a restorative justice approach that can benefit the ex-wife as a victim.

The problems that arise in the context of domestic violence are not only based on the side of women as victims but also on the legal system that has not guaranteed protection for women as victims of domestic violence.<sup>16</sup> In this regard, a global paradigmatic movement has emerged that criticizes the legal system and practice, which tends to ignore the protection of women's rights. The Feminist Legal Theory movement particularly examines the phenomenon and assumption that the law does not favor women. This theory emphasizes the importance of law in identifying and providing comprehensive solutions to gender equality issues (the importance of law in shaping contemporary gender issues).<sup>17</sup> In line with this, the Supreme Court of the Republic of Indonesia 2017 issued the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases in Conflict with the Law. The emergence of PERMA is motivated by several things, including First, the desire of the Supreme Court to eliminate all forms of discrimination in applying the law involving women as litigants. Second, the state must guarantee that every citizen is free from all forms of discrimination in line with the principles of the International Covenant on Civil and Political Rights. Third, the state is obliged to provide guarantees to be free from discriminatory treatment that causes the loss of legal rights for women.

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<sup>15</sup> The provisions regarding this connection court are only regulated in Article 89 paragraph (1) of the Criminal Procedure Code, which states, "If there is a crime committed jointly by legal subjects who are included in the district court and military court, then the court that can examine it is District Courts".

<sup>16</sup> Muhajarah, K.(April, 2016). *Kekerasan Terhadap Perempuan dalam Rumah Tangga: Perspektif Sosio, Budaya, Hukum dan Agama*. *Jurnal Sanwa*, (11)2, p. 128

<sup>17</sup> Lavit, N. & Verchick, R.M.R, *Instructor Guide of Feminist Legal Theory* (New York: Nyu Press, 2016), Second Edition, p. 2

After the enactment of this PERMA, many policies and various legal reforms have been prepared based on the rules contained in the PERMA, especially in the Religious Courts environment. However, many people are unaware of the various legal reforms that have been carried out as the results of field studies conducted by several NGOs (ALPJ2, SAMMI Institute, IRCKJHAM, Savy Amira Women's Crisis Center Surabaya, LBH Surabaya, Pelangi Community Interfaith Women's Network).<sup>18</sup> In addition, other problems that arise are related to the issue of the executive power of decisions based on the principles of simple, fast, and low cost. The decision that has been given has no impact, so the decision becomes useless. The decision does not have the power of execution to realize the obligations contained in the dictum of the decision that has been decided. Such a phenomenon can be found in the post-divorce decision, which includes the ex-husband's obligation to pay a certain amount of money to his ex-wife and children. In this case, there is still many ex-husbands' negligence in carrying out the obligation to pay *iddah*, *mut'ah*, *madhya*, and maintenance expenses to their children, which causes misery for women and children.

### **Biological Justice Metabolism: A Thought on Comprehensive Justice in Ensuring the Rights of Women and Children**

The judge's crown lies in his decision. The judge's decision is something that the parties want to end the dispute. With the judge's decision, the parties will get the value of legal certainty and justice.<sup>19</sup> Justice is the struggle of humanity that evolves according to the rhythm of time, time, and space that continues from the past until now.<sup>20</sup> Thus, justice is like a metabolism that circulates in the body of law and interacts with each other to give life to law and justice itself.<sup>21</sup>

*Legal justice* is a condition that cannot stand alone because justice as a part of law accumulates with a reaction that provides a stimulus to a state around facts closely related to the environment in which the

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<sup>18</sup> Decree of the Director General of Badilag Number 1959 Year 2021

<sup>19</sup> Rasaid, M. N., *Hukum Acara Perdata* (Jakarta: Sinar Grafika Offset, 2003), p. 48

<sup>20</sup> Erwin, M., *Filsafat Hukum, Refleksi Kritis terhadap Hukum dan Hukum Indonesia* (Jakarta: Raja Grafindo Persada, 2015), hlm. 219

<sup>21</sup> Suadi, A., *Philosophy of Justice: Biological Justice and its Practice in Judges' Decisions* (Jakarta: Kencana Prenada Media Group, 2020), p. 110

event occurred. Justice as a value becomes relative and depends on the conditions, and here justice is a biological metabolism in the blood or legal weight itself. Justice is relative, depending on the stimulus surrounding it being tried because it is closely related to the breath of human life. Without justice, this life will die. Law enforcers' main task is to uphold justice so that life does not feel dead. Justice is inherent in humans and has a metabolism that flows in all aspects of legal cases that make the case live and deserve to be tried.

Zippelius uses a socio-biological approach to explain the existence of basic moral institutions in humans regarding a sense of justice.<sup>22</sup> At the same time, Kelsen abstracts it as two meanings of feelings of justice: First, as an inner attitude that requires fair treatment and refuses otherwise. Second, as an inner attitude detached from positive law that accepts fair treatment or rejects unfair treatment.<sup>23</sup>

According to John Stuart Mill, the standard of justice lies in the element of expediency that comes from awareness to defend oneself and a sense of sympathy. Therefore, justice is self-actualization obtained from the metabolism between the question of facts and the question of law, which cannot be separated from external influences. This is where the role and duty of the judge are to provide understanding to the parties through dialogue during the trial process so that the community can feel the verdict handed down.<sup>24</sup> In line with this, Robert Nozick firmly said that justice is the highest respect for the natural rights that each person has as an essential part of the social order.<sup>25</sup> Moreover, it contains values and morality that collaborate to become the lifeblood of the law itself, which consists of building questions of facts and questions of law, as well as a stimulus, locus, and place that influence each other. This is as often explained by Prof. M. Hatta Ali (Chairman of the Supreme Court for the period 2012-2020) that without justice, the law is only a form of formalized violence and K.H. Hasyim Muzadi (Chairman of PB-NU for the period 2000-2010) that he stated that without justice, the law does not exist anymore.

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<sup>22</sup> Zippelius, R., *Rechtsphilosophie* (Munich: Beck Munchen, 1982), p. 129

<sup>23</sup> Kelsen, H., *Reine Rechtslehre* (Germany: Franz Deuticke Wien, 1982), p. 426-427

<sup>24</sup> Suadi, A. *Philosophy of Justice....*, p. 114

<sup>25</sup> Robert Nozick, *Anarchy, State and Utopia*, (London: Oxford Blackwell, 1980), p. 78

Based on what was conveyed by the experts above, it is true that justice cannot stand alone and is individual but is comprehensive so that it gives birth to a real sense of justice and can be felt by people seeking justice. The law stipulates what to do and what not to do. The legal targets to be addressed are not only people acting against the law but also legal actions that may occur and state equipment to act according to the law. Such a system of working law is a form of affirmation of law enforcement that will always rely on the idea of justice and moral strength. To guarantee the protection of the rights of women and children, judges should realize that fulfilling the wife's rights departs from the values of equality between rights and obligations in the household. A Muslim scholar, al-Zamakhsyari (d. 538 H.), describes the principle of equality (*al-mumatsalah*), which states that *"Wives are obliged to get rights from their husbands, just as their husbands get rights from them through ma'ruf, namely in a way that not reprehensible in the Shari'a or human habits. Wives are not allowed to burden their husbands with things that are not their rights, and husbands are not allowed to burden their wives with things that are not their rights"*.

Moreover, each husband and wife cannot commit violence against their partners. Judges should animate that neglecting a living for his wife and children is a form of economic violence with an excessively negative social effect. In the trial, the judge must be sensitive and have a sharp conscience to be able to photograph the future of his wife and children after the divorce. Traumatic, emotional, and economic factors experienced by ex-wife and children after divorce must be a patron of the judge's thinking in deciding cases. The judge's decision not only considers the current state of the case but also has to look at the future of the parties (wife and children) in a broader spectrum of how the psychological impact is faced as well as the economic factors that become the life size of the ex-wife and child after divorce.

## Interconnection of the Judicial System in Ensuring the Rights of Women and Children

### *The idea of interconnecting the justice system in ensuring the rights of women and children*

To guarantee the rights of women and children post-divorce can not only be built through a legal structure in the form of court decisions, but it is necessary to systematically strengthen the power of coercion so that the dictums of decisions will be obeyed and become a tool of social control. The phenomenon of husbands' reluctance to make court decisions is a different problem that must be found in a legal solution.

Referring to the concept of Islamic justice, the priority of the judicial process does not stop solely on the imposition of decisions. However, more than that reaches out until the decision is implemented and executed correctly. The leading Muslim jurist, Syihabuddin al-Qarafī, emphasized that there are 3 (three) stages that the court must carry out in enforcing the law: First, *Al-tsubut* or the stage where the judge arrives at a legal conclusion that provides certainty after going through the case examination process. Second, *Al-hukm*, or the stage of the judge deciding on the case. Third, *Al-tanfīd*, or the stage where the judge or court executes the decision that has been handed down.<sup>26</sup>

Habituation of the assumption that the judicial process has been completed at the stage of imposing a decision and then ignoring the implementation aspect is a degradation of the judiciary's authority. In the context of the protection of women and children, the neglect of the fulfillment of the rights of women and children, which they should get quickly along with their needs that cannot be postponed, is a form of injustice that is commonplace. This is not in line with the will to protect and ensure the fulfillment of their rights appropriately and quickly. In fact, in the legal world, we have long known the legal maxim, which states, "Justice delayed is justice denied," which means that "delayed justice is an injustice". This adage is in line with a fragment of the treatise that Umar bin Khattab had sent to his judge, Abu Musa al-Ash'ari, 14 centuries ago. Umar said, "*And immediately carry out (execution) of the law*

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<sup>26</sup> Syihabuddin Ahmad bin Idris al-Qarafī, *al-Ihkam fī Tamyiz al-Fatana al-Abkam wa Tasharrufat al-Qadhi wa al-Imam* (Beirut: Dar al-Basya'ir al-Islamiyyah, 1995), p. 145

*when it is clear. Because there is no point in talking about the truth (making the right decision), but it cannot be implemented".*<sup>27</sup>

Delaying the implementation of court decisions is a form of disguised arbitrariness, or at least opening up opportunities for perpetuating injustice. This is not in line with the objectives (*maqashid*) of the administration of justice itself. Izzuddin bin Abdussalam (1991: 43), emphasized "*The administration of justice must be carried out as soon as possible. This is so that those entitled can immediately get their rights and avoid mafsadat (bad things) from parties who act unjustly and falsely (for not giving up rights to those entitled)*".<sup>28</sup>

In the context of implementing decisions in the Religious Courts, especially regarding the implementation of divorce case decisions accompanied by punishment to ex-husbands to pay *iddah*, *mut'ah*, and *madhya*, all of them can be realized by taking two ways, namely voluntary implementation and implementation of decisions with an execution mechanism by the Court. The emphasis on implementing decisions is actually through the voluntary implementation of decisions. However, in reality, the prevalence of voluntary implementation does not show a significant figure. Based on the explanation above, one of the efforts so that the rights of women and children can be immediately implemented (executed) is through a justice system that is connected between legal structures (institutions and law enforcement), legal substance (laws and regulations), and culture law (public view).

### ***The Interconnection of the Justice System: A New Paradigm for the Execution of the Rights of Women and Children After Divorce***

A democratic legal state, according to integrative legal theory, can be formed if the three main pillars, namely law enforcement (rule by law), human rights protection (enforcement of human rights), and public access to justice, can be fulfilled consistently and intertwined. In the Indonesian context, the three pillars must be bound by Pancasila as

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<sup>27</sup> Ibn Syubbah, *Tarikh al-Madīnah* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1417 H.), Vol. II, p. 775

<sup>28</sup> Izzuddin bin Abdussalam, *Qawa'id al-Abkam fi Mashalih al-Anam* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), Vol. 2, p. 43

the ideology of the Indonesian nation.<sup>29</sup> Indonesia faces global challenges, especially the development of the industrial technology era 4.0. In the context of these global challenges, integrative legal theory can be used to analyze, anticipate and recommend legal solutions that consider normative and social, economic, political, and national security aspects. Integrative legal theory can be developed as a model of legal analysis that is comprehensive and holistic in dealing with and anticipating national developments in various issues in society.

This integrative legal theory needs to be applied to protect the rights of women and children against cases in the field of family law. So far, the internal efforts of the judiciary, especially within the Religious Courts, need to be more powerful to succeed in the intended efforts. Therefore, it is critical to consider the synergy between the Supreme Court, especially the Religious Courts, and other related institutions. For example, to streamline the power of coercion and the authority of execution of decisions related to the rights of women and children through steps to reconstruct the body's coercive institution (*gijzeling*) to be applied elegantly and humanely by involving assistance from the state apparatus (the police) to encourage men to men obey the court's decision. The position of the police agency as law enforcement is considered practical enough to pressure men to fulfill their obligations.

In comparison, in judicial practice in Egypt, an ex-husband who does not fulfill his post-divorce obligations in the form of payment of a living to his ex-wife can be sentenced to 30 days in prison.<sup>30</sup> If the ex-husband has fulfilled his obligation to pay a living to his ex-wife and children or presents a guarantor, then the husband can be released from all claims. This regulation has an imperative nature and coercive power against the ex-husband who neglects his responsibility to fulfill his obligations, which can have a deterrent effect.<sup>31</sup> Another alternative for the realization of a living for his wife and children, Egypt has also established a Family Insurance Fund Institution (*shunduq ta'min al-usrah*),

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<sup>29</sup> Atmasasmita, R., *Teori Hukum Integratif: Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif* (Bandung: CV. Mandar Maju, 2012), hlm. 81

<sup>30</sup> Article 76 of the Civil Procedure Code for Muslims Number 91 of 2000 concerning Amendments to the Civil Procedure Code for Muslims Number 1 of 2000 (*Qanun Tanzhim ba'dh Au'da' wa Ijra'at al- Taqaadiy fi Masail al-Ahwal al-Shakhsyiyah*)

<sup>31</sup> Regulation of the Egyptian Supreme Court Number 1 of 2000 concerning Forced Agencies

which is based on Egyptian Law Number 11 of 2004. The law explains that the ex-wife and her children are entitled to earn a living determined by the court as soon as possible through a bank appointed by the government (namely Nasser Social Bank) without waiting for the ex-husband to carry out the obligations set by the court.<sup>32</sup> This kind of practice is an example of how the interconnection of systems plays a role in ensuring the fulfillment of women's and children's rights after divorce.

In addition, we can also look at Malaysia, where since ten years ago, the neighboring country has optimized the Family Support Section (BSK) institution, which is tasked with assisting the Sharia Court to ensure judges' decisions regarding livelihoods can be carried out. Technically, since the judge issues the decision of the living order, the decision will be authorized and implemented by the institution.<sup>33</sup>

Likewise, in Australia, the protection of wives and children has been well managed within the framework of a clear administrative scheme. In this case, the government cooperates with the tax department to see the husband's income as data in determining the amount of child support. Australia's full attention to the fulfillment of child support after the divorce is shown through coordination with the company where the husband works and asking for a salary deduction every month to ensure the child's rights are fulfilled. If the ex-husband is unemployed, the benefits from the government will be cut by 50 percent. Ex-husbands who neglect to carry out their obligations can be banned through travel bans and have to face legal demands;

Reflecting on the example above, the Supreme Court of the Republic of Indonesia also needs to establish understanding and cooperation with related Ministries/Institutions to formulate a joint regulation that can encourage the implementation of efforts to protect

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<sup>32</sup> Technically, this rule requires married couples to have a family insurance premium account which is their joint right while married. When a divorce occurs, one of the parties can claim the insurance premium. More details can be seen in the provisions of Article 2 and Article 3 of Law Number 11 of 2004 concerning establishing a Family Insurance Fund (*Insyá' Shundúq Ta'mín al-Usrab*).

<sup>33</sup> Hanafi, A. & Hedhayatullah, B (2018). The Role of the Family Support Division in the Problem of Fulfillment of Wife's Maintenance After Divorce (Case Study in the Syariah High Court of Kedah, Malaysia). *Media Syariah: Wabana Kajian Hukum Islam dan Pranata Sosial*, (20)1, p. 58-67 DOI: <http://dx.doi.org/10.22373/jms.v20i1.6501>

the rights of women and children. This policy includes a mechanism for protecting the rights of women and children in divorce cases where the ex-husband/father is a State Civil Apparatus (ASN), private employee, informal worker, or unemployed. So that they can meet the needs of their ex-wife and children, such as economic needs, education, and health, therefore, it is necessary to immediately explore sustainable collaboration with the Ministry of National Development Planning/National Development Planning Agency (KemenPPN/Bappenas), Ministry of Women's Empowerment and Child Protection (KemenPPA), Ministry of Finance (KemenKeu), Ministry of Empowerment of State Apparatus and Bureaucratic Reform (KemenPAN RB), Ministry of Manpower (Kemenaker), Ministry of Education, Culture, Research, and Technology (Kemenristek Dikti) and the Ministry of Social Affairs (Kemensos) so that every woman who is divorced by her husband and their children can obtain socio-economic security regardless of the economic background of the ex-husband/father.<sup>34</sup>

Protecting women's rights after divorce does not only focus on the economic aspect but also has to reach the psychological aspect. The status of divorced women is often labeled with stereotypes that tend to be unfavorable. This negative label adds to the burden of divorced women as "widows" while their emotions are still turbulent after being faced with household problems that cannot be resolved. They are transitioning from having a complete family with their husband and children to being back on their own and bearing the cost of living after the divorce. In this transition period, they try to adapt and find a formula that suits them in meeting family needs and actualizing themselves in society.<sup>35</sup>

Post-divorce women who have to work to provide for themselves and their children need to receive proper protection. Fairness and propriety are a necessity in delivering non-discriminatory treatment to

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<sup>34</sup> Suadi, A. (November, 2018). The Role of Religious Court in Women and Children Rights Protection Through Partial and Executable Decision. *Jurnal Hukum dan Peradilan*, V(7), 3, hlm. 353 - 374

<sup>35</sup> Sholeh, A., Rachmat Gumelar, D., & Tsamrotul Fuadah, A. (2019). Pendampingan Hak-Hak Perempuan Dan Anak Pasca Perceraian. *JCIC: Jurnal CIC Lembaga Riset Dan Konsultan Sosial*,1(2), p. 80-99. DOI: <https://doi.org/10.51486/jbo.v1i2.19>

women. This view is more an embodiment of the principle that "men and women should not be treated the same where they are relevantly different and that women should not be required to assimilate to male norms" and is in line with the theory of Cultural Feminism, which is a subsystem of the paradigmatic movement theory in developing understand the feminist legal theory.<sup>36</sup> In this context, there is a correspondence between the results of Tim Lindsey and Cate Summer's research with the fact that women are breadwinners who experience financial difficulties in accessing legal services and obtaining certainty about compensation and other consequences of divorce.

The status of women (wives) after divorce must be recorded in a system connected to population data. This data can capture the status of post-divorce women so that they will receive counseling services, psychosocial assistance, and various other productive pieces of training. The provision of this service is also aimed at eliminating the traumatic phase and restoring the economic condition of women after divorce. The Ministry of Finance, the Ministry of Cooperatives, or the Ministry of Tourism and Creative Economy should facilitate these women gaining access to microfinance institutions to obtain capital and start businesses so they can live independently. In addition, post-divorce children need special advocacy, education, and assistance from the Ministry of Women's Empowerment and Child Protection, as well as getting great attention from the Ministry of Education, Culture, Research, and Technology to get a proper education so they have a bright future. The fulfillment of children's rights, such as the right to take education from elementary school to college, the right to get medical expenses, and the right to live, is the ex-husband's responsibility after the divorce. In this case, an institutional collaboration system is needed that can control and supervise the father's obligations after the divorce on the child's rights so that it can run effectively and consistently.

Protection of children can also be seen in the prevention of child marriage programs. Nevertheless, on the other hand, the rise of the practice of child marriage is very worrying and sets a bad precedent for

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<sup>36</sup> Manan, A., *Peranan Hukum dalam Pembangunan Ekonomi* (Jakarta: Prenada Media Group, 2014), 288

the future of Indonesia.<sup>37</sup> Many things have been done by the government and the Supreme Court to prevent child marriage, including changing the minimum age for Marriage for girls from 16 years to 19 years, as confirmed in Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 1974 concerning Marriage and the issuance of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. In the end, these regulations make court decisions able to protect children's rights.

The granting of permission for a marriage dispensation application must consider the principle of the best interest of the child. In Article 15 and Article 16 of the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019, it is stated that Judges can request and must consider the opinions of Psychologists, Doctors/Midwives, Professional Social Workers, Social Welfare Workers, Integrated Service Centers for the Protection of Women and Children (P2TP2A, is now a Regional Technical Implementation Unit for the Protection of Women and Children, UPTD PPA) or the Indonesian/Regional Child Protection Commission (KPAI/ KPAD). Guaranteeing the availability of these professionals requires attention from the central and local governments. The benefits of professional availability can be used by judges in considering granting a marriage dispensation permit oriented to the child's best interest. Thus, it is clear that the relationship between the courts and the government, and other institutions are very much needed.

The need to build a system of interconnection with institutions outside the judiciary, including the executive and the private sector, is an effort to make decisions of the Religious Courts in terms of fulfillment and guaranteeing the rights of women and children can be implemented quickly and definitely without having to go through an execution process. Furthermore, the intervention of institutions outside the judiciary will facilitate and become a separate force for the implementation of court decisions related to the rights of women and children because these institutions can support the judicial power to

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<sup>37</sup> Candra, M., *Pembaruan Hukum Dispensasi Kawin dalam Sistem Hukum Indonesia* (Jakarta: Kencana Prenada Media Group, 2021), hlm. 9

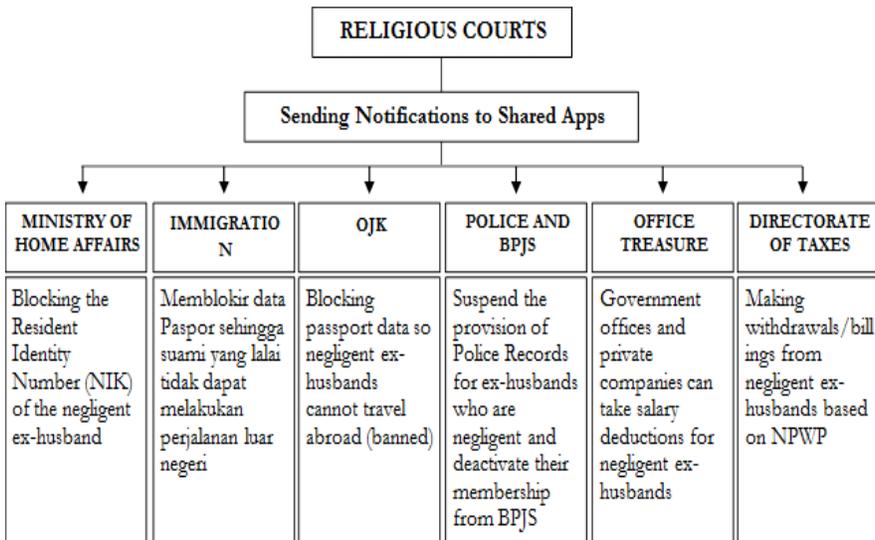
block/limit the civil rights of ex-husbands who do not fulfill their obligations (neglect their responsibilities).

The interconnection of the judicial system in the implementation of court decisions referred to here is the fulfillment of the rights of women and children after divorce through the courts by involving non-judicial institutions in an integrated manner according to their respective authorities without going through the execution application process. This new framework makes institutions outside the judiciary as external partners in implementing single identity-based court decisions that collaborate and synergize with one another.<sup>38</sup>

Strategic steps to realize system interconnection are: First, build an integrated database containing data on the parties (ex-husband, ex-wife, and children) conducted by the judiciary and related Ministries/Institutions. Second, the Supreme Court coordinates with the Ministry of Women's Empowerment and Child Protection, as well as other relevant Ministries/Institutions, to formulate regulations on system interconnection that authorizes each ministry and institution involved in fulfilling the rights of women and children. The following is a description of the authority of each institution outside the court in ensuring the fulfillment of the rights of women and children based on system interconnection:

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<sup>38</sup> A single Identity or Single Identity Number (SIN) is a unique identifier owned by each individual. However, it contains individual personal data and other information related to family data, asset ownership, police data, banking, taxes, Etc. Administratively, a single identity number is useful for facilitating public services, overcoming illegal work and immigration abuse, preventing and detecting crime and terrorism, preventing identity theft and fraud, and preventing fraudulent access to public services.



**Figure 1.** Overview of the Authority of each Institution Outside the Court in Guaranteeing the Rights of Women and Children

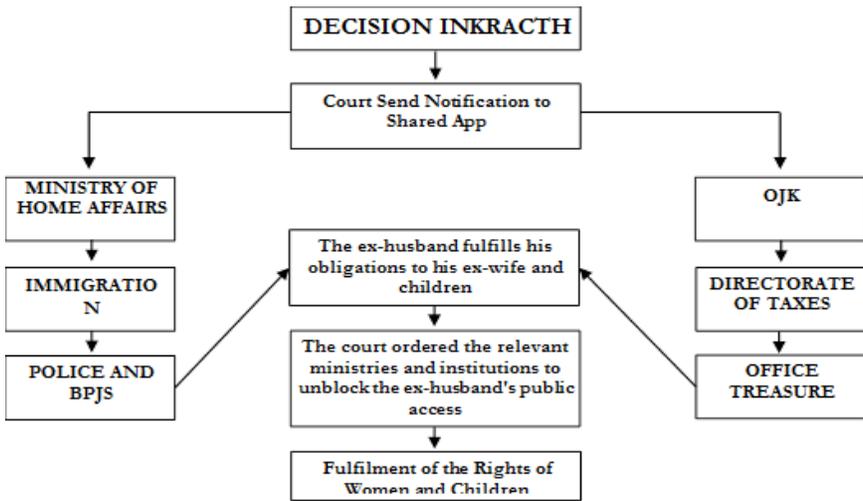
Based on the figure above, the interconnection of the system in question can be described as follows (work system): The Ministry of Home Affairs (*Kemendagri*) can block the Population Identification Number (NIK) when the ex-husband has not fulfilled his obligations to his ex-wife and children so that the blocking results in limited public access for the husband. The Ministry of Home Affairs (*Kemendagri*) can revoke the blocking after receiving notification from the court that the ex-husband has fulfilled his obligations. Likewise, this can be done by the lowest levels of government, such as sub-district and village governments. Both of them can suspend administrative services to the ex-husband, for example, delay in making an introduction to the management of ID cards And so on, which are the authority of the village government.

Likewise, the Ministry of Law and Human Rights (*Kemenkumham*) is also given the authority through the Directorate General of Immigration to block the passport of the negligent ex-husband so that he cannot travel abroad. Furthermore, regarding economic rights, the Financial Services Authority (OJK) can issue regulations that authorize financial institutions to block accounts so ex-husbands cannot access

financial services. Furthermore, the police can intercept the administration of a Police Record Certificate (SKCK), even in necessary services, such as the ex-husband's access to some health services, through deactivating membership in Social Health Insurance Administration Body (BPJS).

The fulfillment of the rights of women and children through restrictions on public services, as described above, can also be done through deductions from the ex-husband's salary if the ex-husband works as a State Civil Apparatus, State-Owned Enterprise Employee, Regional-Owned Enterprise Employee, or private employee. As for ex-husbands who do not have income due to particular legal reasons, there needs to be a social security mechanism from the Ministry of Social Affairs (*Kemensos*) or the Ministry of Women's Empowerment and Child Protection (*Kemen PPA*).

Based on this explanation, a general description is obtained as an illustration of the fulfillment of the rights of women and children based on system interconnection, as follows:



**Figure 2.** Illustration of the Fulfillment of the Rights of Women and Children based on System Interconnection

Based on the illustration above, the interconnection of systems in the implementation of court decisions is carried out to realize holistic legal certainty for fulfilling the rights of women and children. Legal

certainty in the implementation of decisions does not only reach the normative juridical level "the decision has legal force" but also reaches the implementation stage so that the law can guarantee the fulfillment of the rights of women and children. The existence of interconnection systems in institutions outside the judiciary related to fulfilling women's and children's rights after divorce will further enhance the principle of legal certainty while still placing the court as the leading sector in its implementation. The author hopes these ideas can be realized to provide legal certainty in fulfilling the rights of women and children after divorce in Indonesia.

## **Conclusion**

Regulations related to legal protection for women and children in Indonesia are quite capable. However, its implementation often encounters various obstacles, so the rights of women and children to obtain legal protection from the state should be addressed. One of the obstacles and major concerns in protecting women's and children's rights are related to implementing decisions. Based on this, efforts must be made so that the rights of women and children can be immediately fulfilled. One of the ideas is through a judicial system that is interconnected between legal structures (institutions and law enforcement), legal substance (laws and regulations), and legal culture (public views). In this case, a system framework for the fulfillment of women's and children's rights must be built through the courts by involving non-judicial institutions in an integrated manner following their respective authorities without going through the petition process from the petitioner for execution. This new framework makes institutions outside the judiciary as external partners in implementing single identity-based court decisions. The implementation of decisions that rely solely on court institutions will encounter many obstacles and are difficult to implement so joint synergy between various relevant agencies is needed in order to realize the effectiveness of implementing decisions, especially decisions related to the consequences of divorce.

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