



Post-Divorce Child Support Obligations as Ex Lege Obligations and Its Implications for Legal Certainty in the Perspective of Civil Procedure Law

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Abstract

Background. The obligation to support children after divorce has been normatively regulated in laws and regulations, but in judicial practice it is often not stated in the decision, thus creating a gap between material law and procedural law in ensuring legal certainty in fulfilling children's rights.

Aims. This study aims to analyze whether the obligation to support a child born directly under the law (ex lege) or depends on a court decision, as well as assess the harmony between material law and procedural law.

Result. The results of the study show that the obligation of child support is juridically an ex lege obligation that is born directly from the law and is imperative and binding without the need for the appointment of a judge. However, in judicial practice, these obligations are not always stated in the judgment because the judge is bound by the passive and ultra petita principles that limit the scope of the decision to the petitum submitted by the parties.

Conclusion. This condition shows a disharmony between material law and procedural law, which has an impact on the lack of optimal legal certainty in fulfilling children's rights after divorce.

Implementation. As a result, maintenance obligations often do not have executory force if they are not applied, so their implementation depends on the judge's decision.

Keywords: Child support obligations, ex lege, divorce, material law, procedural law, legal certainty.



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INTRODUCTION

Children are parties who have the right to receive maintenance, education, and protection from their parents from birth. This right is inherent because children need physical, mental, and social support in order to grow and develop optimally. The family environment is the primary foundation for children's development, so parents' role greatly determines their well-being and

safety¹. In addition, consistent attention from parents helps children build confidence and strong social skills from an early age.

The obligation of parents to raise children remains valid, including after a change in family status. In situations where child custody is with one parent due to a divorce, the parents still have the responsibility to support the child's living needs. The fulfillment of this responsibility includes financial support and attention to education and health to ensure the best interests of the child. This ensures that the child's growth is not interrupted by changes in family status and still gets the attention of both parents².

The obligation to provide child support is regulated by law and regulation. Article 26, paragraph (1), letter a of Law No. 35 of 2014 concerning Child Protection emphasizes that parents are obliged and responsible for raising children. In addition, Article 41, letter b of Law No. 1 of 1974 concerning Marriage emphasizes that the father is responsible for all costs of child maintenance and education. For families who adhere to Islamic law, Article 156 letter d of the Compilation of Islamic Law (KHI) also stipulates that the cost of hadhanah and child support is the responsibility of the father according to his ability. These provisions clearly affirm that providing child support is a legal obligation of parents.

In practice, however, the fulfillment of these obligations is often hampered by various factors, including parental non-compliance and weak supervision mechanisms. As a result, many children do not receive the support they should have, even though those rights have been expressly regulated by law. For example, a father is sued for not providing child support for almost 10 years after a divorce. The basis of the lawsuit is the submission of the child regulated in Article 76B in conjunction with Article 77B of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection³.

Research conducted in Riau Province has found that many fathers, including civil servants, members of the National Police/TNI, and state-owned/private-sector workers, are not responsible for providing support for their children after divorce. These findings suggest that

¹Septiana Laaturu, et al. *The Role of Family Environment in Shaping Human Development Throughout Life*, Scientific Journal of Social Sciences and Education, Volume 3 Number 1, 2025, pages 32-35.

²Carlijn Bussemakers, et.al., *Household Dysfunction and Child Development: Do Financial Resources Matter?*, Advances in Life Course Research, Volume 51, 2022, pages 1-14.

³<https://www.kompas.com/tren/read/2025/02/12/110000865/dari-kasus-gugatan-siswi-di-sidoarjo-apa-hukuman-ayah-yang-tak-menafkahi?page=all>, accessed on December 17, 2025, at 20.19 WIB.

although the rules already govern maintenance obligations, implementation in society is often not optimal, and many fathers do not meet their obligations⁴.

In addition, despite a court decision that decided that fathers should provide support to their children, these obligations were not complied with. This happens because the decision is not equipped with a mechanism to guarantee the implementation and supervision of the fulfillment of alimony, which is still ineffective⁵. Such a condition turns out to be experienced by many post-divorce children who still do not receive alimony, even though the court has determined the amount that must be paid, because the father does not carry out his obligations according to the decision⁶.

These problems show that the issue of child support compliance is not only practical but also related to the construction of the law that regulates it. Support obligations have basically been normatively established as part of parental responsibility⁷. The fulfillment of these obligations does not always go hand in hand with the arrangement. This condition indicates that there is a problem in the relationship between legal norms and their implementation mechanisms.

Therefore, this research is important to carry out, considering that the obligation of post-divorce child support, which is expressly regulated in the law, does not fully guarantee the certainty of fulfilling children's rights. This happens because, in addition to the provisions of Article 80 paragraph (4) of the Compilation of Islamic Law limiting the responsibility 'according to ability', the judge is also bound by *the principle of ultra petita, which is regulated in Article 178 jo 189 paragraph (3) of the HIR, so that the obligations that already exist materially are not always listed in the verdict. The implementation of the decision on child support obligations also faces obstacles at the execution stage, especially the need for costs incurred, and the limited economic ability of the father*⁸.

⁴Gushairi, *Fulfillment of Child Support After Divorce in Riau Province*, Journal of Islamic Law, Volume 22 Number 1, 2022, pages 23-52.

⁵Nurrohmatul Jannah, et al. *Juridical Review of Parents' Obligations to Child Support After Divorce Decision (Case Study at the Kediri Religious Court)*, Mizan: Journal of Legal Science, Volume 11 Number 1, 2022, pages 79-85.

⁶Intan Puspita Sari, et al. *Implementation of Post-Divorce Child Support at the Surabaya Religious Court*, Journal of Legal Studies and Civic Education: Civilia, Volume 2 Number 6, 2023, pages 275-288.

⁷Ahmad Wafiyul Ahdi and Ita Rahmania Kusumawati, *Islamic Boarding Schools as Maintenance Substitution Institutions for Broken Home Students: An Analysis of Maintenance Obligations in the Perspective of Islamic Law*, El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law, Volume 6 Number 2, 2025, pages 165-184.

⁸Seki Mutianingsih, et al., *Implementation of Post-Divorce Child Support Decisions (Study of Makassar Religious Court Decisions)*, Al-Zayn: Journal of Social & Legal Sciences, Volume 4 Number 2, 2026, pages 3284-3290, DOI: <https://doi.org/10.61104/alz.v4i2.4774>.

This research focuses on normative analysis of post-divorce child support obligations, especially in terms of legal sources and synchronization between material law and procedural law. The emphasis on legal sources is important because the obligation of child support is expressly regulated by law, but it is not automatically included in the court decision if it is not requested in the petition. Therefore, this study also examines the insynchrony between material law and procedural law in ensuring the certainty of the fulfillment of children's rights.

Thus, the formulation of the problem in this study is as follows:

1. Is the obligation to provide support to a child after the divorce is born directly according to the law (*ex lege*) or depends on the determination of the judge through a court decision?
2. Has the regulation of child support obligations after divorce shown the harmony between material law and procedural law in ensuring legal certainty in fulfilling children's rights?

Based on the formulation of the problem that has been described, the objectives of this research are as follows:

1. To analyze the position of the obligation to provide alimony to children after divorce as an obligation that is born directly under the law (*ex lege*) or that depends on the determination of the judge through a court decision.
2. To analyze the harmony between material law and procedural law in ensuring legal certainty in the fulfillment of children's rights.

LITERATURE REVIEW

Article 3 of the United Nations Convention on the Rights of the Child (CRC) emphasizes that the best interests of the child must be the main consideration in any action concerning the child. At the national level, Articles 4 and 5 of Law Number 35 of 2014 concerning Child Protection stipulate that the state, society, and parents are obliged to guarantee children's rights and ensure their welfare. This protection covers the physical, mental, and social needs of children, so any legal decision related to children must prioritize their overall well-being and development⁹.

The principle of the best interests of the child is the basis for all provisions of national law that govern the rights and obligations of parents towards children. The obligation of parents

⁹Michael Freeman, *A Commentary on the United Nations Convention on the Rights of the Child Article 3: Best Interests of the Child*, (Leiden: Martinus Nijhoff Publishers, 2007), page 25.

to maintain and provide for children is a legal consequence of a marriage¹⁰. Regarding children, the consequences of marriage are still valid even after divorce has occurred. Childcare may be transferred to one parent, but the other parent remains responsible for supporting the child's life, education, and health needs¹¹. This provision ensures that changes in family status do not reduce the child's right to the fulfillment of the child's best interests as a top priority.

In national law, the obligation of parents to provide child support has been affirmed through various regulations. Article 26 paragraph (1) letter a of Law No. 35 of 2014 concerning Child Protection places parents as the party responsible for maintaining and guaranteeing children's rights. Article 41 letter b of Law No. 1 of 1974 concerning Marriage stipulates that fathers are obliged to bear the cost of living and education of children. For families who follow Islamic law, Article 156 letter d of the Compilation of Islamic Law (KHI) stipulates that the cost of hadhanah and child support is the responsibility of the father according to his ability. These provisions make the child support obligation normative and legally binding¹².

Child support obligations in national law regulations are *ex lege*. The *ex lege* nature asserts that legal obligations arise directly from the statute without the need for additional action¹³. In the case of child support, this means that the parents are obliged to provide maintenance and financial support from the moment the right is born, regardless of whether there is an application in court. This principle emphasizes the normative and binding character of the maintenance obligation, so that children have legally enforceable rights.

Although the obligation to support children is *ex lege*, in the practice of judicial procedural law, this right can only be included in the judgment if requested by the litigant. This is related to the *principle of ultra petita* regulated in Article 178 paragraph (3) of the HIR, namely that the judge only decides what is proposed in the petitum and does not act actively to enforce the obligation that is not requested¹⁴. Therefore, even if not requested in the petitum, the father can ignore the child support application after the divorce.

¹⁰Rene van Weeren, Tine de Moor, *Counting Couples: The Marriage Banns Registers of the City of Amsterdam*, Research Data Journal for the Humanities and Social Sciences. 2021; Volume 8 Number 3, 2021, pages 1-45. doi:10.1163/24523666-06010002.

¹¹Riduan Syahrani, *The Ins and Outs of Civil Law*, (Bandung: Alumni, 2013), page 99.

¹²Muhammad Miftah, et al., *Islamic Law Protection of Child Support After Divorce*, Journal of Progressive Law, Volume 8 Number 7, 2025, pages 14-21.

¹³The Black Law Dictionary translates *ex lege* as a right born or arising not from a treaty, but by law as a result of a legal event (see Bryan A. Garner, *Black Law Dictionary, 9th Edition*, West Publishing, 2009, page 656).

¹⁴The Black Law Dictionary translates *ultra petita* as a judgment given outside of what is requested so that a reinterpretation of the decision can be requested (*ibid*, p. 1662).

The divorce lawsuit is not automatically locked before entering the main examination stage. The substance of the lawsuit cannot be changed by the judge because it is bound by the principle of *ultra petita*, but the results of the mediation stage may include child support obligations even if they are not listed in the *petitum*. This is based on Article 25 of PERMA Number 1 of 2016 concerning Mediation Procedures in Court, which allows for agreement between the parties beyond the formal demands of the lawsuit. With this mechanism, the *ex lege child support obligation* can still be affirmed without violating the limits of procedural law. This condition illustrates the point of tension between the protection of children's rights and the judge's attachment to the event's formal structure.

Amendments to the lawsuit are allowed if they are submitted before the defendant submits an answer, and if there is already an answer from the defendant, then the amendment must be made with the consent of the defendant. The amendment of the lawsuit is regulated in Article 127 of the *Reglement op de Rechtsvordering (Rv)*. The amendment of the lawsuit can be made if it does not contradict the principles of civil law, does not change or deviate from the material incident¹⁵.

The plaintiff has the right to file an amendment to the lawsuit, but only one that reduces or does not add to the basis of the claim and the events on which the claim is based. If the amendment of the lawsuit is in the form of an addition of the basis or event that is the basis of the claim, then it will be very detrimental to the interests of the defendant. Changes to the lawsuit are allowed as long as they do not change the material of the lawsuit, but only the formal aspects of the lawsuit (for example: change or addition of the plaintiff's address, the name of the plaintiff or defendant).

A lot of research has been done on child support obligations after divorce. However, in general, it still places child support obligations separately, both as a normative legal norm and as an empirical practice in its implementation. In a normative perspective, research by Wilnan Fatahillah, et al. emphasized that child support obligations are legal consequences that remain attached to the father even in the event of divorce. This obligation is seen as a legal responsibility that stems from the relationship between parents and children, and cannot be removed by the breakdown of the marriage¹⁶.

¹⁵ Princess Ayu Trisnawati <https://pdb-lawfirm.id/pengaturan-perubahan-gugatan-dalam-hukum-acara-perdata/>, accessed December 18, 2025, at 10.15 WIB).

¹⁶Wilnan Fatahillah, et al., 'Fulfillment of Child Support After Divorce According to a Compilation of Islamic Law and Marriage Law', *Journal of Islamic Studies*, 1.2 (2023), 79–88.

In an empirical perspective, research by Betra Sarianti shows that the level of fathers' compliance in paying child support is still low, even in some cases not in accordance with court decisions.¹⁷ The research by Andriyani et al. concluded that neglect of child support can be qualified as a form of child neglect that has legal consequences.¹⁸

Studies that link maintenance obligations as obligations born directly from the law (*ex lege*) with the limitations of civil procedure law, especially due to the application of the passive principle and *the ultra petita* principle, have not been widely done. As a result, there has not been an analysis that comprehensively explains the relationship between material legal norms and procedural mechanisms in ensuring legal certainty in fulfilling children's rights. Based on this, this study has a novelty that lies in the analysis of post-divorce child support obligations from the perspective of *ex lege* obligations associated with the limitations of civil procedure law.

METHODS

Research that focuses more on the concept of law as a rule is known as a normative or doctrinal juridical type of research¹⁹.

This type of research is used because it does not focus on people's behavior. The focus of the study lies in the analysis of post-divorce child support obligations as obligations born directly from the law (*ex lege*), as well as its relationship with enforcement mechanisms in civil procedure law.

Some approaches that are commonly used in normative juridical research are legislative, conceptual, analytical, comparative, historical, philosophical, and case²⁰ approaches.

The legislative approach was chosen because the main focus is to examine the legal provisions that govern child support obligations, both in the Child Protection Law, the Marriage Law, and the KHI. Conceptual approaches are used to understand legal principles such as the

¹⁷Betra Sarianti, Faculty of Law, and Muhammadiyah University, 'The Level of Compliance of Fathers in Paying Child Support After Divorce', 27.2 (2018), 2013–16.

¹⁸Andriyani et al., Andriyani, 'Intentional Neglect of Child Support by Fathers After Divorce', *Journal of Judicial Review*, 27.1 (2025).

¹⁹Ronny H.S., *Legal Research Methodology and Jurimetry*, (Semarang: Ghalia, 1990), page 15. Regarding the doctrinal approach, Bambang Waluyo explained that the doctrinal approach referred to here is the same as normative legal research or literature research. He explained that it is called doctrinal law research because its main focus is to study written regulations and other legal sources. It is called literature research or document research, because the data source used is only secondary data in the form of legal materials (see Bambang Waluyo, *Legal Research in Practice*, Jakarta: Sinar Grafika, 1996, page 13).

²⁰Johnny Ibrahim, *Theory and Method of Normative Law Research*, (Malang: Bayumedia, 2005), page 300.

best interests of the child and the *principle of ex lege*, as well as the relationship between material law and procedural law in the context of post-divorce child support enforcement.

According to Suteki, in normative (doctrinal) research, the term data is actually not known, but legal material.²¹ This is because, in doctrinal research, only secondary data (literature studies) are used in the form of primary legal materials, secondary legal materials, and tertiary legal materials²².

As a key instrument, a researcher must interact or be directly involved in the scope of research, either by finding, searching, or visiting the location of legal sources such as libraries, offices/agencies, bookstores, campuses, and others²³.

The primary legal materials needed are the Marriage Law Number 1 of 1974, the Child Protection Law Number 35 of 2014, the Compilation of Islamic Law, and the Civil Procedure Law. Secondary legal materials such as books, journals, and other tertiary legal materials such as legal dictionaries are needed as support for researchers in conducting analysis related to the obligation to provide child support after divorce.

Legal Materials Analysis Techniques

In normative or doctrinal juridical law research, analysis is carried out on primary, secondary, and tertiary legal materials. The data obtained is normative text, not numbers or statistics, so the analysis techniques used are qualitative²⁴. All legal materials are then interpreted so that their meaning is known.

Grammatical (literal) interpretation is used to examine the text of the law word by word, ensuring understanding of the formal meaning of related articles, for example, Article 26 of the Child Protection Law, Article 41 of the Marriage Law, and Article 156 of the Civil Code. Meanwhile, systematic interpretation is used to situate the analyzed norms within the unity of the legal system, examining relationships among regulations (for example, between material

²¹ Suteki and Galang Taufani, *Legal Research Methodology (Philosophy, Theory, and Practice)*, (Depok: Rajawali Press, 2020), page 266.

²² Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review*, 17th edition, (Jakarta: RajaGrafindo Persada, 2015), page 13.

²³ Abdulkadir Muhammad, *Law and Legal Research*, (Bandung: Citra Aditya Bakti, 2004), page 81, said that there are three ways to collect legal materials, namely through literature studies, documents, and archive studies.

²⁴ Soerjono Soekantodan Sri Mamudji, *op.cit*, page 12. Afrizal added that the so-called "qualitative" analytical technique in doctrinal research refers to textual and conceptual approaches that are interpretive, not to a qualitative methodological approach in the sense of empirical research (see Zuchri Abdussamad, *Qualitative Research Methods*, Makassar: Syakir Media Press, 2021, page 32).

and procedural law) to obtain a complete understanding of maintenance obligations and their implementation.

Drawing conclusions uses a deductive approach, which starts with a more general legal theory or principle, then analyzes more specific legal material to test or apply that theory to a particular case or phenomenon²⁵.

DISCUSSION

Post-Divorce Child Support Obligations as *Ex Lege Obligations* Normative Arrangement of Child Support Obligations

Normatively, the obligation to provide child support after divorce has been expressly regulated in laws and regulations in Indonesia.²⁶ Law Number 1 of 1974 concerning Marriage emphasizes that both parents are still obliged to maintain and educate the child, with the father responsible for financing. This is explicitly regulated in Article 45 paragraph (1), which states that both parents are obliged to maintain and educate their children as well as possible. This obligation remains valid even if the parents' marriage has broken down, so divorce does not remove the responsibility for the child.

Furthermore, in Article 41 letter (b) of Law Number 1 of 1974, which has been amended by Law Number 16 of 2019, it is emphasized that due to the breakdown of marriage due to divorce, the father is responsible for all costs of child maintenance and education.²⁷ If the father is unable to afford it, then the court can determine that the mother also bears the costs. This provision shows that the maintenance obligation has been determined directly by law, while the role of the court is only complementary in certain conditions.

The Compilation of Islamic Law (KHI) also emphasizes the obligation of child support more specifically.²⁸ Article 80 paragraph (4) states that the husband is responsible for the cost of family living, including children. Then Article 156 letter (d) emphasizes that all costs of hadhanah and child maintenance are the responsibility of the father according to his ability until the child grows up or is able to be independent. This provision strengthens that alimony obligations are legal obligations derived from written norms.

²⁵ Muhaimin, *Legal Research Methods*, (Mataram: Mataran University Press, 2020), page 71.

²⁶ Nurbaedah Nurrohmatul Jannah, 'Juridical Review of Parents' Obligations to Child Support After Divorce Decision (Case Study at the Kediri Religious Court)', *Journal of Law*, 11.1 (2022), 79–85.

²⁷ Alfian Qodri Azizi Nurhadi, 'Philosophical Obligation of Child Support in Indonesian Islamic Up', *Ahwal Syakhshiyah Scientific Journal*, 1.2 (2019).

²⁸ Aldy Darmawan Afrinal, 'Fulfillment of Child Support After Divorce', *Family Law Journal*, 7 (2022).

Law Number 35 of 2014 concerning Child Protection (an amendment to Law Number 23 of 2002) places children as legal subjects whose rights must be protected.²⁹ In Article 26, paragraph (1), it is emphasized that parents are obliged and responsible for nurturing, maintaining, educating, and protecting children. This provision substantially includes the obligation to provide alimony as part of fulfilling the child's basic needs. Thus, the obligation of maintenance is not only an obligation of the parents, but also part of the legal protection of the child guaranteed by the state.

In the perspective of family law theory, alimony obligations are a juridical consequence of the legal relationship between parents and children.³⁰ This obligation is *inherent* and imperative, and cannot be overridden by the parties' will, so it falls under the category of obligations born directly from the law (*ex lege*).

Based on the overall normative arrangement, it can be understood that the obligation to provide child support is an obligation born directly from the law (*ex lege*). This obligation does not depend on the existence of a court decision, but is inherent as a consequence of the legal relationship between parents and children. The role of the court in this case is not to create obligations, but only to affirm and concretize its implementation under certain conditions.

Thus, juridically, the obligation to support children is imperative and directly binding. In this case, it is necessary to distinguish between the existence of maintenance obligations as a material law norm and the mechanism for their enforcement under judicial procedural law.

The Concept of *Ex Lege* Obligations in Family Law

Ex lege liability is an obligation that arises automatically under the law, without the need for legal action.³¹ In the context of family law, the obligation of parents to provide support for their children is a form of *ex lege* obligation that cannot be overridden by any circumstances, including divorce.

Theoretically, this obligation is closely related to the protection of children's rights as a weak party. Children have the right to maintenance and welfare that must be fulfilled by parents

²⁹Tedy Sudrajat, 'Legal Protection of Children's Rights as Human Rights', *Treasure of Legal Journals*, 2011, 111–32.

³⁰Lilik Andaryuni Musbih, 'Reconstruction of the Concept of Parental Responsibility for Children in Unrecorded Marriage: A Normative Study of Islamic Family Law in Indonesia', *Tana Mana Journal*, 6.3 (2025).

³¹I gede hartadi kuniawan Kikey yolanda christina, 'The Absence of Child Custody and Alimony Obligations from the Perspective of Islamic Law Compilation: A Study of Decision Number 3500/PDT. G/2023/PA. JB', *Al-Wasith Journal: Journal of Islamic Law Studies*, 10.2 (2025).

as a consequence of the family's legal relationship.³²Therefore, the obligation to support is not only seen as a moral obligation, but as a legal obligation that has binding force.

However, in the practice of court decisions, these obligations often only acquire concrete force after they are stated in the judgment. This shows that, in practice, *ex lege* obligations require judicial legitimacy to be effectively enforced.

The results of the interview with the judge corroborated this. The judge stated that although the maintenance obligation already exists legally, it cannot be concretely enforced without a court decision. Without a judgment, the entitled party must file a new lawsuit to claim alimony. In addition, the judge also explained that if the father is unable to afford it, the amount of alimony can be adjusted to the economic conditions concerned. This condition shows the tension between *ex lege* legal norms and law enforcement practices that depend on judicial mechanisms.

Child support obligations are conceptually *ex lege* obligations born directly from the law. However, in practice, these obligations depend on the judge's decision to enforce them effectively. This suggests that *the ex lege nature* does not stand entirely on its own in a positive legal system, but rather requires the support of a judicial mechanism. Normatively, the obligation to support children arises directly from the law (*ex lege*), but in judicial practice, it still requires the intervention of judges through decisions as a means of enforcing the law.

Harmony of Material Law and Procedural Law in Ensuring Legal Certainty of Child Support

The Concept of Legal Certainty in the Fulfillment of Children's Rights

Legal certainty is a basic principle that requires clarity of norms, consistency in application, and a guarantee of the law's implementation in practice. In legal doctrine, legal certainty is understood not only as the existence of written rules but also as the law's ability to provide real protection for regulated rights.³³ Legal certainty requires the integration between legal norms and their implementation, so that law does not stop at the textual level, but can be realized in social reality.

In family law, legal certainty serves to ensure the fulfillment of rights and obligations between parents and children. The obligation to support is an integral part of the legal

³²Yeni Sebriyani, 'Legal Protection of Children in Divorce According to the Perspective of Islamic Family Law', *Journal of Islamic Law and Social Institutions*, 5.2 (2023), 1967–76 <<https://doi.org/10.37680/almanhaj.v5i2.3822>>.

³³Rury Sagita and Asep Suherman, 'Protection and Legal Certainty of Post-Divorce Children's Rights', 2.1 (2024), 221–29 <<https://doi.org/https://doi.org/10.62379/5xpya891>>.

protection of children and cannot be ignored. This is in line with Article 26 paragraph (1) of Law Number 35 of 2014 concerning Child Protection, which emphasizes that parents are obliged to nurture, maintain, educate, and protect children.³⁴ This provision shows that the payment of alimony is part of parents' inherent legal responsibility.

Legal certainty is also related to the protection of children as weak parties in family legal relationships. Children have the right to maintenance, education, and welfare, which must be provided on an ongoing basis.³⁵ If these rights are not upheld, the law loses its protective function, rendering the existence of norms ineffective.

In practice, legal certainty is often not achieved even when norms clearly govern it. Various studies show that child support obligations are not always met, even after a court decision.³⁶ This condition indicates a gap between legal norms and their implementation in the field.

Legal certainty in the fulfillment of child support requires support not only from material law, but also from the effectiveness of procedural law as a means of enforcement.³⁷ Without the support of strong procedural mechanisms, imperative norms may not be implemented optimally.

Material Legal Arrangements on Child Support

Material law treats child support obligations as a parent's legal responsibility, binding and nonwaivable. This obligation includes maintenance, education, and the fulfillment of children's overall living needs. This is affirmed in Article 45 of Law Number 1 of 1974 concerning Marriage, which states that both parents are obliged to maintain and educate their children as well as possible.³⁸

In addition, Article 41 letter (b) of Law Number 1 of 1974 jo. Law Number 16 of 2019 states that fathers are responsible for child maintenance and education costs after divorce. This provision shows that the maintenance obligation remains inherent even after the marital relationship has ended.³⁹

³⁴M. Almin Ilman Ilham Tohari Huda, 'Justice and Legal Certainty in the Fulfillment of Children's Rights After Divorce', 13.1 (2025).

³⁵Muhammad Ariful Fahmi and Dzulkifli Hadi Imawan, 'LEGAL PROTECTION AGAINST LIVELIHOOD FULFILMENT', 17.2 (2024), 209–24 <<https://doi.org/10.29123/jy/v17i2.618>>.

³⁶Sarianti, Hukum, and Muhammadiyah.

³⁷Aisyah Ayunda and others, 'The Problem of Legal Protection of Children as Victims of the Fulfillment of Maintenance Rights', 6.2 (2023), 14–24 <<https://doi.org/10.30999/jph.v5i2.2516>>.

³⁸Wilnan Fatahillah.

³⁹Meilan Lestari, et al., 'Post-divorce child support in Indonesia', *Journal of Government Studies (JKP)*, 9.2 (2023), 88–98.

In the Compilation of Islamic Law, this obligation is emphasized in Article 80 paragraph (4) and Article 156 letter (d), which states that the father is responsible for the maintenance of the child according to his ability until the child grows up or is independent.⁴⁰ This regulation shows that the material law has comprehensively regulated the subject of obligation, the scope of obligations, and the period of fulfillment of alimony.

The obligation of maintenance in material law is imperative and has a strong binding force. This norm does not depend on the existence of a court decision but arises directly from the law as a consequence of the legal relationship between parents and children.

Reality shows that the existence of strong norms is not always directly proportional to their implementation. Many cases show that maintenance obligations are not met consistently, creating a gap between legal norms and social practices. This shows that material law cannot fully guarantee legal certainty without procedural legal support.⁴¹

Procedural Law Arrangements in Child Support Cases

Procedural law serves to enforce the rights and obligations established in material law. In child support cases, filing a lawsuit or application is the main requirement to obtain an enforceable court decision.

The role of *petitum* greatly determines the scope of the judge's decision. The judge can only decide based on what the parties have requested, so anything not included in the *petitum* cannot be decided. This principle is in line with the *ultra petita* principle, which limits judges from deciding beyond the demands.⁴²

The principle of passive judges emphasizes that judges cannot act outside of the application submitted. Although this principle maintains the judge's neutrality, in child support cases it can actually limit the protection of children's rights.² This condition shows the limitations of procedural law in ensuring the optimal fulfillment of children's rights.

The execution stage of the decision is a crucial part in ensuring legal certainty. In practice, the execution of child support often faces various obstacles such as economic incapacity, lack

⁴⁰Anjani Sipahutar, 'Parental Responsibility for Child Support After Divorce Decision for Indonesian Citizens Who Are Muslim', *Usu Law Journal*, 4.1 (2022), 152–67.

⁴¹Muh.Jufri Ahmad Dian Ayu Safitri, 'Parental Responsibility for Post-Divorce Child Support', *Journal of Legal Research*, 4.01 (2024).

⁴²Muhammad Panjiraka Siwi, 'The Intersection of Ex Officio Judges and Ultra Petitum Partium in Divorce Cases', *Repository of Multidisciplinary Journals*, 2.6 (2024), 520–25
<<https://doi.org/https://doi.org/10.59435/gjmi.v2i6.605>>.

of fixed income, and weak supervision mechanisms.⁴³ Procedural law plays an important role in bridging norms and practices, but at the same time has limitations in ensuring the effective implementation of alimony obligations.

Potential Disharmonization between Material Law and Procedural Law

Disharmonization occurs when material legal norms do not align with the procedural law mechanism. Material law strictly regulates maintenance obligations, but procedural law limits their enforcement through formal procedures. Alimony obligations are often not invoked in lawsuits, so they are not included in the judge's decision.⁴⁴ This condition causes the obligation not to have executory power to be enforced.

In fact, Article 41 of the Marriage Law emphasizes that the obligation of maintenance still exists even if it is not enforced. This discrepancy indicates a gap between legal norms and judicial practice. As a result, children's rights are not fully realized, even though they are guaranteed by law. Obstacles also arise in the execution stage, which often does not run effectively due to economic factors and a lack of legal awareness. This disharmonization directly affects legal certainty because imperative norms lack adequate guarantees of implementation.

The Role of Court Decisions in Determining Child Support

Court decisions in divorce cases provide legal certainty regarding the parties' rights and obligations. In legal theory, judgments regarding child support are essentially declaratory because they merely affirm pre-existing legal obligations. However, in practice, the judge's decision plays a broader role, namely as a basis for enforcing maintenance obligations.⁴⁵ Without a ruling, these obligations are difficult to enforce legally.

The results of the interview with the judge showed that the judge could not add the maintenance obligation to the verdict if it was not requested, even though the obligation already existed by law. This is because judges are bound by the passive principle and the ultra petita principle, which limit judges from deciding matters not requested. The judge can only encourage the parties to reach an agreement on child support through mediation. If an

⁴³Novendri eka Saputra, 'Execution of Child Support as the Ultimum Remedium for the Default of the Biological Father After Divorce in the Religious Court', *PTA Pekanbaru Research*, 2026.

⁴⁴Renly Aprilia et al., 'Legal Obstacles in Dispute Resolution of Abandoned Children's Maintenance', *Al-Zayn : Journal of Social Sciences and Law*, 4.1 (2026), 6227 <<https://doi.org/https://doi.org/10.61104/alz.v4i1.4127>>.

⁴⁵Sisinta H.Djuli, 'The Convergence of State Law and Sharia: Rereading the Arrangement of Child Support After Divorce', *Judge of the Law Journal*, 6.2 (2025).

agreement is reached, it can be included in the decision. But if not, it must be submitted by way of a formal amendment to the lawsuit.⁴⁶

In addition, the judge emphasized that if the father does not fulfill his maintenance obligations, the legal remedy is to file a new lawsuit or an application for execution if there is already a judgment. The judge's decision does not give rise to a maintenance obligation but serves as an instrument for the concretization and enforcement of existing obligations. Thus, the judgment has a juridical declarative nature but, in practice, a constitutive function, as it determines whether the obligation can be enforced.

Analysis of Judicial Practice

In judicial practice, there is a tendency for child support obligations not to always be part of a divorce decision. This is due to the parties' non-inclusion of maintenance claims in the lawsuit.

The results of the interview with the clerk showed that in the Cirebon City area, only about 10% of divorce cases included child support claims, while the remaining 90% focused solely on the divorce itself. This shows that there is still low legal awareness among the parties on the importance of protecting children's rights.

In addition, the registrar explained that implementing child support is more effective for those with civil servant or SOE/BUMD employee status, because it can be done through a salary deduction mechanism. Meanwhile, in the private sector, the enforcement of alimony depends heavily on the father's good faith, especially when no application for execution is filed.

The registrar stated that, to date, there has been no application for the enforcement of child support at the Cirebon Religious Court. This shows that even though the obligation has been set out in the decision, it is not necessarily implemented. In many cases, these obligations are not fulfilled either for economic reasons or because the right party fails to make collection efforts. This finding is in line with research findings, which state that the main problem in child support does not lie in the existence of obligations, but in their implementation and enforcement.⁴⁷

Empirical data show that *ex lege* child support obligations are not automatically carried out in practice. The low alimony demand in the lawsuit and the absence of execution show that the existence of a judge's decision is an important factor in determining the effectiveness of the

⁴⁶ Interview of the Judge of the Cirebon Religious Court, February 20, 2026 at 10.15

⁴⁷ Interview of the Registrar of the Cirebon Religious Court, March 28, 2026 at 14.29

obligation. This reinforces the idea that, without judicial intervention, *ex lege* obligations are less likely to ensure the fulfillment of children's rights.

Efforts to Realize Legal Harmony

Legal harmony can be realized through judges' role in making legal discoveries (*rechtsvinding*). Judges can use progressive interpretation to provide more optimal protection of children's rights. This approach allows the law to be more responsive to the needs of the community.⁴⁸

The application of the child protection principle needs to be strengthened in every decision. Children's rights must be placed as a top priority in the judicial process. Thus, legal certainty can be more guaranteed.⁴⁹In addition, it is necessary to strengthen regulations in regulating child support obligations. This aims to improve the effectiveness of implementing these obligations.

Improving judicial practices is also an important step, especially in terms of the execution of judgments. Supervision and law enforcement mechanisms need to be strengthened. This aims to ensure the decision is implemented.⁵⁰Harmony between material law and procedural law can be achieved through the integration of norms and practices. This effort is important to ensure legal certainty in the fulfillment of children's rights.

CONCLUSION

Based on the results of the research and discussion, it can be concluded:

1. The obligation to provide child support after divorce juridically is an obligation that is born directly from the law (*ex lege*) and is inherent as a consequence of the legal relationship between parents and children. However, in judicial practice, this obligation cannot necessarily be enforced without a judge's decision that includes it in the ruling; in practice, its enforcement depends on judicial legitimacy to have executory power.
2. The regulation of child support obligations after divorce has not shown harmony between material law and procedural law. Material law has regulated obligations expressly and

⁴⁸R. Zainuddin, Z., Ramadhani, 'Legal Discovery (Rechtsvinding) by Judges in Realizing Justice for Children After Divorce', *Legal Journal*, 5.2 (2023).

⁴⁹A.D. Pratiwi, 'Protection of Children's Rights: Analysis of Judges' Decisions in Madhiyah and Child Support Cases', *Journal of Islamic Justice*, 21.1 (2024).

⁵⁰N.e Saputra, 'Optimizing the Role of Bailiffs in the Execution of Child Support Decisions in the Digital Era', *PTA Pekanbaru Law Review*, 8.1 (2026).

imperatively, but procedural law limits their enforcement through the principles of passive and *ultra petita*, so that these obligations are not always included in the judgment if they are not requested. This condition contributes an weak legal certainty and the suboptimal fulfillment of children's rights.

Advice

1. Policies that provide convenience in the execution of child support, especially through exemption or relief of execution fees, considering that high costs are often an obstacle for parties who have the right to demand the implementation of the judgment.
2. There is a need for special provisions in the civil procedure law that accommodate child support obligations as a legal consequence that is *ex lege*, without overriding the principle of *ultra petita*. This arrangement can take the form of provisions that allow the judge to consider the best interests of the child through the obligation to provide child support.

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