

## THE APPLICATION OF JOINT CUSTODY CONCEPT IN RELATION TO THE CUSTODY OF THE CHILD

Edrick Edwardina Effendy

EEE Lawyers, Indonesia

email: edrick.effendy@eeelawyers.com

### Article Info

#### Article History:

Submitted: 23 February 2024

Revised: 13 March 2024

Published: 22 June 2024

#### Keywords:

Child Custody; Execution of Court Decisions; Joint Custody

#### DOI:

<http://dx.doi.org/10.1966/1p.v2i1.8029>

### Abstract

In Indonesia, the execution of court decisions regarding child custody is still a matter of debate among legal experts because the object is a person (human), not an inanimate object. This research will focus on discussing how regulations and execution of court decisions regarding child custody are carried out as well as how the concept of joint custody can be applied to minimize disputes related to child custody. This research is normative juridical research with a statutory and conceptual approach. Even though there are no regulations in Indonesia that comprehensively regulate child custody or its execution, the execution related to child custody can still be carried out guided by generally applicable procedures regarding execution of court decisions. The execution of child custody rights carried out in this way has a low level of success and is prone to causing problems where children's rights which should be protected are violated. For this reason, it is hoped that the concept of joint custody can be applied to minimize the emergence of disputes related to child custody.

## 1. INTRODUCTION

Humans as *zoon politicon* contain the meaning that humans in living their lives are always in need of other humans to meet their needs. The interaction between humans will continue until it reaches a complex order called society. The smallest part of a society is a family consisting of a father, mother, and their offspring as a result of a marriage. Marriage according to Law Number 1 of 1974 concerning Marriage is a bond of birth and mind between husband and wife held in order to form a happy and eternal family based on the belief in the one and only God.

Although the Marriage Law mandates that every marriage to be held for the achievement of an eternal and happy family, but in reality, *das sein* does not always reflect what is aspired in *das sollen*. Every marriage contains the potential for conflict between married couples that could fracture family relationships between them. There are times when the conflict between husband and wife are so complicated and great that there is not

a way out or an alternative solution other than severing the marriage through divorce based on a court decision.<sup>1</sup>

One of the legal problems arising from the breakup of marriage due to divorce is related to who has the right to take care of underage children. In divorce, often the child is the most disadvantaged party. This is because through divorce, children have the potential to lose the love that should be obtained from both parents.<sup>2</sup> Children as parties who receive the effects of domestic disputes between their parents, are often also treated like objects that can be freely contested and shared by both parents.<sup>3</sup>

Husbands and wives in conducting a divorce must determine to whom the right to child custody is granted. But in this process, it is not uncommon for disputes between husband and wife to occur so that eventually child custody must be decided by the court. A judge in considering to whom custody of the child should be granted must be based on the best interests of the child. However, the problem does not stop at the court decision. In practice, often the losing parent does not carry out the court decision voluntarily, therefore the execution of child custody must be enforced by the court.

In Indonesia, the process of enforcing court decisions regarding child custody is still an enigma among legal experts because the lack of regulations that regulate comprehensively concerning child custody after divorce and the dichotomy between legal experts regarding whether or not the execution of court decisions concerning child custody is permissible. There are legal experts who argue that the execution of child custody cannot be carried out on the basis that so far the practice of an execution of court decisions has only been applied to inanimate objects, not humans. While on the other hand there are legal experts who argue that the execution of court decisions regarding child custody can be carried out on the grounds that the decision regarding child custody is a punitive decision (condemnatoir).

Based on what described above, the author felt compelled to conduct research about the execution of court decisions and application of joint custody within the scope of child custody by trying to answer the following questions: how are the regulations regarding child custody in Indonesian positive law; how does the execution of court decisions regarding child custody carried out; and how are the application of joint custody as an alternative resolution to child custody disputes.

## 2. METHOD

This research is a normative juridical research, which is research conducted to examine and review law as norms, rules, legal principles, legal doctrines, legal theories, and other literature to answer the legal problems studied.<sup>4</sup> This research uses a statutory approach and a conceptual approach. The statutory approach is carried out by reviewing applicable legal provisions and relating them to the problems studied. The conceptual approach is

---

<sup>1</sup> Chandra Darusman S, M. Ikhwan Adabi, Apri Rotin Djusfi, Phoenna Ath Thariq, Eza Aulia, Rahmat Jhowanda, and Liza Agnesta Krisna, "Eksekusi Putusan Pengadilan Agama Yang Belum Inkracht Berkenaan Dengan Hak Asuh Anak," *Arena Hukum: Jurnal Ilmu Hukum* 16, no. 1 (April 2023): 174, <https://doi.org/10.21776/ub.arenahukum.2023.01601.9>.

<sup>2</sup> Titania Britney Angela Mandey, Karel Yossi Umboh, and Deine R. Ringkuangan, "Hak Pengasuhan Anak Akibat Terjadinya Perceraian Menurut Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan," *Lex Privatum* 9, no. 9 (August 2021): 63, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/36568>.

<sup>3</sup> Chandra Darusman S, *Op. Cit.*, 174.

<sup>4</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 48.

carried out when researcher does not build arguments based on existing legal provisions due to the lack of regulations related to the topic concerned or the problem studied. The data collection method used in this study is library research by studying various reading sources on the problem under study such as books, journals, articles, and other materials all of which are analyzed qualitatively.

### 3. RESULTS AND DISCUSSION

#### 3.1 Regulations Related to Child Custody in Indonesian Positive Law

Marriages according to Article 199 of the Civil Code can be dissolved due to death, absence of husband or wife, separation of table and bed, and divorce. The same thing is also stipulated in Article 38 of the Marriage Law where it is stated that marriage can be broken up due to death, divorce and by court decision. Divorce can be interpreted as a break in the bond of birth and mind between husband and wife, resulting in the breaking of the bond or family relationship between husband and wife.<sup>5</sup> If the husband and wife who will carry out the divorce have an offspring, then one of the legal problems that will arise is related to the right to care for the child. What is meant by a child in the context of parenting is an underage child whose age limit differs depending on the provisions of the regulations that govern it. Regulations related to child custody in Indonesia's positive law can be found in the Marriage Law, the Compilation of Islamic Law (KHI) and Act Number 35 of 2014 concerning Amendments on Act Number 23 of 2002 concerning Child Protection, the explanation of which will be described as follows:

##### 3.1.1 According to Act Number 1 of 1974 concerning Marriage

In the Marriage Law, provisions that allude to child custody rights are contained in Article 41 related to the legal consequences of the breakup of marriage due to divorce. According to the article, the legal consequences of the breakup of marriage due to divorce are: 1) The mother and father are still obliged to provide education and care for their children based on the interests of the child. However, if there is a dispute regarding the possession of the child, the court has the right to give the final decision; 2) The father bears responsibility for all costs of the child's care and education. However, if it is found that the father is unable to fulfill the obligation, the court may determine that the mother also participated in fulfilling the obligation; 3) The court has the right to impose the obligation to provide living expenses and/or other obligations to both the former husband and the former wife.

Based on the description of the Article mentioned above, it can be concluded that the relationship between parents and children is not broken even though the husband and wife are divorced.<sup>6</sup> Article 41 jo. Article 45 of the Marriage Law affirms that both parents are still obliged to provide the best education and care for their underage children even though the marriage between husband and wife has been broken. In the Marriage Law, what is meant by an underage child is a child who has not reached the age of 18 (eighteen) years or has never been married as stipulated in Article 50 of the Marriage Law. Although the Marriage Law has provided some form of protection for the needs of children after the divorce of their parents, but unfortunately the Marriage Law is not clearly regulated regarding the provision

---

<sup>5</sup> Titania Britney Angela Mandey, *Op. Cit.*, 65.

<sup>6</sup> *Ibid.*, 67.

of child custody rights. The granting of child custody rights in the Marriage Law is only mentioned in Article 41 paragraph (1) where it is stated that disputes between fathers and mothers related to the rights of child custody are resolved through a court decision.

### 3.1.2 According to the Compilation of Islamic Law (KHI)

In Islamic Law, there is a terminology known as *hadhanah*. *Hadhanah* is Arabic for "child rearing", which means to care, nurture and educate children who have not been able to take care of themselves.<sup>7</sup> M. Yahya Harahap stated that child rearing includes two things, namely: 1) The responsibility of parents to supervise and provide proper services and meet the needs of children's lives; 2) Responsibility in the form of continuous sustenance until the child reaches adulthood and can take care of themselves.<sup>8</sup> While the encyclopedia of Islamic Law explains that *hadhanah* is the care of children who have not or cannot live independently by meeting their needs, keeping them away from danger, providing physical and psychological education, and developing their intellectual abilities to prepare them to assume the responsibilities of life.<sup>9</sup>

The right to custody of children in the Compilation of Islamic Law is contained in Article 105 which stipulates that in the event of divorce, then: 1) The custody of children who are not yet *mumayyiz* (able to determine good and bad) or haven't reach the age of 12 (twelve) years old is the right of the mother; 2) The custody of a *mumayyiz* child is left to the child to decide between his father or mother as the holder of the right of custody; 3) custody fees are charged to the father.

According to Article 105 of the Compilation of Islamic Law mentioned above, if a child is not yet 12 (twelve) years old, then the right of custody automatically falls to the mother. This is because women are believed to be more worthy to care for children for there is an assumption that women are more gentle, patient and more capable to show affection in caring for and educating children.<sup>10</sup> However, the primacy of a mother's rights is only determined if she meets the conditions for carrying out the *hadhanah* namely being reasonable, mature, trustworthy and virtuous, having the will and ability to care for children, being Muslim, and not marrying or having a husband for the second time. If these conditions are not met, the custody rights will pass to the father.<sup>11</sup> If the father is not available, then the one who has the right to care for and educate the child is the mother's sister.<sup>12</sup> In the event that the court grants custody to the mother, then the father must give up custody voluntarily and must not take custody forcibly. In the event of a dispute related to child custody arise, the party who gets the right of custody can apply for the execution of child custody to the court.<sup>13</sup>

---

<sup>7</sup> Zulfan Efendi, "Pelaksanaan Eksekusi Hak Asuh Anak (Hadhanah) Terhadap Isteri Yang Muratad dalam Perkara Nomor: 398/P.dt.G/2013/PA.Pbr di Pengadilan Agama Pekanbaru)," *TERAJU: Jurnal Syariah dan Hukum* 2, no. 1 (March 2020): 6, <http://dx.doi.org/10.35961/teraju.v2i01.62>.

<sup>8</sup> *Ibid.*, 7-8.

<sup>9</sup> M. Yahya Harahap, *Hukum Perkawinan Nasional* (Medan: CV Zahir Trading, 1975), 6-7.

<sup>10</sup> Titania Britney Angela Mandey, *Op. Cit.*, 68.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> Nelly Layaliyal Fitri, "Eksekusi Hak Asuh Anak di Dua Wilayah Yurisdiksi Perspektif Undang-Undang Perlindungan Anak No 35 Tahun 2014 (Studi Putusan Nomor 1813/Pdt.G/PA. Kab. Kediri)," *SAKINA: Journal of Family Studies* 3, no. 1 (December 2019): 7, <http://urj.uin-malang.ac.id/index.php/jfs/article/view/350>.

Based on the descriptions above, it can be concluded that in Islamic Law, the mother is preferred to be given the right to care for the child if the child is under the age of 12 (twelve) years. However, this does not apply absolutely, meaning it must be seen first whether the mother has fulfilled the conditions to perform *hadhanah*. This shows that just like the Marriage Law, the provisions regarding child custody rights stipulated in the Compilation of Islamic Law also emphasize such parenting in the best interests of the child. Only after a child has been considered as *mumayyiz* or is 12 (twelve) years old is he/she allowed to choose whether to follow his/her father or mother.

### 3.1.3 According to Law Number 35 of 2014 concerning Amendments on Law Number 23 of 2002 concerning Child Protection

Law Number 35 of 2014 as a result of adaptation of the Convention on the Rights of the Child both contain the basic principles of protection of children's rights, namely: non-discrimination, best interests for children, respect for children's opinions, the right to live, grow and develop.<sup>14</sup> Just like the provisions in the Marriage Law that require parents to properly care and educate their children, the same is also regulated in Article 26 paragraph (1) of Act Number 35 of 2014 concerning the obligations and responsibilities of parents to: 1) care, nurse, educate and protect their children; 2) develop their children in accordance with their abilities, talents and interests; 3) prevent child marriage; 4) provide character education and ethics education to their children.

Although Law Number 35 of 2014 has provided protection for children's rights that must be fulfilled by their parents, Law Number 35 of 2014 does not have clear a regulations regarding child custody rights. The only article that concerns the right to custody for children after divorce in Law Number 35 of 2014 is in Article 14 which paragraph (1) stipulates that every child has the right to be cared for by his own parents, unless there are valid reasons and/or rules that show that separation is the best way for the interests of the child and is the last consideration. Meanwhile, Article 14 paragraph (2) of Act Number 35 of 2014 regulates the rights of children after divorce, namely: 1) a child still have the right to meet and bond with both parents; 2) a child has the right to receive care and education from both parents in accordance with the child's abilities, interests, and talents; 3) a child is entitled to living expenses from both parents; 4) a child has the right to obtain any other rights of child according to existing law.

## 3.2 Execution of Court Decisions Regarding Child Custody

Divorce is the termination of marital relations based on a divorce lawsuit filed by one party to the court provided that there are sufficient reasons to prove that the husband and wife can no longer live harmoniously as a family. As according to Article 39 paragraph (1) of the Marriage Law, divorce can only be carried out before a court hearing after the court concerned fails to reconcile both parties.

The end process of examining a case in court according to the provisions of Article 178 HIR/189 RBg is by the imposition of a decision by the Panel of Judges. With the passing of the decision, it is hoped that problems or disputes can be resolved. The decision handed

---

<sup>14</sup> Titania Britney Angela Mandey, *Op. Cit.*, 69.

down by the court must certainly be enforceable for if it is not executable, then the decision of the court is meaningless.<sup>15</sup>

In general, court decisions that can be enforced or executed are court decisions that have legally binding status (*inkracht van gewijsde*). According to M. Yahya Harahap in his book, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, a court decision that can be executed must be a decision that has obtained a legally binding status because only in a decision that has legally binding status are there still a form of a permanent and definite legal relationship between the litigants.<sup>16</sup>

In judicial practice in Indonesia, there are two ways to carry out court decisions, namely voluntarily or by force. Execution is basically a coercive act to carry out or implement a court decision that has legally binding status. In practice, often the losing party is dissatisfied with the judgment handed down by the court that they are reluctant to carry out the decision voluntarily. For this reason, the party won by the court may apply for execution either in writing or orally to the court so that the decision will be implemented forcibly.<sup>17</sup>

In Indonesia, although there is no law that regulates the execution of court decisions relating to child custody rights, this does not mean that such rulings cannot be enforced. Instead, its enforcement must be carried out in accordance with generally applicable law.<sup>18</sup> The process of execution of a court decision regarding child custody can generally be described as follows: 1) The prevailing party in the court's decision submits an application for an execution to the court where the case is examined, trialed and decided; 2) The Chief Justice summons the respondent of the execution to be reprimanded (*aanmaning*) to carry out the judge's decision within a period of eight days as stipulated in Article 207 RBg and if the respondent of the execution still has not carry out the judge's decision after the expiration period aforementioned, then; 3) The Chief Justice shall issue an execution warrant whereby the court decision shall be enforced by the bailiff assisted by two witnesses as provided in Article 210 paragraph (2) RBg; 4) The bailiff will take the child in a courteous manner and in accordance with the prevailing customs and if the child is not handed over by the respondent, then the taking may be forcibly made; 5) The bailiff shall produce a Minutes of Execution signed by the bailiff and two witnesses.<sup>19</sup>

The execution of court decisions relating to child custody right is an execution that is classified as a real form of execution, namely execution that requires concrete actions to be taken. However, execution related to child custody in practice often experiences obstacles due to the object being in the form of a person, therefore the success rate of the execution is still relatively low compared to an execution in which the object is an inanimate object.<sup>20</sup> Until now, there is still a dichotomy among legal experts regarding the execution of court decisions related to child custody. There are legal experts who argue that child custody decisions cannot be executed on the grounds that the practice of execution so far has only

---

<sup>15</sup> Rai Mantili, "Kajian Hukum Terhadap Pelaksanaan Eksekusi Anak Oleh Pengadilan Agama Dalam Suatu Putusan Perceraian," *KEADILAN: Jurnal Fakultas Hukum Universitas Tulang Bawang* 2, no. 2 (August 2022): 100-101, <https://doi.org/10.37090/keadilan.v20i2.725>.

<sup>16</sup> M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata* (Jakarta: Sinar Grafika, 2005), 99.

<sup>17</sup> Rai Mantili, *Op. Cit.*, 101.

<sup>18</sup> Salsabillah Nilam Zahra, I Nyoman Sujana, and Ni Made Puspasutari Ujianti, "Implikasi Yuridis Perceraian Terhadap Hak-Hak Anak Dalam Perspektif Hukum Islam (Studi Kasus Pengadilan Agama Denpasar)," *Jurnal Konstruksi Hukum* 4, no. 3 (September 2023): 257, <https://doi.org/10.55637/jkh.4.3.8032.253-260>.

<sup>19</sup> Chandra Darusman S, *Op. Cit.*, 184.

<sup>20</sup> Rai Mantili, *Op. Cit.*, 103.

been applied to inanimate objects, not people. Therefore, decisions related to child custody are often inexecutable especially if the decisions are "declaratoir".<sup>21</sup> On the other hand, there are also legal experts who argue that the execution of court decisions related to child custody can be carried out on the basis that the decisions are "condemnatoir" (punitive) in the sense that there is something that can be done in real terms by the losing party. So that if the decision is legally binding then it can be executed.<sup>22</sup>

In the execution of a court decisions related to child custody, there are several things that can hinder the smooth running of the execution process, for example: 1) The child is reluctant to be handed over or hidden by the execution respondent, causing the child's whereabouts to be unknown and difficult to find his/her whereabouts; 2) The child prefers to follow the execution respondent which means the court cannot force the execution for it would contravene Article 3 paragraph (1) of the Convention on the Rights of the Child which affirms that any action related to the child carried out by the institution of the court must put the best interests of the child as the primary consideration; 3) The cost of execution is expensive because in order for the execution to be carried out, the execution applicant is required to pay costs such as the cost of registering the execution, the fees of witnesses, security costs, and other costs deemed necessary for the execution;<sup>23</sup> 4) The legal instrument governing the execution of child custody is unclear which means there is still a legal vacuum in this regard.

In addition, in the execution of the court decision, the bailiff must also consider the psychological factors of the child. This is because children are individuals who possess self-awareness and rights that must be protected, not lifeless objects that can be executed carelessly. Therefore, the execution of child custody requires careful planning and a more sensitive approach, so that the execution itself does not leave a bad and frightening impression which could left a traumatic impact on the child.<sup>24</sup>

### 3.3 Joint Custody as an Alternative Resolution to Custody Child Disputes

The right to child custody by parents has changed a lot along with time and mindset of society. In the early nineteenth century, the right of custody was believed to be more appropriately fall to the father as the party who had the financial capacity to care for the child. But this eventually shifted to the mother on the basis that the mother is the one who has the emotional capacity to care for children who are still in tender years. This certainly does not apply absolutely, for instance in the event that the mother is proven to be incompetent and unable to provide nurturing and fulfillment of the rights of the child as it should.<sup>25</sup>

In the 1970s, mental health experts argued that the right course of action to take in sole custody was to give the right of custody to the parent who psychologically has a closer emotional bond with the child as a primary consideration. However, along with the

---

<sup>21</sup> Salsabillah Nilam Zahra, *Op. Cit.*, 257.

<sup>22</sup> Rai Mantili, *Op. Cit.*, 103.

<sup>23</sup> Laily Lukita Nilam Sari, Wasis Suprayitna, and Kukuh Dwi Kurniawan, "Pelaksanaan Eksekusi Hak Asuh Anak Dalam Perkara Perceraian (Studi Kasus Putusan No 1618/PDT.G/2020/PA.SMP)," *ILREJ: Indonesia Law Reform Journal* 2, no. 2 (July 2022): 177, <https://doi.org/10.22219/ilrej.v2i2.22075>.

<sup>24</sup> Salsabillah Nilam Zahra, *Op. Cit.*, 258.

<sup>25</sup> Rika Saraswati, Emanuel Boputra, and Yuni Kusniati, "Pemenuhan Hak Anak di Indonesia Melalui Perencanaan Pengasuhan, Pengasuhan Tunggal dan Pengasuhan Bersama," *Veritas et Justitia* 7, no. 1 (2021): 190-191, <https://doi.org/10.25123/vej.v7i1.4066>.

development of the era where many women began to be busy working and many fathers began to fight for the custody of their children encouraged the emergence of a custody concept that involves the active participation of both parents commonly called joint custody.<sup>26</sup>

Legal psychology distinguishes child custody needs into two, namely legal custody and physical custody. Legal custody is a right related to decision making that will have a major impact on the development of a child, for example where the child will get his/her education, where the child will get medical treatment, and so on. Whereas physical custody today refers more to which parent's place will the child live or spend more of their time.

Edward Kurk in his book, *Child Custody, Access and Parental Responsibility: The Search for a Just and Equitable Standard*, specifies four pillars in the implementation of joint custody, namely:

1. Harm Reduction: Legal Presumption of Joint Parental Responsibility

This first pillar establishes the legal understanding that the relationship or bond that already exists between parents and children will remain and continue even after divorce. This pillar is aimed at maximizing the participation of both parents in the lives of their children after divorce. Child custody that is carried out by both parents will provide a balanced division of parenting time and effort and give each parent a respite from full-time childcare. It is also aimed at maximizing cooperation and reducing conflicts between parents after divorce, and most importantly, to prevent child poverty after the divorce of their parents.<sup>27</sup>

2. Treatment: Parenting Plans, Mediation, and Support/Intervention in High Conflict Cases

This second pillar talks about the implementation of parenting planning before divorce cases are examined by the court.<sup>28</sup> In Indonesia, every civil lawsuit that goes to the district court must first be preceded by mediation efforts. Which is given more emphasis, especially on divorce lawsuits. Today, the existing pre-divorce mediation still focuses on the will of the parties to divorce or not. Given that the function of judges as mediators according to Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court is to inventorize existing problems and discuss them based on priority scales, the judge as a mediator must remind the fulfillment of the needs and interests of the children of the husband and wife who are about to divorce. Therefore, a judge when assigned as a mediator in divorce cases, should require the parties to make a joint parenting plan. Making a mutual agreement related to parenting planning in the event of unsuccessful mediation is necessary for the parenting plan that has been made will be brought into the court process and will get a legal force that is expected to be able to provide protection for children's rights, especially related to care and education.<sup>29</sup>

The parenting plan includes parenting schedules and all legal issues related to parents' obligations to the rights of their children. This plan lays down the responsibility of each parent for meeting the needs of their children and also

---

<sup>26</sup> Rika Saraswati, *Op. Cit.*, 191.

<sup>27</sup> Edward Kurk, *Child Custody, Access and Parental Responsibility: The Search for a Just and Equitable Standard* (Vancouver: University of British Columbia Press, 2008), 60.

<sup>28</sup> *Ibid.*, 62.

<sup>29</sup> Rika Saraswati, *Op. Cit.*, 206.



contains matters related to resolution in the event of disputes between parents arise in the future.

Regarding the parenting time contained in parenting plans, it means that there is a certain period of time where the children will live or under the supervision and care of each parent. Through the parenting plan, it is hoped that children's rights can be guaranteed where periodically children will get meaningful contact with each parent.<sup>30</sup>

### 3. Prevention: Joint Parenting Education

This third pillar emphasizes the importance of education or counseling related to joint parenting/joint custody. Counseling related to this matter can be applied or carried out both in the educational curriculum, before marriage, and in divorce.<sup>31</sup> Joint parenting education is a program aimed primarily at parents with the hope that after divorce, parents can find and agree on their respective roles in the parenting planning scheme. In this case, the focus of the matter is not "who" is more entitled to the right of custody, but "how" the best parenting can be done.<sup>32</sup>

### 4. Execution: Judicial Determination in Cases of Established Abuse; Execution of Joint Parental Responsibility Orders

In relation to disputes between parents regarding child custody and parenting plan, the last pillar talks about the imposition of sanctions in the event of non-compliance or violation of parenting plan that has been made and agreed. When a parenting plan has a legally binding force in which a child must spend time with one parent for a certain period of time and the other parent refuses to comply with the plan and thus interferes with the first parent's time, then in this case, enforcement efforts must be taken. When enforcement efforts are required, the results may be in the form of reduction or elimination of time or parenting rights, or it may also be: 1) The obligation for the offending parent to give more parenting time to the parent whose parenting time is interrupted or reduced; 2) the right to charge payment against costs incurred in violations of parenting plan; 3) Imposition of court case costs on the offending party; 4) Discretion to impose sanctions for any violation of parenting plan.<sup>33</sup>

## 4. CONCLUSION

The absence of a definitive legal regulation related to the granting of child custody right and execution procedures related to this matter has the potential to cause various problems considering that the object in the context of a custody right is a child who possess consciousness and feelings, not just an inanimate object that can be executed freely and carelessly. To avoid this from happening, the concept of joint custody can be applied to safeguard the interests of children. In joint custody, both parents can still actively provide care and education even though they are no longer bound by marriage. On the other hand, the child can still receive affection while simultaneously maintaining harmonious family relationships with both parents.

---

<sup>30</sup> *Ibid.*, 204.

<sup>31</sup> Edward Kurk, *Op. Cit.*, 68.

<sup>32</sup> Maghfirah and Gushairi, "Konsep Shared Parenting Dalam Hadhanah Pasca Perceraian: Kajian Perundang-Undangan Perkawinan Islam Kontemporer," *Hukum Islam* 20, no. 2 (December 2020): 198-199, <http://dx.doi.org/10.24014/jhi.v20i2.12169>.

<sup>33</sup> Edward Kurk, *Op. Cit.*, 69-71.

## REFERENCES

### Laws and Regulations

*Het Herziene Indonesisch Reglement.*

*Reglement voor de Buitengewesten.*

*Kitab Undang-Undang Hukum Perdata.*

*Kompilasi Hukum Islam.*

*Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.* Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019.

*Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.* Lembaran Negara Republik Indonesia Tahun 2014 Nomor 297, Tambahan Lembaran Negara Republik Indonesia Nomor 5606.

*Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan.* Berita Negara Republik Indonesia Tahun 2016 Nomor 175.

### Books

Harahap, M. Yahya. *Hukum Perkawinan Nasional.* Medan: CV Zahir Trading, 1975.

Harahap, M. Yahya. *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata.* Jakarta: Sinar Grafika, 2005.

Kurk, Edward. *Child Custody, Access and Parental Responsibility: The Search for a Just and Equitable Standard.* Vancouver: University of British Columbia Press, 2008.

Muhaimin. *Metode Penelitian Hukum.* Mataram: Mataram University Press, 2020.

### Journal Articles

Efendi, Zulfan. "Pelaksanaan Eksekusi Hak Asuh Anak (Hadhanah) Terhadap Isteri Yang Murtad dalam Perkara Nomor: 398/P.dt.G/2013/PA.Pbr di Pengadilan Agama Pekanbaru." *TERAJU: Jurnal Syariah dan Hukum* 2, no. 1 (March 2020): 1-34. <http://dx.doi.org/10.35961/teraju.v2i01.62>.

Fitri, Nelly Layaliyal. "Eksekusi Hak Asuh Anak di Dua Wilayah Yurisdiksi Perspektif Undang-Undang Perlindungan Anak No 35 Tahun 2014 (Studi Putusan Nomor 1813/Pdt.G/PA. Kab. Kediri)." *SAKINA: Journal of Family Studies* 3, no. 1 (December 2019). <http://urj.uin-malang.ac.id/index.php/jfs/article/view/350>.

Maghfirah and Gushairi. "Konsep Shared Parenting Dalam Hadhanah Pasca Perceraian: Kajian Perundang-Undangan Perkawinan Islam Kontemporer." *Hukum Islam* 20, no. 2 (December 2020). <http://dx.doi.org/10.24014/jhi.v20i2.12169>.

- Mandey, Titania Britney Angela, Karel Yossi Umboh, and Deine R. Ringkuangan. "Hak Pengasuhan Anak Akibat Terjadinya Perceraian Menurut Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan." *Lex Privatum* 9, no. 9 (August 2021): 63–72. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/36568>.
- Mantili, Rai. "Kajian Hukum Terhadap Pelaksanaan Eksekusi Anak Oleh Pengadilan Agama Dalam Suatu Putusan Perceraian." *KEADILAN: Jurnal Fakultas Hukum Universitas Tulang Bawang* 2, no. 2 (August 2022): 91–106. <https://doi.org/10.37090/keadilan.v20i2.725>.
- Darusman S., Chandra, M. Ikhwan Adabi, Apri Rotin Djusfi, Phoenna Ath Thariq, Eza Aulia, Rahmat Jhowanda, and Liza Agnesta Krisna. "Eksekusi Putusan Pengadilan Agama Yang Belum Inkracht Berkenaan Dengan Hak Asuh Anak." *Arena Hukum: Jurnal Ilmu Hukum* 16, no. 1 (April 2023): 174–190. <https://doi.org/10.21776/ub.arenahukum.2023.01601.9>.
- Saraswati, Rika, Emanuel Boputra, and Yuni Kusniati. "Pemenuhan Hak Anak di Indonesia Melalui Perencanaan Pengasuhan, Pengasuhan Tunggal dan Pengasuhan Bersama." *Veritas et Justitia* 7, no. 1 (2021): 188–210. <https://doi.org/10.25123/vej.v7i1.4066>.
- Sari, Laily Lukita Nilam, Wasis Suprayitna, and Kukuh Dwi Kurniawan. "Pelaksanaan Eksekusi Hak Asuh Anak Dalam Perkara Perceraian (Studi Kasus Putusan No 1618/PDT.G/2020/PA.SMP)." *ILREJ: Indonesia Law Reform Journal* 2, no. 2 (July 2022): 166–181. <https://doi.org/10.22219/ilrej.v2i2.22075>.
- Zahra, Salsabillah Nilam, I Nyoman Sujana, and Ni Made Puspasutari Ujianti. "Implikasi Yuridis Perceraian Terhadap Hak-Hak Anak Dalam Perspektif Hukum Islam (Studi Kasus Pengadilan Agama Denpasar)." *Jurnal Konstruksi Hukum* 4, no. 3 (September 2023): 253–260. <https://doi.org/10.55637/jkh.4.3.8032.253-260>.

### **International Convention**

*The United Nations Convention on the Rights of the Child.*