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Implication of condemnatoir verdict in the case of child custody rights in the legal way of The Denpasar Agency (Case study of case No. 358/PDT. G/2023/PA. DPS)

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ABSTRACT

This study aims to find out the implications of condemnatoir decisions in child custody cases in the jurisdiction of the Denpasar Religious Court, and the obstacles faced in the implementation of the execution of child custody decisions in this jurisdiction. The study employs both normative and empirical approaches, focusing on the norm vacuum regarding the enforcement of Hadhanah (child custody) decisions. The data analysis involves a legal analysis of the normative sources to interpret and evaluate the current laws, complemented by qualitative analysis of empirical data to identify patterns, issues, and challenges in the execution process. The research offers valuable insights into the practical difficulties of enforcing child custody rulings, which could inform legal reforms or improvements in the judicial process to better protect the interests of the child and ensure compliance with judicial decisions.

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INTRODUCTION

The Religious Court as one of the four judicial institutions in Indonesia, has the duty and authority to examine, decide, and resolve cases at the first level between people of the Islamic religion in Marriage, inheritance, will, *Hibah*, *Waqf*, Zak at, *Infaq*, *Shadaqah*, and Sharia Economics. In the authority of the field of marriage, including resolving the case of Child Custody (*Hadhanah*). This is based on the provisions of Article 49 of Law Number 7 of 1989, as amended first by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009 concerning Religious Justice.

Hadhanah is always associated with the obligation of parents to their children in the context of *Nasabiyah* (genetic relationship). Meanwhile, the person who is cared for has the right to their genetic parents. Thus, the talk about *Hadhanah* always limits itself to the obligations of biological parents to their children due to a valid marriage and the responsibility of the husband when he has divorced his wife who gave birth to his children.

The *Fiqh* scholars (Muslim scholars) define *Hadhanah* as taking care of children who are still young, both boys and girls, or who are grown up but not yet mumayyiz (children who can distinguish between good and bad), providing something that makes their good guard against something that hurts and damages them, educating their body and spirit and intellect, so that they can stand up face life and take responsibility. In this case, it also contains the meaning of education for children (Ghazaly, 1980).

In principle, those who have the rights and obligations of *Hadhanah* are the parents of the child (father and mother), as stated in Article 77 paragraph (3) of the Compilation of Islamic Law, "Husband and wife bear the obligation to nurture and maintain their children, both regarding their physical, spiritual, intellectual and educational growth". For the benefit of children, a caring attitude from both parents towards the problem *of Hadhanah* is indeed very necessary. The integration of cooperation between father and mother in carrying out this task will only be realized as long as the parents are still in a husband and wife relationship. In such an atmosphere, even though the duties of *Hadhanah* according to their character will be carried out more by the mother, the role of a father cannot be ignored, both in meeting all the needs that facilitate the task of *Hadhanah*, as well as in creating a peaceful atmosphere in the household where the child is cared for and raised.

In Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Article 16 paragraph (1) states that every child has the right to receive protection from the target of persecution, torture, or inhumane punishment. In addition, Article 36 paragraph (1) also states that in the event that the appointed guardian is incapable of performing legal acts or abusing his power as a guardian in the future, his guardianship status will be revoked and another person will be appointed as a guardian through a court determination.

In KHI Article 156 letter (c) it is also stated that if the holder of *Hadhanah* is unable to guarantee the physical and spiritual safety of the child, even though the alimony has been met, then at the request of the relative concerned, the Religious Court can transfer the right of *Hadhanah* to another relative who has the right to *Hadhanah* as well. In addition, in Article 49 paragraph (1) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, it is stated that one or both parents can be deprived of their power over one or more children for a certain time at the request of the other parent, the family of the child in the straight line upwards and the adult sibling or the official of the authority, by the decision of the Court in the event that he is grossly negligent in his obligations to his child and he behaves very badly. In this Article, it is clear that parental authority can be revoked with several conditions, one of which is abusing parental power or neglecting the obligation to maintain and educate a child or more. So that when parents cannot carry it out, the power can be revoked in the best interest of the child.

Many problems arise in the field regarding the problem of *Hadhanah*, the main problem is the result of divorce itself which has an impact on child care. Usually when a divorce occurs, problems will arise about joint property and child care, if this marriage gives birth to offspring.

Ka'bah (2021) explained about the problems that occurred in the settlement of *Hadhanah* disputes, especially in the Religious Court, that the Religious Court has long known the institution of *Tahkim* (peace, marriage arbitration) . In every court decision, it is always stated that the judge has tried to reconcile the parties, but to no avail. The Panel of Judges tried its utmost to convince the parties that peace is better than litigation, where each party to the dispute has the opportunity to file a lawsuit and rebuttal in Court.

The decision made by the judge consists of several parts, including, the legal consideration part or known as the consideration and the judgment part. Legal consideration is defined as a stage where the panel of judges considers the facts revealed during the trial, starting from the lawsuit, answer, exception from the Defendant which is connected to evidence that meets the formal requirements and material requirements, which reaches the minimum limit of proof.

Judges' decisions can be categorized into three types based on their nature: declaratory, constitutive, and condemnatory. A declaratory decision (*declatoir vonnis*) clarifies or determines a right, title, or status, and this determination is included in the verdict's dictum. A constitutive decision (*Constitutief vonnis*) establishes or negates a legal situation, creating a new legal status. A condemnatory decision imposes a penalty on one of the parties, often requiring actions such as payment, delivery, or dismantling. Condemnatory decisions (*Condemnatoir*) are often part of declaratory or constitutive judgments, enforcing the legal outcomes determined by the court (Harahap, 2016).

In child custody disputes, judges may not always grant custody to the mother, even if the child is under 12 years old, as outlined in Article 105 of the Compilation of Islamic Law. If the mother is deemed unfit, due to reasons such as substance abuse or irresponsible behavior, the judge may award custody to the father instead. Determining child custody is challenging because the core issue is the well-being of the child, not material losses. Judges must carefully assess the legal relationships and behaviors of the parties involved. For instance, in a recent case, the father was granted custody after proving that the mother, who had entrusted the child to an aunt, failed to provide proper care. While civil court decisions are typically executed by the losing party, enforcement may require court intervention if the losing party refuses to comply voluntarily.

The problem that occurs after the judge's decision is the difficulty in executing the *Hadhanah* decision, especially if the child is not in the hands of the party who won the *Hadhanah right*. In the execution of joint property or inheritance, because it concerns objects or goods, the execution can be enforced by involving the security forces, especially the police, but in the execution of children it is impossible to force because it is difficult to carry out and concerns the feelings of the child that need to be considered, especially for the best interest of the child, both from the point of view of *sharia* Islam as well as from the point of view of laws and regulations about children. Another problem is the absence of strict sanctions in the event that the party does not want to hand over the child in his hands to the party who wins the right to *Hadhanah.*

This study aims to find out the implications of *condemnatoir* decisions in child custody cases in the jurisdiction of the Denpasar Religious Court, and the obstacles faced in the implementation of the execution of child custody decisions in the jurisdiction of the Denpasar Religious Court. The research contribution lies in its exploration of the implications of condemnatory decisions in child custody cases within the Denpasar Religious Court's jurisdiction. The study contributes by identifying and analyzing the specific challenges and obstacles

encountered during the execution of these decisions. This research offers valuable insights into the practical difficulties of enforcing child custody rulings, which could inform legal reforms or improvements in the execution process to better protect the interests of the child and ensure compliance with judicial decisions.

METHOD

The research employs both normative and empirical approaches, focusing on the norm vacuum regarding the execution of Hadhanah (child custody) decisions. Normative data is collected from legal texts, regulations, and court decisions to analyze the existing legal framework. Empirical data is obtained through field observations, interviews, and case studies at the Denpasar Religious Court, providing insights into the practical challenges of implementing these decisions. The data analysis involves a legal analysis of the normative sources to interpret and evaluate the current laws, complemented by qualitative analysis of the empirical data to identify patterns, issues, and challenges in the execution process. This combined approach offers a comprehensive understanding of the gaps in the legal framework and the real-world difficulties encountered during the enforcement of Hadhanah decisions.

RESULTS AND DISCUSSION

The terms child and immature in a general sense are seen as the same or almost the same, so the two are often used interchangeably, both do have similar meanings, where the meaning of adult is until age; No longer children or adolescents, have reached maturity of mind, views, and so on, while the definition of children includes the second generation, the first offspring or young humans.

Both have different definitions and legal consequences. Suherman & Satrio (2010) stated that often the word child in the law only wants to indicate a person's position in family relationships, while the term immature is related to the ability to act or perform legal acts.

The definition of a child according to Islamic law terms is the second offspring who are still young. The small nature when associated with property trusts and the prohibition of self-acting, there are actually two levels, namely (Al-Barry, 1997):

a) Little and not yet *mumayyiz* in this case the child has no ability to act at all. So, it is not valid if, for example, he buys anything or gives anything to others. His words couldn't be used as a handle at all, so everything was in the hands of the guardian.
b) Little but already *mumayyiz*, in this case this little one lacks the ability to act, but already has the ability, therefore his words can be used as a handle and it is valid if he buys or sells or gives anything to others.

According to Abu Hanifah, the age of adulthood for boys is 18 years old, while for women it is 17 years. So if a person has not reached that age, then the legal burden does not apply (Al-Qurthubhi, 1990). To emphasize this issue of maturity, the Supreme Court provides guidance in the Formulation of the Results of the Plenary Meeting of the Civil Chamber of the Supreme Court of the Republic of Indonesia as stated in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 07 of 2012 concerning the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court, which expressly states that adults are capable of acting in law, namely people who have reached the age of 18 or have been married.

Hadhanah comes from the word *hidnan* which means stomach. Like the sentence *hadhana ath thaairu baidhahu*, the bird finches the egg under its wings, as well as the woman (mother) who finches her child. Child care in Arabic is called the term *Hadhanah* (Sabiq, 2007). The meaning is to take care of and educate or nurture babies or small children who are not yet able to take care of and regulate themselves. *Hadhanah* according to the language means to put something near the ribs or on the lap, because the mother when breastfeeding her child puts the child on her lap, as if the mother at that time protects and nurtures her child, so *Hadhanah* is used as a term that means the education and maintenance of the child from birth until she is able to stand alone to take care of herself which is done by the child's relatives (Ghazaly, 1980). The meaning *of Hadhanah* in the term *Fiqh* is used two words but it is shown for the same purpose, namely *Kafalah* and *Hadhanah* (Syarifuddin, 2001). What is meant by *Hadhanah* and *Kafalah* in a simple sense is maintenance or nurturing.

In a civil review of who has the most right to maintain and take care of a minor child, the consequences of a divorce are the obligations of the parents. Parents are obliged to maintain and educate their minor children. The loss of parental power and guardianship does not relieve them of the obligation to provide allowances according to the amount of their income to finance the maintenance and education of their children (Soimin, 2007).

Religious Justice products are in principle the same as products in the General Justice environment. As stated in Article 60 of Law Number 7 of 1989 which has been last amended by Law Number 50 of 2009 concerning Religious Courts, which states that "Court Decisions are only valid and have legal force if they are pronounced in a public hearing". Determination is one of the products of the Religious Court which aims to

determine a situation or a certain status for the applicant. Which in this determination is a *declaratoir* that only stipulates or does not have executory power.

The verdict is a court decision on a lawsuit based on a dispute. This decision is binding on both parties and has the power of proof so that the decision that already has legal force can still be executed. A decision is said to have permanent legal force if the parties have accepted the verdict, no legal remedy is taken by the parties or one of the litigants within the specified time limit, and it has been decided by the court of final instance (Wahyudi, 2018). This is the general rule guided by the Civil Procedure Law concerned in the General Court environment (HIR and RBg) considering Article 54 of Law Number 7 of 1989 which reads that the procedural law applicable to the Court within the Religious Court environment is the civil procedural law that applies to the court within the General Court, except for those that have been specifically regulated in the Religious Justice Law (Nasution, 1992).

Court decisions are generally regulated in Article 185 of the HIR, Article 196 of the R.Bg, and Articles 46-68 of the Rv. In addition, there are also Provisions decisions as stipulated in Articles 180 of the R.Bg, and 191 of the , so based on these Articles, the types of decisions can be grouped from several aspects that can be handed down by the judge (Rasyid, 1998). The example of the case handling process at the Denpasar Religious Court number: 358/Pdt.G/2023/PA. Dps which was decided by verstek by the Panel of Judges, where the Decision granted the Plaintiff's lawsuit and stipulated to revoke the child*'s Hadhanah* Rights (Custody/Custody Rights) on behalf of the Defendant (MAP binti DAP) to the Plaintiff (DB bin BMB) as the biological father.

The decision has not been said to be inclusive, because before 14 days the original Defendant resisted by filing a Verset Lawsuit.

Legal Standing

The Defendant originally denied the arguments of the Defendant, originally the Plaintiff in case number 358/Pdt.G/2023/PA. Dps, except for those expressly acknowledged:

1) The arguments contained in this Opposition are considered to be included and are an inseparable part of the original Plaintiff's lawsuit;
2) That the Opponent objected to the Decision of the Denpasar Religious Court, both regarding its legal considerations and the verdict;
3) That the Opponent/Defendant STRONGLY OBJECTED to the Judges' views and legal considerations against Verstek. The opponent was shocked and very disappointed, why it was so easy for the Panel of Judges of the Denpasar Religious Court to examine this case to decide on child custody according to the Bekasi Religious Court Decision Number 1846/Pdt.G/2021/PA. Bks, it is true that the custody of the child named MKM falls to his mother, namely Pelawan;
4) The opponent only receives one call. Is it enough for one trial to just disappear, decided with verstek which is completely unfair and not what the opponent wants;
5) That through this verzet hearing, the Panel of Judges is pleased to reopen this trial by prioritizing the interests of both parties in the best interests of the child and the psychological development of the child of the Opponent and the Defendant;
6) That for this reason, through this Verzet trial, the Plaintiff submitted an answer to the original Defendant's lawsuit in conjunction with the decision dated August 29, 2023, case number 358/Pdt.G/2023/PA.Dps.;
7) That it is true what the Opponent/Plaintiff conveyed in point 3, that the children of the Defendant have been living and being cared for by the Defendant. but it is NOT TRUE that the child is entrusted or lives with the aunt of the Defendant/Defendant;
8) That it is not true that the Opponent/Defendant makes it difficult for the Opponent/Plaintiff to access to meet his child. The Defendant/Defendant invites the Defendant/Plaintiff to visit his or her child at the house of the Defendant's aunt who is also the residence of the Defendant/Defendant and the time that has been agreed;
9) That currently the children of Pelawan and Terlawan are still registered as schools in SD Islam Dian Didaktika grade 2. And until now Pelawan's children have never stated that they have changed schools from SD ISLAM DIAN DIDAKTIKA, then how can Pelawan's children go to school in Denpasar without bringing a letter of transfer from the previous school;
10) That on June 22, 2023 at 07.00 the Defendant came to the Pelawan family to take away the MKM of Pelawan's child, on the pretext that he would take the report card. At that time, Pelawan's child was sleeping and Terlawan asked to be woken up and obeyed by Pelawan's family. Then the Opponent finds out the new Defendant's mobile phone number through the Defendant's relatives/aunt, the Defendant contacts the Defendant through a new phone but is not picked up, sends a WA chat to return the child and is answered if the Defendant does not want to return the child to the Defendant;

11) That Pelawan made various efforts to take MKM back into Pelawan's lap. By sending a summons to the Opponent but there is no response from the Opponent;
12) That currently the Defendant/Plaintiff has remarried to a woman who lives in Denpasar;
13) Considering that it has been almost a month since Pelawan's child has not been returned to Pelawan, Pelawan took the legal route by reporting the Defendant to the police. On July 16, 2023, the Defendant/Plaintiff was reported to the Bekasi City Metro Resort Police;
14) That related to the Pelawan's police report against the Defendant, the Defendant has been summoned by the police 2 times, namely on July 31, 2023 and August 10, 2023 to be questioned, but the Defendant was not present in the summons according to the date of the summons set by the police.
15) In addition to the police report, Pelawan also made a report to the Indonesia Child Protection Commission with report Number B-605/KPAI/APM.03/8/2023 dated August 21, 2023. And regarding this report to KPAI, the Defendant was summoned to provide clarification on August 28, 2023, but again the Defendant was absent and did not attend;
16) In addition to the police report, Pelawan also made a report to the Indonesia Child Protection Commission with report Number B-605/KPAI/APM.03/8/2023 dated August 21, 2023. And regarding this report to KPAI, the Defendant was summoned to provide clarification on August 28, 2023, but again the Defendant was absent and did not attend;
17) That considering the Opponent's report against the Defendant at the police and KPAI where the Defendant was not present according to the date of the summons, it shows that there is a bad faith from the Defendant to find a solution to the problem of child custody of the Opponent and the Defendant;
18) That for more than 2 years Pelawan's child was taken care of by his mother, Terlawan never provided support to his child as a form of responsibility to his child;
19) That how could the panel of judges decide that child custody falls to the Defendant/Plaintiff if at the time the Defendant's child was in the care of his mother, the Defendant never provided proper maintenance to his child. Which is the primary responsibility of a father to provide for his child;
20) That related to the economic condition of the Opponent/Plaintiff, some time ago around August 2023 the Defendant/Defendant was called by the Debt Collector of DBS bank to collect the Opponent/Plaintiff's Credit Card bills that had been in bad condition from March 12, 2020;
21) That the Opponent/Defendant rejected the statement of points no. 5 and 7 of the lawsuit. It is not true that in the care of Pelawan, the child of Pelawan feels uncomfortable and afraid;
22) That it is true what was conveyed by the witness Defendant/Plaintiff EH Binti A who said that to the knowledge of the witness, the Defendant/Defendant is a good person;
23) That the Opponent rejects the verstek decision which stipulates the revocation of the Right of *Hadhanah* (Right of Custody/Custody) of a child named MKM binti DB, Female, born in Jakarta on May 27, 2016 from the Defendant (MAP BINTI DAP) to the Plaintiff (DB BIN BM) as his biological father.

Legal Considerations

The basis for the Judge's consideration in case number 358/Pdt.G/2023/PA. DPS, the Tribunal in its explanation, considered that the Panel of Judges had tried to reconcile the Opponent/Original Defendant and the Opponent/Original Plaintiff, but was unsuccessful and also related to PERMA Number 1 of 2016, the litigants had made peace through a mediation institution, for which a Mediator was appointed, it turned out that the peace efforts held by the Mediator were also unsuccessful.

Considering, that the legal principle of verzet resistance is a unit that is not separate from the original lawsuit. Therefore, the resistance is not a lawsuit or a new case, but nothing but a rebuttal aimed at the untruthfulness of the lawsuit postulates, on the grounds that the verstek decision handed down, is erroneous and untrue, so that in the examination of the verszet resistance to the verstek decision, the Opponent remains in the position of the Original Defendant and the Opponent as the Original Plaintiff.

Considering, that with regard to the above legal principles, the a quo case, the parties are accompanied by legal counsel, in accordance with Perma Number 3 of 2018 Jo. Perma Number 1 of 2019, then by the Supreme Court again strengthens electronic court services with Perma Number 7 of 2022 Amendments to Perma Number 1 of 2019 concerning Case Administration and Trials in Courts Electronically, But because the Verzet case refers to the verstek case process which is a litigated trial process.

Considering, that the Panel of Judges considers, as the legal principle in article 41 of Law Number 1 of 1974, as well as article 26 of Law Number 23 of 2002 as amended by Law Number 35 of 2014, a case related to child care, must contain the legal principle that the lawsuit is solely for the benefit of the child, both physically and spiritually.

Considering, that to the original plaintiff's lawsuit, the Original Defendant/Defendant responded in the verzet case with the response that: Pelawan's child has been living and being cared for by the Plaintiff/Defendant. but it is NOT TRUE if the child is entrusted or lives with the aunt of the Defendant.

Considering, that in the a quo case, it is concluded that there are several postulates that are not refuted by the opposing party which subsequently become permanent postulates in this case, these postulates are:

1. The Plaintiff Origin/Defendant and the Defendant Origin/Defendant are a husband and wife who have been officially divorced at the Bekasi Religious Court, West Java Province in accordance with **Decision Number: 1846/Pdt.G/2021/PA.Bks.;**
2. That the marriage of the Plaintiff and the Defendant has been blessed with 1 (one) child named**:** **MKM BINTI DBO,** Female, born in Jakarta, on May 27, 2016;
3. That in addition to granting the divorce of the Original Plaintiff and the Original Defendant, the contents of the dictum of Decision Number: 1846/Pdt.G/2021/PA.Bks. are in the custody of the Original Defendant/Defendant;

Considering, that furthermore, the postulates of the original lawsuit of the Original Plaintiff/Opponent which was then denied by the Original Defendant/Opponent.

Analysis of the Judge's Considerations in Giving a Decision

Considering, that based on the facts of the trial above, the Panel of Judges found the legal facts that:

1. That the Opponent / Plaintiff from before the trial is unable to prove his postulates;
2. That the Original Defendant / Defendant is a mother who is legally held by the Bekasi Religious Court custody of a child of the Opponent and the Defendant named MKM BINTI DB, Female, born in Jakarta, May 27, 2016;
3. That Pelawan in nurturing and educating children is considered good, it is proven that children are always ranked in their schools, included in good schools, and even have been tried in schools with *better grades, children are proven to have never violated the rules both in their schools and others;*
4. That there is not a single clue of evidence that leads to the behavior of the Original Defendant/Defendant is considered to be able to injure the right to custody of the child (Article 156 letter (c) of the Communion of Islamic Law which explains that a mother can lose custody of the child even though she is still under 12 years old if she cannot guarantee the physical and spiritual safety of the child);
5. That the Original Plaintiff / Defendant has given access to the Original Plaintiff / Defendant to pour out a father's affection to his child, even for that it has been agreed orally between the parties so as not to interfere with the learning process, this access has also been tacitly acknowledged by the Original Plaintiff / Plaintiff himself by submitting T-3 evidence in the form of Video recording between the Defendant and his child (Lilu) and video recording between the Defendant and the Defendant;
6. That the departure of the child from Bekasi to Bali, is considered without the knowledge and permission of the Defendant as the holder of legal custody of the child, so that the current custody/custody of the child from the Defendant / Original Defendant to the Defendant / Plaintiff is the possession of the child that is not based on a valid legal basis

Considering, that based on the considerations mentioned above, the Panel of Judges considers that the resistance of the Original Opponent/Defendant has been in accordance with the law, so it must be granted. The Resistance of the Original Defendant must be declared as a correct resistance, then the Panel of Judges cancels the Verstek Decision Number 358/Pdt.G/2023/PA.Dps. which has been imposed on Tuesday, August 29, 2023 AD, coinciding with the 12th of Shafar 1445 Hijri.

Declare that the resistance filed by the Original Opponent/Defendant is acceptable;

1. Declaring that the resistance proposed by the Original Opponent/Defendant is a true resistance;
2. Canceling the Verstek Decision Number 358/Pdt.G/2023/PA.Dps. dated August 29, 2023;
3. Punish the Defendant/Original Plaintiff to hand over a child named MKM BINTI DB, Female, born in Jakarta, on May 27, 2016 to the Opponent/Original Defendant;
4. Punish the Opponent / Original Plaintiff to pay compulsory money (*dwangsom*) in the amount of Rp.100,000,- (one hundred thousand rupiah) every day of delay since this decision has permanent legal force (*inkracht)* until it is implemented;
5. Charging the Original Defendant to pay the case fee in this verzet in the amount of Rp 440,000.00 (four hundred and forty thousand rupiah);

One of the things that must be considered in providing legal considerations is how the judge arrives at the imposition of a decision. Although the researcher agrees that in civil proceedings the judge relies on formal truth, and this has been done by the Judge in this case, but in cases involving "human" or children (not material),

the Judge should be justified to be active in seeking the material truth. Because the child custody case is a matter related to economic factors, the ability of the caregiver, and the psychology of a child.

Although the duties of the Judge in the case seem to have been completed in accordance with the corridor of due process of law, namely to create legal certainty. However, in the process there are other tasks that have not been carried out optimally, namely the task of realizing and upholding justice for the parties. This has not been realized because the position of judges is shackled by the written legal system or laws and regulations which are the primary source of law in the civil justice system in Indonesia, namely seeking formal truth.

In the event that a decision has permanent legal force (*Condemnatoir*), then in principle, the losing party, namely the Defendant, must voluntarily surrender custody of the child to the Plaintiff. Then if the Defendant does not want to voluntarily surrender the custody, then the execution process can be carried out. However, the execution process can only be carried out if the execution request has been made (Jamal et al., 2021). However, if the losing party (the Defendant) does not want to follow the results of the trial decision, then the Chief Justice can make an effort to reprimand or what is commonly called *Aanmanning.* Post-divorce is a difficult time to predict the way of life of children, at all parents prioritize ego and arrogance with various justification arguments in order to obtain custody of the children, at that time the children are faced with the loss of the warmth of a family. In this condition, the court can distinguish between legal custody and physical custody for the future of the child (Costanzo, 2008).

Issues related to parenting often arise when parents decide to divorce and there is no discussion related to parenting. The current formal civil law in Indonesia is that when there are no claims related to custody, there will be no discussion of custody or better known as *ultra petita*. *Ultra petita* regulated in Article 178 paragraphs (2) and (3) of the *Het Herziene Indonesisch Reglement* (HIR) and in Article 189 paragraphs (2) and (3) of the Rbg prohibits the judge from deciding to exceed what is demanded or in this case the judge is considered to have exceeded his authority. In fact, ideally, children's affairs can be resolved and discussed as best as possible together with divorce affairs and parental affairs. This is because the child has not been able to demand his right to be cared for while the divorce process is still ongoing.

The absence of rigid regulations and recognized validity by the state of Indonesia that regulates the issue of the execution of child custody makes the regulation on the execution of child custody more biased. There are no rigid regulations that make the people of Indonesia associate existing regulations with each other. For example, if in a decision that contains child custody and then the party who does not get custody does not want to give the child, then one of the regulations that can be used as a role model to regulate the efforts that can make a person executed is Article 196 of the HIR "If the defeated party is unwilling or negligent to fulfill the content of the decision peacefully, then the winning party submits a request, either orally, or by letter, to the Chief of the District Court mentioned in the first paragraph of Article 195 to carry out the decision, the Chairman instructs the defeated party to summon the defeated party and warn him to fulfill the decision within the period determined by the Chairman, which is not more than eight days." Article 195 explains that the implementation of decisions in the court of first instance is by order and with the leadership of the Chief Justice which in practice is carried out by the Registrar/Bailiff. Article 196 of the HIR does not directly regulate the execution of a person, but only provides options for how a person wants to carry out a court decision, one of which is to carry out a court decision regarding child custody. In principle, the judge's decision that already has legal force must be carried out. The exception is if a verdict is handed down with the provision that it can be implemented first in accordance with Article 181 paragraph (1) HIR/ Article 191 paragraph (1) RBg12. In other words, in the case of execution, the general principle applies, that is, the execution can only be carried out if the verdict already has permanent legal force, in the sense that the verdict has no legal remedy of appeal and cassation.

Implementing a court decision is nothing more than implementing the content of a court decision, namely "forcibly" implementing a court decision with the help of state instruments if the losing party does not want to carry it out voluntarily (Harahap, 2007). Execution is essentially nothing but the realization of the obligation of the losing party to fulfill the achievements listed in the court decision. The winning party can apply to the court that decided the case to enforce the decision forcibly. The right to meet and hide the whereabouts of the child by one party is also a problem of parental divorce. Distrust between couples causes one party to worry that if they are reunited with the other parent, the child will be taken and not returned. Likewise, there is a concern that other parents will brainwash to hate other parents, or take their children away.

From the various events and cases that occurred as mentioned above, it became an obstacle for the Bailiff in carrying out his duties and authority in relation to the execution of the child custody decision, besides that the Bailiff was faced with:

1) Absence of compiled regulations regarding the execution of child custody: The problem is that the execution of the hadlanah decision is not without legal rules, but there are no compiled legal rules that regulate the execution of child custody.

2) Consideration of psychological aspects for the good of the child: The execution by the bailiff in the case of Child Custody is an execution against a person, not an object, so that firm attitudes and actions cannot be taken, let alone depriving or forcibly taking the child from the arms of the party who has been taking care of him.
3) Ineffective security involvement: In the execution of the execution, it is possible to involve the *Hadhanah* party involving the police, sometimes it is traumatic for the child, because all this time the children have assumed that the word "Police" is a scary word, this happens because parents sometimes prohibit children with the words "beware of being arrested by the Police."

CONCLUSION

The implementation of condemnatory decisions in child custody cases at the Denpasar Religious Court relies on formal legal norms, but given the human element involved, judges should be involved in seeking material truth. Since child custody cases involve economic factors, caregiver capability, and child psychology, the losing party is expected to voluntarily hand over custody if a decision has permanent legal force. If this voluntary transfer does not occur, execution procedures can be initiated, with the Chief Justice able to issue reprimands. However, challenges arise in executing these decisions, as children are not objects and cannot be forcibly removed, and issues such as the child's disappearance or lack of specific legal rules complicate enforcement. Future research should explore alternative enforcement strategies, assess the role of judges in seeking material truth, and develop legal guidelines to address execution barriers, including psychological and economic factors impacting custody cases.

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