

THE SUPREME COURT AND ISLAMIC FAMILY LAW REFORM: A REVIEW OF POLICY DIRECTION AND IMPLEMENTATION CHALLENGES

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Abstract

The reform of Islamic family law is not only related to legal matters but also to the social and cultural values surrounding it. In Indonesia, the development of Islamic family law has relied on the government and the legislature, as reflected in the enactment of the Marriage Law and the Compilation of Islamic Law. However, the lengthy legislative process, which is often laden with political interests, makes it difficult to accelerate legal reform. This study aims to analyze the role of the Supreme Court, particularly the Religious Chamber, as an institution with the potential to expedite the reform of Islamic family law through its judicial authority. applying a qualitative method and descriptive

analysis, this research finds that the Supreme Court contributes significantly to Islamic family law reform through progressive decisions and the Plenary Meetings of the Religious Chamber producing legal formulations. The main findings show that the reform agenda promoted by the Supreme Court focuses on strengthening the protection of women's and children's rights. The study also identifies two major challenges in implementation: variations in judges' adherence to the plenary formulations and limited public access to information regarding the plenary outcomes. These findings underscore the importance of optimizing the role of the Supreme Court as a strategic driver in accelerating the reform of Islamic family law in Indonesia.

Keywords: Family Law, Islamic Law, Law Reform, Supreme Court.

Introduction

Islamic Family Law is one of the crucial aspects of developing the national legal system. Islamic Family Law has always influenced the formation of national laws, especially laws governing family relations for Muslims in Indonesia, including marriage, divorce, and other rights in the household.¹ In this context, Islamic family law serves as a guideline for living a family life and reflects the moral and ethical values Muslims embrace in Indonesia. Along with developing an increasingly complex society, there are various challenges and the need to reform Islamic family law. These challenges include social, economic, and cultural changes affecting family dynamics and gender roles in society.²

The process of reforming Islamic family law in Indonesia is not only related to legal aspects but also must pay attention to social and cultural values. Is essential to understand that the law is not just a rule that must be obeyed but must also reflect justice and welfare for all

¹ Aldy Darmawan. "Islamic Family Law Reform in Indonesia." *SAKENA: Journal of Family Law* 8, no. 1 (2023): 85-94.

² Septian Riyantoro. "The Need for Islamic Law Reform in Accordance with the Needs of Contemporary Times". *An-Nawa: Journal of Islamic Studies* 3, no. 2 (2021): 28-41. <https://jurnal.staiannawawi.com/index.php/-annawa/article/view/296>.

family members.³ The reform of Islamic Family Law has always been an important issue to be studied. It is related to the problem of protecting the rights of women and children are often disadvantaged.⁴

Recent data suggests that there has been a significant increase in cases involving violations of women's and children's rights in the context of family law. In divorce cases, for example, many women file for divorce because they experience *domestic violence from their husbands, whether in the form of physical, psychological, verbal, sexual, or economic violence*.⁵ After divorce, they often face difficulties in obtaining their rights, both in terms of finance and child custody.⁶ This shows that the current legal system is not fully capable of providing adequate protection, thus demanding an urgent need to update existing laws to be more responsive to the needs and rights of women and children.

The state's role becomes essential and crucial in reforming Islamic Family Law. The government and the House of Representatives (DPR) have a strategic role to implement the reform process of Islamic Family Law, as has been done by establishing several regulations, such as the Marriage Law and the Compilation of Islamic Law.⁷ However, if only relying on the executive and legislative institutions, the process of

³ Fitriyani. "Aspects of Islamic Law Reform in Family Law in Indonesia". *Tasamuh: Journal of Islamic Studies* 11, no. 2 (2019): 249-270. <https://ejurnal.iainsorong.ac.id/index.php/Tasamuh/article/view/162>.

⁴ Rini Kartika Ridwan and Badruzzaman. "Optimizing the Legal Framework for the Protection of Women's Rights (Study in Parepare City as the City of Love)." *SULTAN JOURNAL: Constitutional Law Research* 1, no. 2 (2023): 52-64. <https://doi.org/10.35905/sultanhtn.v1i2.3394>

⁵ Amran Suadi and Mardi Candra. *Political Law Perspectives on Islamic Civil and Criminal Law and Sharia Economics* (Jakarta: Kencana Prenada Media Group, 2016), p. 123; Amran Suadi, Mardi Candra, Fahadil Amin Al Hasan, and Gugun Gumilar. "Legal protection of women's and children's rights after divorce through the E-MOSI CAPER App." *Novelty Law Journal* 15, no. 1 (2024): 35-52. <https://doi.org/10.26555/novelty.v15i1.a27347>

⁶ Fitrian Noor, M. Fahmi Al-Amruzi, and Ahmadi Hasan. "Problems of Child Custody After Divorce Decisions in Religious Courts (Case Study Number 342/PDT.G/2020/PA.MTP Jo Appeal Decision Number 32/PDT.G/2020/PTA.BJM Jo Cassation Decision Number 392 K/AG/2021)." *Al Qalam: Scientific Journal of Religion and Society* 17, no. 6 (2023): 4085-4104. <http://dx.doi.org/10.35931/aq.v17i6.2808>

⁷ Fathul Muin. "Islamic Family Law Reform in Indonesia in Improving the Status of Women." *Legal Studies Journal* 2, no. 1 (2022): 12-29. <https://doi.org/10.33650/ljs.v2i1.3390>

reforming Islamic Family Law has various obstacles, including resistance from some groups feeling that such changes can threaten specific values that are political in nature.

The acceleration of the Islamic family law reform process must be taken over by other institutions authorized to carry out the process. One can be taken over temporarily by the Supreme Court through the Religious Chamber. Currently, Supreme Court, through its authority, has made various efforts to reform Islamic Family Law, primarily through the instrument of the Plenary Meeting of the Religious Chamber. The results of the Chamber Plenary Meeting formulation are then confirmed through the Supreme Court Circular Letter to become a guideline for all judges in Religious Courts throughout Indonesia.⁸ The Supreme Court's role becomes crucial in the rapid reform of Islamic Law, considering the challenges Muslim communities face today are increasingly complex and diverse.

Based on this explanation, the problem formulation in this research includes several key questions: *First*, what is the role of the Supreme Court in the renewal of Islamic family law in Indonesia? *Second*, what is the direction of the Supreme Court's policy in reforming Islamic Family Law? *Third*, what are the challenges faced in implementing the policy?

The main objective of this study is to analyze the role of the Supreme Court in the reform of Islamic family law and examine the direction of the resulting policy, as well as the challenges of its implementation. This research also aims to identify the challenges faced in implementing the policy and provide recommendations for future improvement. Thus, this research is expected to significantly contribute to the development of Islamic family law that is more responsive to the needs of society.

Research Methodology

The methodology used in this research is a qualitative approach with descriptive analysis⁹ designed to provide an in-depth understanding

⁸ Khiyaroh. "The Role of the Plenary of the Religious Chamber of the Supreme Court in Achieving the Goals of Indonesian Family Law." *Ahkam: Journal of Islamic Law* 8, no. 2 (2020): 312-332. <https://doi.org/10.21274/ahkam.2020.8.-2.311-332>

⁹ Tengku Erwinsyahbana and Ramlan. "Qualitative Research in Legal Science in the Perspective of Constructivism Philosophy." *Borneo Law Review Journal* 1, no. 1 (2027): 1-19. <https://doi.org/10.35334/bolrev.v1i1.706>

of the phenomenon being studied. This qualitative approach is chosen because it allows the researcher to explore the nuances and complexities of the data obtained and provides room for a more profound interpretation of the issues discussed. Data is collected through literature studies from various sources, including books, journals, and official documents of the Supreme Court, providing a strong foundation for the analysis conducted. Applying these sources ensures that the data obtained is valid and reliable and enriches the perspectives presented in this study.

Data analysis is conducted by identifying critical themes from the research, which are then linked to existing legal policies and practices. This process involves crucial reading of each source collected, where the researcher looks for patterns and relationships between existing data. In this way, the researcher can reveal how the policies enacted by the Supreme Court interact with legal practices in the real life, particularly in the implementation of Islamic family law, as well as its impact on society. These results reveal the role of the Supreme Court to reform Islamic law in Indonesia.

Furthermore, this approach allows researchers to identify risks in implementing existing policies. Therefore, the analysis focuses on written official documents and the way it is applied and accepted by the public and law enforcers, particularly judges.

Discussion

The Role of the Supreme Court in Islamic Law Reform

The Supreme Court has an essential role in upholding law and justice. In carrying out this role, the Supreme Court is equipped with specific functions and authorities, and one is to make rules or regulations to fill the legal vacuum for a smooth judicial process.¹⁰ One of the regulations issued by the Supreme Court is the Supreme Court Regulation (PERMA) and Supreme Court Circular Letter (SEMA). Both are essential to ensuring the law can be applied fairly and effectively.

¹⁰ Rinsifat Naibaho and Indra Jaya M. Hasibuan. "The Role of the Supreme Court in the Enforcement of Law and Justice through Judicial Power". *Nommensen Journal of Legal Opinion* 2, no. 02 (July 30, 2021): 203-214. <https://doi.org/10.51622/njlo.v2i02.388>

PERMA is one type of legislation enacted in Article 8, paragraph (1) of Law Number 12 of 2011. This provision provides a legal basis for the Supreme Court to issue binding regulations.¹¹ Meanwhile, SEMA is a policy regulation (*beleidsregel*) that is also recognized and legally binding, especially when there is an order from a higher regulation or based on the inherent authority of the Supreme Court.¹² Through these two regulatory products, the Supreme Court can influence legal practice in the courts of first instance and provide clear guidelines for judges handling family law cases. This is very important as judges are often faced with situations requiring proper interpretation of the law, and the existence of clear regulations will assist them to make fair decisions.

As a regulator, the Supreme Court has produced many legal products through PERMA or SEMA reflecting an adaptive response to the needs of society. One relevant example is the regulation of the conduct of electronic trials, which is increasingly important in this digital era. Through this PERMA regulating this matter, the judicial process can be carried out more efficiently and transparently, reducing the possibility of delays detrimental to the parties. In addition, the application of Restorative Justice in criminal cases, which is also regulated through PERMA, shows the Supreme Court's efforts to prioritize a more humane and recovery-oriented settlement, not just punishment.

In addition to PERMA, there is also SEMA, which is used to enforce the formulation of Chamber Meeting Results as guidelines for judges in dealing with complex cases. The creation of regulations through PERMA and SEMA shows the commitment of the Supreme Court to continue to improve and refine the justice system in Indonesia to provide better justice for the community. Therefore, the Supreme Court's role in regulating and updating relevant regulations is crucial in creating a responsive and adaptive legal system.

In the context of Islamic law reform, the Supreme Court also functions not only as the highest court in the application of Islamic law

¹¹ Agus Satory and Hotma Sibuea. "Problematics of the Position and Material Testing of Supreme Court Regulations as Legislative Regulations." *Pakuan Law Review* 6, no. 1 (2020): 1-27. <https://doi.org/10.33751/palar.v6i1.1831>

¹² Adi Syahputra Sirait. "Implications of the Implementation of Supreme Court Circular Letter (Sema) Number 3 of 2014 on the Existence of Law Number 1 of 1974." *FITRAH: Journal of Islamic Studies* 4, no. 1 (2018): 113-128. <https://doi.org/10.24952/fitrah.v4i1.879>

through religious courts and mahkamah syar'iyah throughout Indonesia but also as a regulator or policymaker playing an essential role in filling any deficiencies or legal gaps that may exist.¹³ As such, the Supreme Court has a significant role to play in the legal reform process. In recent years, the Supreme Court has undertaken various initiatives, including through progressive decisions that have become jurisprudence and the Plenary Meeting of the Religious Chamber. These plenary meetings provide an essential discussion forum for judges in the religious chambers, both justices and seconded judges, where various crucial issues related to family law are discussed, including issues related to the protection of the rights of women and children, as well as the resolution of other family disputes.

One of these concrete steps is to formulate a rule of law that will then be applied and become a guideline for judges of religious courts in handling family law cases. These guidelines cover essential aspects such as determining maintenance, child custody, division of Marital Property after divorce, execution of court decision regarding child guardianship, etc. In this context, it is necessary to note that the guidelines are normative and consider Indonesian society's diverse social and cultural context. Through these guidelines in place, judges will likely be able to make decisions community's needs. This also reflects an effort to reduce the legal uncertainty often experienced by parties involved in family disputes.

Through these steps, the Supreme Court has shown that Islamic family law reform is a formality and a strategic step to create social justice. In the face of increasingly complex challenges, the legal system needs to adapt and respond to the changing needs of society.

Supreme Court Policy in Islamic Family Law Reform through the Formulation of the Results of the Plenary Meeting of the Religious Chamber

In early 2012, the issue of legal unity became a significant concern in the Indonesian judicial system. The Chief Justice issued an instruction emphasizing each chamber's interest in holding regular plenary

¹³ Islamiyati, Ahmad Rofiq, Rofah Setyowati, and Achmad Arief Budiman. "Enforcement of Islamic Marriage Law through Supreme Court Jurisprudence". *National Law Magazine* 48, no. 2 (December 3, 2018): 85-107. <https://mhn.bphn.go.id/index.php/MHN/article/view/104>.

meetings. This emerged as a response to the urgent need to improve consistency and legal certainty amidst the judicial system's various challenges. Through plenary sessions, judges can synergize in formulating uniform legal views so that decisions can reflect justice and certainty for the community.

The judges discuss relevant and current issues at each meeting and seek broadly applicable solutions. This profound discussion allows the judges to exchange ideas and experiences, resulting in a more comprehensive formulation of the law. Through this collaboration, a more solid agreement on legal interpretation will be reached, reducing the potential conflict in court decision-making. As such, this plenary meeting serves as an essential communication bridge between the various chambers of the Supreme Court.

The result of this plenary meeting is a legal formula expected to serve as a guideline for judges in handling various cases. Such legal formulations are essential, given that different interpretations of the law can lead to uncertainty and injustice. When the law is often dynamic and complex, the legal formulation produced from the plenary meeting provides clear direction for judges. It also reflects the Supreme Court's commitment to maintaining the integrity and credibility of the judicial system and providing a sense of security to the public that every decision taken is based on the principle of equal justice.

The chamber plenary meeting in the Supreme Court was first conducted in 2012 as an initial step in strengthening the chamber system. The Chamber Plenary Meeting is an implementation of the Decree of the Chief Justice of the Supreme Court Number 142/KMA/SK/IX/2011 dated September 19 2011, on the Guidelines for the Implementation of the Chamber System in the Supreme Court of Indonesia. This policy is not only a milestone for the Supreme Court but also reflects efforts to strengthen the legal system in Indonesia as a whole. Through clear guidelines in place, it is expected that each chamber will be able to operate more efficiently and effectively and respond to increasingly complex legal challenges in the future.

The first plenary meetings of each chamber were held in March-May 2012. The Plenary of the Criminal Chamber March 8-10, 2012. The Plenary of the Civil Chamber March 14-16, 2012. The Plenary of the Special Civil Chamber April 19-21, 2012; the Plenary of the

Administrative Chamber April 11-13, 2012; and the Plenary of the Religious Chamber May 3-5, 2012.¹⁴

Initially, the legal formulations produced through the Chamber Plenary Meetings were intended solely as guidelines for justices when handling cases at the cassation and case review levels. However, in order to facilitate the realization of legal uniformity, demands emerged for first-instance and appellate judges to also adopt these formulations as references. Responding to this recommendation, the Chief Justice issued Supreme Court Circular Letter (SEMA) No. 7 of 2012 on September 12, 2012. This SEMA enacts that the legal formulations resulting from the Chamber Plenary Meetings must serve as guidelines in judicial practice, with the aim of promoting consistency in judicial decisions and minimizing potential disparities in the future. Thus, the issuance of this SEMA ensures that the binding force of the chamber's legal formulations extends to all courts, both at the first-instance and appellate levels.

In the context of Islamic family law, plenary meetings can be used as one of the legal instruments in the reform of Islamic family law, the results of which can be directly implemented in decisions in the religious courts.

Policy Direction of the Supreme Court in Islamic Family Law Reform

Unequal socio-economic conditions contribute to injustice for women and children. Many women, especially in rural areas, are still economically dependent on their husbands, so when divorce occurs, they do not have the resources to provide for themselves and their children. Komnas Perempuan (national commission on violence against women)'s report also shows that there is an increase in cases of domestic violence, which also often leads to divorce.

Due to these alarming conditions, there is a growing public awareness of the importance of protecting the rights of women and children. As a result, social movements supporting gender equality have become more robust, and many non-governmental organizations actively advocate for women's rights. In 2023, approximately 465,063

¹⁴ Asep Nursobah. *History of the Chamber System in the Supreme Court*. Accessed via <https://kepaniteraan-mahkamahagung.go.id/sistem-kamar/sejarah-sistem-kamar> on October 4, 2024

divorce cases entered the religious courts.¹⁵ The number of Around 60% was filed by women. This shows that they are beginning to have the courage to fight for their rights through official state institutions.

The social changes that have occurred in society, especially about the rights of women and children, have triggered an urgent need for reform in Islamic family law. In this context, the Supreme Court has taken a role in formulating policies that are more responsive and fairer to the needs of women and children. The role and step that have been taken are contained in the formulation of the results of the Plenary Meeting of the Religious Chamber regarding the rights of women and children in divorce, such as the right to demand *mut'ah* and *iddah* maintenance, guarantees for the fulfillment of children's rights, and so on. This is important to provide legal certainty for women who are forced out of marriage. The main objective is that their rights can be legally protected. In this context, the Supreme Court acts as an agent of change enforcing the law and ensuring social justice for all levels of Muslim society in Indonesia.

Islamic Family Law Reform in the Formulation of the Plenary Results of the Religious Chamber

Since it was first held in 2012, many formulations of religious chamber plenary outcomes have been established through Supreme Court Circular letter.. At least 25 main issues have been formulated through the chamber plenary mechanism, 14 of which are related to the rights of women and children. For example, Child Execution, Marriage, Marriage Cancellation, Itsbat Nikah, Divorce, Divorce of Civil Servants and TNI/POLRI, *Iddah*, *Mut'ah*, and *Madhiyah*, Child Validation, *Hadbanah* and Child Maintenance, Guardianship, *Wali Adhal*, Marriage Dispensation, Polygamy Permit, Marital Property.¹⁶

The results of the reform of Islamic family law that will be discussed in this study are as follows:

1. Restriction on Divorce for Disputes and Quarrels

One of the principles recognized in the Marriage Law is the principle of making divorce difficult. Its implementation is the

¹⁵ Directorate General of Religious Courts, *Directorate General of Religious Courts Annual Report 2023* (Jakarta: Directorate General of Religious Courts, 2024), p. 4-5.

¹⁶ Faisal Saleh. *Compilation of Legal Formulations of the Plenary Meeting of the Religious Chamber of the Supreme Court of the Republic of Indonesia 2012-2023* (Pekanbaru: FS, 2024)

obligation to conduct divorce, which must be tried in court.¹⁷ The principle of making divorce difficult is an implementation of the Qur'an and Hadith,¹⁸ Such as QS. Thalaq: 1, QS. Al Baqarah: 232, and the Hadith of the Prophet Shalallahu'alaihi wa Sallam as follows:

أبغض الحلال إلى الله تعالى الطلاق

Meaning: "*The most hated thing by Allah Ta'ala is Thalake (divorce).*"¹⁹

To support the implementation of this principle, the Supreme Court has issued a policy to limit divorce caused by disputes and quarrels. The policy is formulated through provisions contained in the formulation of the results of the chamber plenary meeting. For the first time, the policy was outlined in SEMA No. 1 of 2014 - Formulation of the Law of the Religious Chamber in 2013, point 4. Then, it was emphasized in SEMA No. 03 of 2018 - III. Formulation of the Religious Chamber Law in 2018 letter A number 1. Then, it was outlined in SEMA No. 1 of 2022 - C. Formulation of the Law of the Religious Chamber of 2022 number 1 letter b. Finally, it was perfected by the formulation of the chamber in SEMA No. 3 of 2023 - C. Formulation of the Law of the Religious Chamber of 2023 number 1.

In the latter provision, it is explained that "*Divorce cases on the grounds of continuous disputes and quarrels can be granted if it is proven that husband and wife have continuous disputes and quarrels and there is no hope that they will live in harmony again in the household followed by having separated living quarters for at least 6 (six) months unless there are legal facts that the Defendant / Plaintiff committed domestic violence.*"

Policy after policy above was issued to encourage married couples to resolve their problems constructively before deciding to divorce, except in some instances, namely if there is domestic violence. This

¹⁷ Siti Chomsiyah, and I Wayan Agus Vijayantera. "Mandatory Requirements for Divorce as an Effort to Enforce the Principle of Making Divorce Difficult." *Saraswati Law Journal* 2, no. 2 (2020): 273-285. <https://ejournal.unmas.ac.id/index.php/JHS/article/view/1384>.

¹⁸ Dahwadin, Enceng Iip Syaripudin, Eva Sofiawati, Muhamad Dani Somantri. "The Nature of Divorce Under the Provisions of Islamic Law in Indonesia." *YUDISIA: Journal of Legal Thought and Islamic Law* 11, no. 1 (2020): 87-104. <http://dx.doi.org/10.21043/yudisia.v11i1.3622>

¹⁹ Wahbah az-Zuhaili, *Al-Fiqh Al-Islami wa Adillatuhu*, vol. 9 (Damascus: Darul Fikr, 2002), p. 6877.

means that if it is found that there is violence in the wife/husband's household, then even though the separation has not reached 6 (six) months, the divorce can be granted.

Overall, the restriction on divorce due to disputes and quarrels shows the Supreme Court's commitment to maintaining family integrity. By encouraging mediation and constructive resolution of domestic conflicts, it is hoped that the divorce rate can be reduced and families can remain intact for the welfare of all its members.

2. The Permissibility of a Wife Demanding Mut'ah and Iddah Maintenance

The obligation to give the consequences of divorce by the former husband to the former wife is part of the implementation of Allah's command to husbands to always treat their wives with the principle of *imsak bi ma'ruf au tasrib bi ihsan*. Therefore, if the marital relationship between them must break up due to divorce, good treatment must be maintained, one of which is through the burdens resulting from divorces, such as mut'ah, iddah maintenance, and madly maintenance (Bagir, B.M., 2016).²⁰ However, the regulation regarding burdens resulting from divorce caused by women's initiative or specific gut needs to be regulated.²¹

Article 149 of the Compilation of Islamic Law only regulates the legal consequences of divorce at the husband's initiative (*cerai talak*). In contrast, the legal consequences of divorce at the woman's initiative (*cerai gugat*) are only regulated in Article 41 of Law Number 1 of 1974 without explaining the obligations after the divorce. The article describes the consequences of breaking up a marriage due to divorce: The court may require the former husband to provide livelihood expenses and determine an obligation for the former wife. As a result of this not being regulated, women's rights after divorce. There are even decisions rejecting claims for *mut'ah*, *iddah* maintenance, and *madlyah* maintenance in cases of *cerai gugat* because the provisions for provision due to divorce at the initiative of women are unknown.

Based on these reasons, the Religious Chamber formulated a provision explaining that even if divorce occurs at the initiative of the

²⁰ M. Bagir. *Fiqh Practical Muamalah Complete Guide* (Jakarta: PT Mizan, 2016), p. 301-302

²¹ Najichah. "Implication of Divorce Initiative on Wife's Nafkah Rights." *Journal of Islamic Studies and Humanities* 5, no. 1 (2020): 42-60. <https://doi.org/10.21580/jish.v5i1.6960>

wife, as long as she is not *nusyuz*, the court can determine the consequences of divorce to her former husband in the form of *mut'ah*, *iddah*, or *madly*. This formulation has been approved by the leadership of the Supreme Court and enacted through SEMA Number 3/2018. The provisions contained in the regulation are then emphasized through the Decree of the Director General of Religious judiciary Number 1959, dated June 25, 2021, on the Implementation of *Policy Briefs* on Guaranteeing the Protection of the Rights of Women and Children After Divorce.

In addition to regulating the permissibility of wives claiming women's rights after divorce, the formulation of the Religious Chamber also regulates the guarantee of the fulfillment of women's rights in a contested divorce. This is as enacted in the provisions of SEMA Number 2 of 2019. The provision explains that in the context of implementing PERMA Number 3 of 2017, to provide legal protection for women's rights after divorce, the Amar / dictum for the payment of the husband's obligations to the wife after divorce in the case of Divorce lawsuit can add the following sentence: "...which must be paid before the Defendant (former husband) takes the divorce certificate. Thus, the husband can only obtain a divorce certificate after paying his ex-wife all his obligations. This is a consequence of the fact that contested divorce is part of the product of *tafriqul qada'i* or the dissolution of the marriage relationship through a judge's decision based on a wife's claim."²²

3. Postponement of Marital Property Division for the Benefit of Children

The concept of *the best interest of the child* is a fundamental principle in child protection law regulated by various legal instruments, both national and international.²³ In the context of family dispute resolution, this principle must be the primary consideration in every court decision, including in the division of Marital Property.

In the division of Marital Property, there are several essential aspects that the judge must consider. Among these are elements of the

²² Muhammad Amin ibn Ibn Abidin. *Radd Al-Mukhtar'Ala Ad-Durr Al-Mukhtar Syarh Tannir Al-Absar*, vol. 3 (Beirut: Daarul Kutub Al-Ilmiyah, 1994), p.186.

²³ Ahmad Muchlis. "Enforcement of the Child's Best Interest Principle in the Implementation of Diversion in the Juvenile Criminal Justice System." *Journal of Progressive Law* 12, no. 1 (2024): 66-77. <https://doi.org/10.14710/jhp.12.1.66-77>

time of acquisition, aspects of the origin of property acquisition, and aspects of property separation agreements.²⁴ These three aspects become very important in determining and dividing Marital Property. This means that when the judge has considered these three aspects, the determination and division of Marital Property can be immediately implemented through a court decision. However, these three aspects are considered not to consider the interests of children.

On this basis, the Supreme Court, through the formulation of the Religious Chamber enacts SEMA Number 1 Year 2022, has added the aspect of the best interests of the child in the division of Marital Property. In the formulation of the religious chamber, number 1 letter states that "*To ensure the realization of the principle of the best interests of the child in the case of Marital Property whose object is proven to be the only house where the child lives, the lawsuit can be granted, but the division is carried out after the child is an adult (21 years old) or married.*"

Based on *these* provisions, if the property disputed by the ex-wife and husband is the only property occupied by the child, then the division must be suspended until the child is an adult. This formulation complements the rules in the division of Marital Property as regulated in Article 35 paragraph (1) of the Law on Marriage jo. Article 97 KHI.

The *policy* outlined in this rule aims to ensure that children are not disadvantaged as a result of their parent's divorce, given that in many cases, the division of Marital Property can lead to prolonged conflict between divorcing couples, which in turn can harm their children.

4. Claims for past-due child support

Article 41, *paragraph* 2 of Law Number 1 Year 1974 on Marriage has regulated the fulfillment of parenting to children by their fathers. In this provision, it is stated that the father is responsible for all the costs of parenting and education needed by the child; if the father, in reality, cannot fulfill this obligation, the Court can determine that the mother shares in these costs.²⁵

²⁴ Deni Kamaludin Yusup and Fahadil Amin Al Hasan. "Legal Protection of Children's Rights in Marital Property Disputes". *Judicial Journal* 15, no. 3 (April 3, 2023): 317-335. <https://jurnal.komisiyudisial.go.id/-index.php/jy/article/view/536>.

²⁵ Nora Andini. "Legal Sanctions for Fathers Who Do Not Carry Out the Obligation of Support for Children After Divorce (Comparative Study of the Perspective of Islamic Law and Positive Law in Indonesia)." *Qiyas: Journal of Islamic Law and Justice* 4, no. 1 (2019): 1-14 <http://dx.doi.org/10.29300/qys.v4i1.2003>

This provision is then emphasized in Article 149, paragraph 4 of the Compilation of Islamic Law, stating that if the marriage is broken due to divorce, the former husband must provide *badlanah* costs for his children who have not reached the age of 21. However, although the child parenting obligation has been enacted in the law, many fathers need to pay more attention. This causes the mother to bear many responsibilities simultaneously (*double burden*). Not only does she have to take care of and maintain her child, but she also has to bear the costs.²⁶ When the father neglects his responsibility to provide for his child, he should be punished. One form of punishment is to reimburse all costs of the mother has incurred while she takes care of and maintains her child.

To ensure that this can be implemented, the Supreme Court, through the formulation of the results of the Plenary Meeting of the Chambers as referred to in Supreme Court Circular Letter Number 2 of 2019, emphasized that the past child support (*nafkah madliyah*) of a child whom the father neglects can be sued by the mother or the person who cares for the child.

The provision as referred to in SEMA Number 2 of 2019 is a form of affirmation that the rights of women and children must be appropriately protected. This provision then repeal the jurisprudence of Supreme Court Decision Number 608 K/AG/2003 dated March 23, 2005, which in its primary consideration explains that the father's obligation to provide parenting to his child is *lil intifa'*, not *lil tamlik*. This results in the inability to file a lawsuit against a father's negligence in providing child maintenance (*Madliyah* financial support).²⁷ The opinion as referred to in the consideration of this cassation decision is based on one of the opinions used by the Shafi'i school of thought as explained by Shaykh Wahbah Zuhayli as follows:²⁸

²⁶ Betra Sarianti. "The Level of Compliance of Fathers Paying Child Support After Divorce". *Supremacy of Law: Journal of Legal Research* 27, no. 2 (2019): 105-117. <https://ejournal.unib.ac.id/supremasihukum/article/view/8889>.

²⁷ N. Amiriyah. "Madliyah Income for Children After Divorce: A Study of the Decision of the Supreme Court of the Republic of Indonesia Number 608/K/AG/2003." *JURISDICTION: Journal of Law and Sharia* 6, no.1 (2015): 1-15. <https://doi.org/10.18860/j.v6i1.4085>

²⁸ Wahbah Zuhayli. *Al Fiqh al Islam wa Adillatuba*, vol. 8 (Egypt: Daar Al Islami, t.th), p. 829.

و قال الشافعية : لا تصير نفقة الولد دينا على الوالد الا بفرض قاضى أو اذنه
اقتراض بسبب غيبة أو امتناع عن الانفاق. وتسقط نفقة الولد عند الفقهاء بمضى
الزمن من غير قبض ولا اسدانة لأنها وجبت على الوالد لدفع الحاجة, وقد زالت
الحاجة لما مضى, فسقطت

Meaning: "*The opinion of the Shaafa'is: The maintenance of a child does not become a debt for the parents unless there is an order or permission from the judge because the parents are negligent or unwilling to provide maintenance. According to the fuqaha, (the obligation of parents) to provide maintenance for children falls when it has passed without being able to be grasped (demanded) or considered as a debt because the obligation to provide maintenance for children is only to meet (the child's) needs. If these needs have been met, they cannot be demanded again*".

The provision as referred to in this SEMA implies that the mother's willingness to provide for her child does not necessarily negate the father's obligation to provide for his child, especially against a father deliberately neglecting his obligations.

5. Settlement in *Hadlanah* Execution

The execution of the *badlanah* has become one of the focuses of the reform of Islamic family law conducted by the Supreme Court. *Hadlanah*, or child custody, is a crucial issue that is often a source of conflict between divorcing couples, especially during its implementation. In this context, it is essential to understand that child custody is not just a legal issue but also concerns the psychological and emotional well-being of the child. Many *badlanah* executions have failed, partly due to the limited regulations on *badlanah* executions.²⁹

The lack of regulations governing the procedures for execution has hampered the execution process. For example, in many cases, there are no clear guidelines on the steps to be taken if one party refuses to comply with the court decision. This often results in confusion and frustration for the parties involved and can prolong the period of uncertainty for the child. Therefore, the government and the House of Representatives need to urgently draft and pass a Civil Procedure Law

²⁹ LeIP (Indonesian Institute for Independent Judiciary), *Policy Paper on Strengthening the Civil Dispute Execution System in Indonesia: Alternative Solution to Strengthen Effective & Efficient Civil Dispute Execution System for Legal Certainty*, (Jakarta: LeIP, 2019), p. 25-27.

regulating the execution of child custody decision. Through clear and detailed regulations, the process of executing child custody is expected to be carried out more smoothly and structured.

To fill the legal vacuum, the Supreme Court has made regulations that are then contained in the Supreme Court Circular Letter (SEMA) regarding the execution of child custody decision. For example, the execution provision in SEMA Number 1 Year 2022 - C. Legal Formulation of the Religious Chamber Year 2022 number 5 letter b, states, *"In the execution of child custody rights, if the child is not willing to join the Execution Applicant, the execution is considered non-executable, while if the child is not found, it can be postponed 2 (two) times and if it is not also found, the execution is considered non-executable."* This provision shows the Supreme Court's effort to provide more explicit guidelines in dealing with complex situations in *hadlanah* execution. However, despite these regulations, challenges in implementation still need to be addressed, particularly in law enforcement and public understanding of children's rights.

The efforts made by the Supreme Court are intended to ensure that the execution of childcare can be carried out effectively and efficiently. This must be implemented immediately to avoid various obstacles, such as non-uniformity and uncertainty over execution procedures in each court. Through solid and transparent regulations, it is hoped that each court can conduct child custody executions similarly, reducing the potential conflict and increasing public confidence in the legal system.

Challenges in the Implementation of Islamic Law Reform Policy

1. Judges' Compliance with the Outcome of the Chamber Plenary Meeting

Judges' compliance with the formulation results is one of the main challenges in implementing the formulation of the Plenary Meeting of the Chamber containing Islamic law reform. In a legal context, this compliance is crucial to ensure that the agreed principles can be applied effectively and consistently in the field. However, despite clear guidelines and decisions, not all judges apply the policy consistently.

For example, many decisions in the first-level court or appeal court do not comply with the formulation of the religious chamber, such as Decision Number 312/Pdt.G/2022/ PA.Tg and Decision Number 334/Pdt.G/2022/PA.Smg still grant the divorce petition even though the couple have not been separated for 6 months, even though

according to the provisions of the results of the plenary meeting of the religious chamber in SEMA No. 1 of 2022 and SEMA No. 3 of 2023, divorce can only be granted if the couple has been separated for at least 6 months. These decisions are later corrected through Cassation Decision Number 41 K/AG/2023 stating that the divorce petition is inadmissible. There is also an appeal court decision rejecting a child support lawsuit, which contradicts the formulation of the religious chamber in SEMA No. 1 of 2019, as in Decision Number 35/Pdt.G/2021/PTA.Jb. This decision overturns the decision of the first-instance court, Decision Number 542/Pdt.G/2021/PA.Jmb, which has previously granted the claim for past maintenance claim that the former husband has not paid. This case is re-examined at the cassation level, where the cassation panel corrected the appeal decision and reaffirmed the first-level court decision granting the child's past maintenance claim. In addition, there have also been many divorce rulings involving civil servants/ASN employees that did not include a guarantee of alimony payments through salary deductions by the treasurer of the office where the employee works, in accordance with the formulation of the plenary session of the religious chamber as stated in the Supreme Court Circular. This can be seen in the First Level Court Decision Number 162/Pdt.G/2022/PA. Kdi and the Court of Appeal Decision Number: 21/Pdt.G/2022/PTA.Kdi.

That despite a robust legal framework, internal factors relating to the judges themselves often hampered its implementation. One of the leading causes of this non-compliance is a need for more understanding of the legal formulation, making them hesitant to apply it in their decisions.

In addition, resistance to change is also a significant factor affecting judges' compliance. In established legal environments, change is often met with skepticism, especially if it is perceived to threaten existing norms. In this context, many judges still cling to classical fiqh literature, which affects their decisions.

Another challenge is the different interpretations of the same policy. Each judge may have a different view and understanding of an issue, which may affect the decision. These differences in interpretation may be due to the judge's educational background, experience, or even personal views. Therefore, it is essential to have a discussion forum among judges to discuss and equalize perceptions regarding the policies

implemented. Such a forum can serve as a platform to share knowledge and experience and build consensus on how best to apply the new legal formulation.

Overall, judges' compliance with the results of the Chamber's plenary meetings is a challenge in implementing Islamic law reform policies. By strengthening understanding and reducing differences in interpretation among judges, agreed policies can be implemented more consistently and effectively. Measures like ongoing training and establishing communication networks between judges can create a more cooperative and supportive environment. In the long run, the successful implementation of Islamic law reform will depend mainly on the ability of the judicial system to adapt and respond to necessary changes. By addressing these challenges, it is hoped that Islamic law will be more relevant and responsive to the needs of modern society.

2. Limited Information on Chamber Plenary Meeting Results

Limited information on the results of plenary meetings of the Religious Chambers is another challenge affecting the implementation of Islamic law reform policies in Indonesia. Although the Supreme Court has issued various policies aimed at reforming Islamic law, the reality is that not all parties, especially the general public, have adequate access to such information. This fact is supported by the findings of several NGOs (AIPJ2, SAMMI Institute, IRCKJHAM, Savy Amira Women's Crisis Center Surabaya, LBH Surabaya, Komunitas Pelangi Jaringan Perempuan Interfaith), stating that many people are not aware of the various policies and legal reforms that the Supreme Court has made.³⁰ This is problematic because with a clear understanding of the policies in place, the application of the legal formulations that have been established can be improved, and ultimately, justice for the people achieve.

One factor that exacerbates this situation is the lack of adequate dissemination in the community about their rights in the context of family law. Many women and children are unaware of the rights protected by the law, so they feel they do not dare to have justice when their rights are violated. In this case, a broader and more targeted

³⁰ Attachment to the Decree of the Directorate General of the Religious Courts Agency Number 1959 of 2021 on the Enforcement of the Policy Brief on Guaranteeing the Protection of Women's and Children's Rights after Divorce

information campaign is needed. Through comprehensive education efforts, it is hoped that people will better understand their rights and feel more empowered to take the necessary legal steps to protect themselves.

In addition, the Supreme Court also needs to consider the use of technology as a means to disseminate information related to new policies. In today's digital era, utilizing digital platforms is crucial to ensure that information can be communicated quickly and effectively. For example, the Supreme Court can develop an information portal through regional courts allowing the public and judges to obtain up-to-date information on existing policies. This way, the public can access the information needed without going through complicated channels, thereby increasing understanding and acceptance of the policies. Each court should have its dedicated platform or medium to provide the latest legal updates. The information available on the JDIH Portal, still under development by the Supreme Court of the Republic of Indonesia, is insufficient. Local courts could also consider creating flyers or real-time updates displayed across media within the court.

Overall, limited information on the outcomes of the plenary meetings of the Religious Courts Chamber is a challenge in ensure the smooth implementation of the Islamic law reform policy. By improving clear communication and using technology effectively, it is hoped that all relevant parties can better access information on the policy. These steps will help people understand their rights and strengthen their trust in the legal system, which can promote justice and prosperity for all.

Conclusion

The Supreme Court has a role in the context of Islamic law reform. It is actively involved in legal reform through progressive decisions and the Plenary Meeting of the Religious Chamber. This plenary meeting is an important discussion forum for formulating a legal rule that will be applied and become a guideline for judges handling Islamic family law cases. Since it was first held in 2012, many formulations from the Plenary Meeting of the Religious Chamber have been enacted through Supreme Court Circular letters.. At least 25 main issues have been formulated through the chamber plenary mechanism, 14 of which are related to the rights of women and children. For example, Child Custody Decision of Execution, Marriage, Marriage Cancellation,

marriage Itsbat, Divorce, Divorce of Civil Servants and TNI/POLRI, *Iddah*, *Mut'ah*, and *Madhiyah* financial support, Child Validation, *Hadhanah* and Child Maintenance, Guardianship, *Wali Adhal*, Marriage Dispensation, Polygamy Permit, Marital Property. Concerning at the formulation of the results of the Plenary Meeting of the Chamber, the direction of the Islamic law reform policy carried out by the Supreme Court leads to the issue of protection of the rights of women and children. There are 2 (two) main challenges in implementing the formulation of the results of the Chamber Plenary, including the compliance of judges with the formulation produced and the limited information on the results of the plenary meeting by the outside community.

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