

MIJHNAPODNE PPAPO



Edi Marsis,
*Doctoral Candidate, Faculty of Law,
Brawijaya University, Malang,
Indonesia*
e-mail: edimarsis@student.ub.ac.id



Sudarsono,
*Professor, Faculty of Law,
Brawijaya University, Malang,
Indonesia*
e-mail: sudarsono@ub.ac.id



Masruchin Ruba'i,
*Professor, Faculty of Law,
Brawijaya University, Malang,
Indonesia*
e-mail: masruchin@ub.ac.id



Siti Hamidah,
*Associate Professor, Faculty of Law,
Brawijaya University, Malang,
Indonesia*
e-mail: hamidah@ub.ac.id

doi: 10.21564/2414–990X.153.223682
UDC 341

DUE TO THE ABSENCE OF RULES FOR THE EXECUTION OF MADLIYAH LIVELIHOOD IN THE LAW OF THE INDONESIAN RELIGION JUSTICE

Provisions for the execution of the madliyah livelihood conditions in statutory regulations, especially in the provisions of Article 70 of Law Number 7 of 1989 concerning the Religion Courts as amended by Law Number 3 of 2006 and Law Number 50 of 2009, directly result in a lack of certainty. The law on the right to maintain madliyah livelihood also has direct implications for the trust of society, especially women, in the Religion Courts which should be able to defend women's rights and serve as a bridge to resolve issues of rights that should be obtained, namely madliyah livelihood after divorce. The execution of the wife's madliyah livelihood has implications for the judge's decision, namely: first, the judge does not have a legal basis regarding how the procedure for carrying out the execution that should be carried out for the process of executing the madliyah livelihood. Second, there is no complete regulation up to the implementation of decisions in regulating the rights to support the wife and children – one of which is the madliyah livelihood. Efforts to be able to provide legal certainty for executions at the Religion Courts can be done by completing regulations and building mechanisms.

Keywords: legal implications; norms of execution; madliyah livelihood.

Edi Marsic, докторант, юридичний факультет, Університет Бравіджая, Східна Ява, Індонезія, м. Маланг.
e-mail: edimarsis@student.ub.ac.id

Сударсоно, професор, юридичний факультет, Університет Бравіджая, Східна Ява, Індонезія, м. Маланг.
e-mail: sudarsono@ub.ac.id

Масручін Рубаї, професор, юридичний факультет, Університет Бравіджая, Східна Ява, Індонезія, м. Маланг.
e-mail: masruchin@ub.ac.id

Сімі Хаміда, доцент, юридичний факультет, Університет Бравіджая, Східна Ява, Індонезія, м. Маланг.
e-mail: hamidah@ub.ac.id

Щодо відсутності правил виконання зобов'язань щодо забезпечення жінок засобами для існування (Мадлен) у законі про індонезійське релігійне правосуддя

Положення закону про виконання зобов'язань щодо забезпечення жінок засобами для існування (Мадлен) в нормативно-правових актах індонезійського релігійного правосуддя, особливо в нормах ст. 70 Закону № 7 від 1989 р. «Про релігійні суди» зі змінами і доповненнями, внесеними Законами № 3 від 2006 р. і № 50 від 2009 р., викликають сумніви у їх спрямованості на забезпечення Мадлен. Це безпосередньо впливає на довіру населення, особливо жінок, до релігійних судів, які повинні захищати права жінок і вирішувати правові питання, безпосередньо пов'язані із забезпеченням їх засобами для існування (Мадлен) після розлучення. На стан виконання рішень судів стосовно зобов'язань щодо Мадлен негативно впливає низка факторів: 1) неповнота правового врегулювання, включаючи виконання рішень у частині забезпечення прав дружини і дітей, одним з яких є Мадлен; 2) висока вартість виконання; 3) відсутність майна, на яке може бути звер-

нено стягнення; 4) проблема людських ресурсів; 5) низька правосвідомість населення. Щоб прийняти рішення, яке гарантує правову визначеність відповідно до обставин певної справи, суддя повинен мати можливість ухвалити рішення, яке б відповідало таким вимогам: по-перше, таке рішення має стати законом для обох сторін у справі, які повинні неухильно дотримуватися його; по-друге, рішення повинно бути прийнято на підставі фактів, встановлених у справі; по-третє, зміст рішення має бути чітко сформульований суддею, щоб уникнути неправильного тлумачення і перешкод у його виконанні. Зусилля, спрямовані на забезпечення правової визначеності рішень релігійних судів, полягають у завершенні розробки нормативних положень і створенні механізмів їх виконання.

Ключові слова: релігійне правосуддя; забезпечення прав жінок; норми щодо виконання судових рішень; засоби для існування Мадлен.

Introduction. Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage, Article 2 stipulates that: (1) Marriage is legal, if it is carried out according to the law of each religion and belief. (2) Every marriage is recorded according to the prevailing laws and regulations. From these provisions, if the marriage contract between a man and a woman has been carried out, the contract will create a reciprocal relationship between the man and woman, both as husband and wife, family and also to the community [3]. This reciprocal relationship in the practice of married life becomes the right and obligation that must be carried out by each husband and wife [1].

The obligation to provide a living is a definite law in the provisions of Islamic law as stated in *Al-Baqarah* letter in verse 233, namely: “Mothers should breastfeed their children for two full years, that is for those who want to complete breastfeeding. And it is the father’s duty to give food and clothes to the mother in a *ma’ruf* (good) manner. Someone is not burdened but according to ability levels. A mother should not suffer misery because of her child. If both want to wean (before two years) with their willingness and deliberation, then there is no sin on both of them. And if you want your child to be fed by someone else, then there is no sin for you if you pay accordingly. You should fear to Allah (God) and you know that Allah is All-Seeing what you are doing.

The above verse implies an order to the husband to provide security for his wife which consists of food, clothes and a place to live [11]. According to *Hanafiyah* (Hanafi sect) society, philosophically the husband’s obligation to provide for his wife is a reward for the husband’s right to limit his wife’s freedom of movement, while the wife gives her loyalty to her husband. This is because when the pronouncement of the marriage contract is completed, the wife’s freedom is limited because of her position as a wife. She may no longer travel freely or do anything except by consulting her husband first. Therefore, when a wife no longer gives her loyalty to her husband, then the wife is categorized as *nusyuz* (out of obedience) which results in the loss of the right to support the wife [8].

The provisions of Article 34 paragraph (3) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 provide the understanding that if the husband is proven to have deliberately neglected his responsibility to provide for his wife even though the husband is in a state of being able to fulfill obligations to

Provide the livelihood that has not been given yet or is not paid, the wife has the right to sue her husband to the court and for this lawsuit, the court can impose past livelihood or *madliyah* (past) livelihood – *madliyah* (past) livelihood is a livelihood that has not been fulfilled to the husband [2]. On the right to file a claim for past livelihood granted by this Law, in reality, even though many of the wife's claims have been proven in the case examination process in court and granted by the court, however they have not been able to fulfill the rights of the wife to support the *madliyah* livelihood. Because there are still many implementations of the execution of the *madliyah* livelihood case cannot be carried out.

Implications for Fulfilling Wife's Rights

The main obstacle in the execution of decisions on the case of *madliyah* livelihood is the absence of regulations regarding the execution of *madliyah* livelihood in Law Number 7 of 1989 concerning Religion Courts as amended by Law Number 3 of 2006 and Law Number 5 of 2009, the provisions of the Article 70 of the law only regulates the execution of the decision for divorce, therefore there is a legal vacuum making it unclear how the execution procedure for ex-husbands who are charged with the maintenance of *madliyah* livelihood but are reluctant to carry them out. Therefore, the implementation of the decision of the Religion Court regarding the imposition of the *madliyah* livelihood on the ex-husband, the implementation depends on the presence or absence of the husband's good intentions.

There are five factors that can hinder the execution of civil cases are namely legal factors, high cost of execution factor, decision problem factors, human resource problem factors and public legal awareness factors [10]. Referring to Heri Swantoro's opinion, the writer argues that the difficulty of execution at the Religion Courts is mainly related to the execution of a wife or child for a livelihood, caused by five factors as shown in the following chart (Figure 1):



Figure 1. Chart of Factors Causing the Inhibition of Execution of Livelihood in Religion Courts

The five factors that cause difficulty in executing a living in the Religion Courts can be described as follows: first, legal factors. Regulations or legal rules governing the execution procedure do not lie in one book or one statutory regulation but are separated into various statutory regulations. Second, the high cost of execution. In the Religion Courts the cost of being able to carry out the exercise of rights is often much higher than the nominal amount of rights that will be obtained by the Petitioner for execution in the execution of the imposition of payment of a sum of money such as the imposition of the ex-husband after the divorce for child support, or the rights of the wife after the divorce including the payment of the *madliyah* livelihood that is charged to the ex-husband where usually in the verdict, it is only charged with a nominal value that is not too high, around a few hundred thousand or a few million, while the costs that had to be incurred if the ex-wife filed a request for execution could reach a nominal higher than the nominal value. He will get what is stated in the ruling of the Religion Court. Third, the problem of verdict. Regarding the problem of verdicts in the Religion Courts, decisions are usually non-executable because the respondent for execution does not have movable property or immovable property so that the execution can be confiscated to fulfill the burdens contained in the contents of the decision. Fourth, human resource problems. A skill that is no less important to have is related to experience in approaching parties during the *anmaning* (warning) process so that the parties can implement decisions voluntarily so that forced execution is not necessary. Fifth, legal awareness of Public factor. The public's legal awareness factor is also a factor that plays an important role in the implementation of the decisions of the Religion Courts.

This low level of public legal awareness is also influenced by the limited legal knowledge of the community.

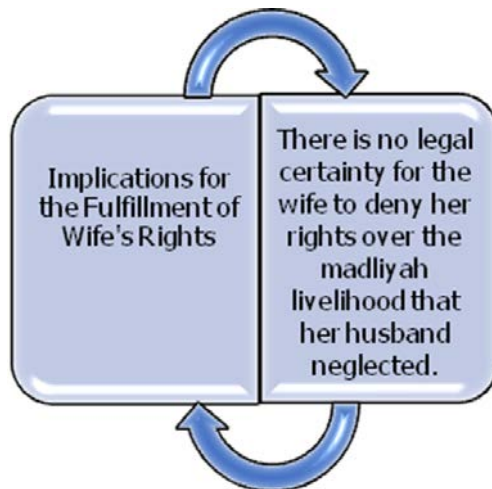


Figure 2. Implications of the Absence of Arrangements for the Execution of the Wife's Livelihood on the Fulfillment of the Rights of the Wife

In the perspective of the theory of legal protection against women as previously described, the implications in (Figure 2) of the absence of arrangements for the execution of wives' *madliyah* livelihood in Law Number 7 of 1989 concerning Religion Courts as amended by Law Number 3 of 2006 and Law Number 50 of 2009, has an impact on the absence of guarantees and protection of women's rights in the family sphere, this will also discriminate against wives to get protection for their rights. In this study, the wife as a woman who is part of the community has not received legal protection of her legal rights and interests. From the perspective of legal protection theory, law aims to integrate and coordinate various interests in society in the traffic of interests, protection of certain interests can be done by limiting various interests on the other hand [7]. Therefore, in this study, the laws and regulations that do not include provisions on the execution of wives' *madliyah* livelihoods as described above, have not been able to achieve the legal objectives in making them to integrate and coordinate the interests of all levels of society, in this case the wife as a woman is still not get legal protection in obtaining his legal rights over the *madliyah* livelihood that his wife neglected.

Implications for Legal Judgments of Judgments

Because the judge's decision has the essence of solving problems raised by the community, the judge has the responsibility both juridically and morally so that the judge's decision can be implemented effectively and efficiently. Juridical responsibility means the judge has a legal responsibility as long as the law can guarantee the value of justice, while moral responsibility means that the judge has a personal responsibility to God and the people who seek justice [4]. With this moral responsibility, a judge in examining and completing a case will never be afraid and trapped in the dilemma of legal loopholes, legal vacuum or even legal rules that contain evil. As an illustration, the implications of the absence of regulations regarding the execution of *madliyah* livelihood against the judge's decision can be seen in the decision table in (Table 1) as follows:

Table 1. List of Considerations for the Decision on *Madliyah* livelihood in Divorce Cases

No	Decision Number	Amar <i>Madliyah</i> livelihood	Amar Guarantee of Legal Certainty for Implementation of Amar
1	1373/Pdt.G/2013/PA.Bgl.	Exist	Not Exist
2	1676/Pdt.G/2018/PA.Bgr.	Exist	Not Exist
3	2064/Pdt.G/2017/PA.Kab.Mlg.	Exist	Not Exist
4	2167/Pdt.G/2016/PA.Sda.	Exist	Not Exist
5	1261/Pdt.G/2015/PA.Mlg.	Exist	Not Exist
6	1765/Pdt.G/2019/PA.Smg.	Exist	Not Exist
7	2064/Pdt.G/2017/PA.Kab.Mlg.	Exist	Not Exist
8	2064/Pdt.G/2017/PA.Kab.Mlg.	Exist	Not Exist

Source: compiled from various sources and secondary legal materials.

The description of the study above directs us that the absence of a complete arrangement in the execution of the wife's *madliyah* livelihood has implications for the judge's decision, namely: first, how is the process of executing the imposition of *madliyah* livelihoods that the husband must pay to the wife after the divorce, by seeing that there is no regulations regarding the procedure for the execution of *madliyah* livelihood in Article 70 of Law Number 7 of 1989 which has been amended by Law number 3 of 2006 and most recently amended by Law number 50 of 2009 concerning Religion Courts, then in such a situation, the judge does not have a legal basis regarding how the execution procedure should be carried out for the process of executing *madliyah* livelihood. Second, the absence of a complete regulation up to the implementation of decisions in regulating the rights of the wife and children – one of which is the wife's *madliyah* livelihood – has implications for the birth of legal considerations and verdicts that are very short summary and difficult to implement. In fact, as described above, an important role for judges in resolving cases submitted to him is that the decisions handed down have an executable character. If it cannot be executed, in this study the wife only has the hope that the fulfillment of her rights is limited to the judge's decision paper. The implication of the absence of regulation regarding the wife's *madliyah* livelihood for legal considerations in the judge's decision can be illustrated in the chart (Figure 3) as follows:

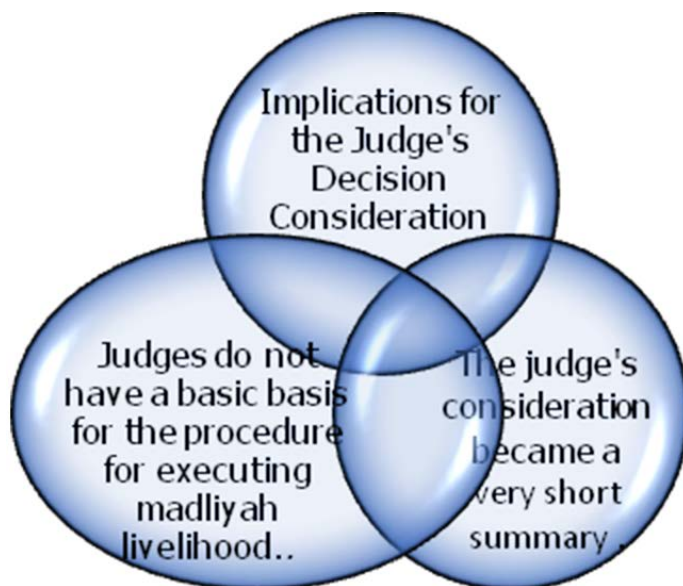


Figure 3. Implications of the Absence of Arrangements for the Execution of *Madliyah's* Wife on the Consideration of Judges' Decisions

Seeing this implication, the judge who also functions as a lawmaker in the midst of the legal vacuum for the execution of the case of the wife's life, the judge should

be able to consider so that the wife can obtain her rights and consider achieving a simple, fast and low cost judicial process. Several patterns of execution have been tried to solve the problem of executing *madliyah* livelihood by considering the fulfillment of the rights that the ex-wife must obtain after the divorce. When applied in the context of this study, the judges' legal considerations in their decisions should be able to reflect a legal discovery thought effort made by the judge with full consideration of efforts to provide the correct settlement of the *madliyah* livelihood case that has been on trial, thus the resulting verdict truly serves as a legal umbrella in solving the problems raised by the parties as a guarantee of legal certainty in the implementation of decisions to fulfill the rights of the wife's *madliyah* livelihood in the decision.

Implications for Uncertainty in Case Resolution

To facilitate understanding of the implications referred to, the authors describe the implications of the absence of arrangements regarding the wife's *madliyah* livelihood for the case resolution process through the chart (Figure 4). From this chart, there are at least two implications of the absence of arrangements for the execution of a wife's *madliyah* livelihood in the provisions of Law Number 7 of 1989 concerning Religion Courts as amended by Law Number 3 of 2009 and Law Number 50 of 2009 on the process of settlement of cases. The implication is that there is no guarantee of legal certainty in the acceptance of the rights of the wife as decided by the judge in a decision that has permanent legal force. An illustration of the uncertainty of the wife in receiving the rights to s the *madliyah* livelihood even though it has been stated in a court decision that has permanent legal force as referred to can be seen in (Table 2).

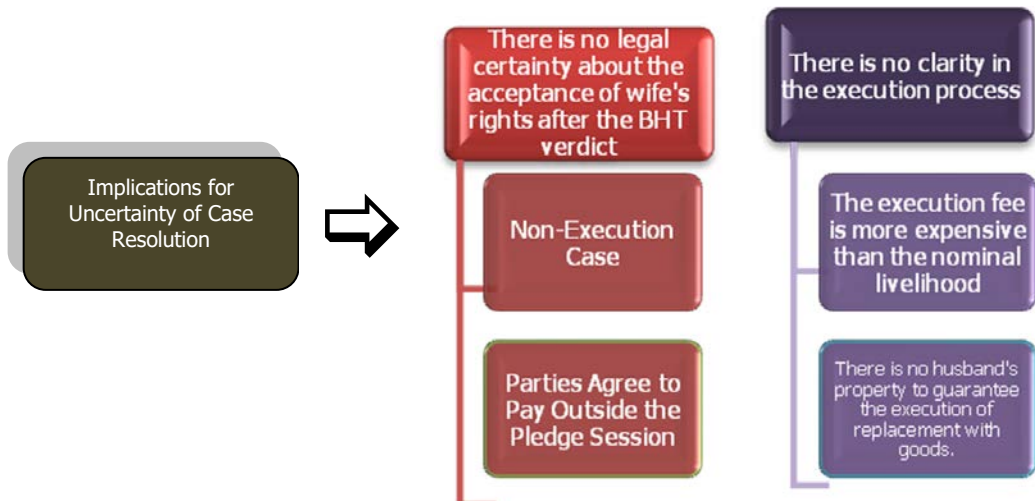


Figure 4. Implications of the absence of arrangements for the execution of the *Madliyah* livelihood of wife

Table 2. List of *Madliyah*'s Decisions in Divorce Cases with Permanent Legal Strength

No	Decision Number	Nominal livelihood	Time of Neglect	Pledge / No	information
1	1373/Pdt.G/2013/PA.Bgl.	Rp10.500.000,00	6 months	No	Non Execution
2	1676/Pdt.G/2018/PA.Bgr.	Rp25.000.000,00	10 months	No	Non Eksekusi
3	2064/Pdt.G/2017/PA.Kab. Mlg.	Rp20.000.000,00	10 months	Pledge	Agreed that payments are done outside the divorce pledge hearing
4	2167/Pdt.G/2016/PA.Sda.	Rp33.750.000,00	15 months	No	Non Execution
5	1261/Pdt.G/2015/PA.Mlg.	Rp12.000.000,00	4 months	No	Non Execution
6	1765/Pdt.G/2019/PA.Smg.	Rp43.000.000,00	20 months	No	Non Execution
7	2064/Pdt.G/2017/PA.Kab. Mlg.	Rp24.000.000,00	12 months	No	Non Execution

Source: compiled from various sources and secondary legal materials.

Based on the table of legal materials for this study, it can be seen that there are two things that cause the absence of legal certainty for the acceptance of the rights of the wife as decided by the judge in a final legally binding decision. These reasons are: first, the divorce case involving the *madliyah* livelihood is declared non-executable. The factor that causes the majority of the wife's *madliyah* livelihood not being paid in the case of divorce as the legal material above is that the divorce case is declared non-execution, from the existing legal materials it reaches 6 (six) cases or reaches 85.71 (eighty five point seventy one) percent of the 7 (seven) cases that were used as legal material for this study. Legally, although the verdict in the divorce case is declared non-execution, it does not abort the husband's obligation to provide for his wife, it means that the status of the livelihood has been determined by the court as stated in the court decision which has permanent legal force but it is declared that non-execution remains the husband's obligation, because according to law.

Second, both parties agreed that the payment of the livelihood is made outside of the divorce vow, but in the end it is not paid by the ex-husband. These two factors are the reasons for the lack of legal certainty in the acceptance of the rights of the wife, as decided by the judge in a final legally binding decision. The two factors mentioned above are the reasons why there is no guarantee of legal certainty in the acceptance of the rights of the wife as decided by the judge in a final legally binding decision. So that in this case the decision that has been handed down by the court cannot fulfill one of the objectives in the formation of the law by the judge, namely the existence of "legal certainty" of the court's decision.

In practice, for cases of *madliyah* livelihood that have been decided by the court in the case of divorce, it is not easy to carry out the decision of *madliyah* livelihood through the execution process, this is at least due to two factors, namely: First, the cost of execution is higher than the nominal of livelihood that has been stipulated. The facts show that it is very rare for an execution request to be filed by a wife or ex-wife on the verdict of *madliyah* livelihood in a divorce case that has permanent legal force. Of these several possibilities, the majority of ex-wives or wives are reluctant to demand the obligation to fulfill the right to support the *madliyah* livelihood so that a religion court ruling regarding this *madliyah* livelihood is no more than just paper. The rights of an ex-wife that have been guaranteed by material law and have been expressly stated in an *inkrach* (legally binding) and executorial court decision are meaningless because their implementation cannot be realized [5]. Second, there is no asset that is guaranteed by the husband to guarantee the implementation of payment for livelihood. The second difficulty in carrying out the execution of the wife's *madliyah* livelihood is the absence of the husband's assets that are guaranteed by the husband to guarantee the payment of the wife's *madliyah* livelihood.

The granting of authority to execute independently for religion courts is actually in the context of providing legal certainty for the community. However, if the political law that actually has given the authority to execute independently is ultimately unable to be implemented properly and effectively, the goal of legal certainty cannot be realized so that legal certainty cannot be felt directly by the public. Due to the failure to realize this legal certainty, from the failure of the implementation of the decision of the Religion Court, especially in terms of the imposition of a *madliyah* livelihood, either voluntarily or through execution procedures, including the low level of public trust, especially women in the Religion Courts institution.

Based on the perspective of legal objectives, one of the expected legal objectives for the formation of law by the judge through his decision is not achieved, namely the objective of the law to achieve legal certainty [6]. Therefore in the future, as an effort to be able to provide legal certainty for executions in the Religion Courts it can be carried out by means of including:

First, complete the regulations. The absence of regulations regarding execution which in this case is regulated in *HIR* (civil procedural law applied in Java and Madura island) and *R.Bg* (civil procedural law applied outside Java and Madura island) than objects has also caused problems including in the execution of child custody decisions that do not have clear regulations regarding how the mechanisms and procedures can be applied to the execution of child custody. Then on the execution of the imposition of wife's rights after the divorce, it is also found that there is a regulatory vacuum. Second, build a mechanism. The absence of a clear mechanism regarding the mechanism that can guarantee the burden of child livelihood and the rights of the wife after the divorce by the ex-husband and there is no binding mechanism for third parties, namely the agency where the ex-husband

works to ensure the payment of child livelihood and Post-divorce rights of ex-wife are also an obstacle to execution in the Religion Courts.

The jurisprudence of the Supreme Court Number 11 K / AG / 2001 dated 10 July 2003 has caused the Religion Courts to not be able to implement a mechanism for punishing the payment of money by directly deducting the husband's salary through the agency treasurer because this is the authority of state administrative officials who are not included in the realm Religion Courts Procedural Law. Regarding this, except for obeying the jurisprudence regarding the imposition of 1/3 salary as the domain of State Administration officials, the Supreme Court can renew the rules of jurisprudence that have been tied up so far by making the Religion Courts authorized to determine the fees that husbands must pay to children and wives caused by the result of a divorce by means of a salary deduction mechanism in the agency where the husband works. For this reason, the Supreme Court needs to establish an understanding with related agencies and formulate a joint regulation that can encourage the implementation of efforts to protect the rights of women and children after the divorce takes place [9].

In terms of legal certainty, there are two kinds of definitions of legal certainty, namely legal certainty by law and legal certainty in or from law (Radbruch, 1975). Laws that have succeeded in ensuring a lot of legal certainty in society are useful laws. Referring to Gustav Radbruch's opinion as mentioned above, at this time neither statutory regulation nor court decision can guarantee legal certainty for the fulfillment of the wife's right of *madliyah* livelihood in a divorce case, whether it is legal certainty by law or legal certainty in or from the law. Legal certainty by law in the fulfillment of the wife's rights to a *madliyah* livelihood stipulated in the divorce decision has not been achieved because justice has not been achieved for the wife to get her rights over the *madliyah* livelihood from her husband, the decision that has been passed by the court has not been able to show its usefulness.

Conclusion. The author has an opinion that legal certainty can not only be guaranteed through the norms of statutory regulations, but if there is no governing norm, then legal certainty must be guaranteed by the legal norms contained in the court decisions. Therefore, the court decisions must also guarantee that there is no conflict of norms, whether it is the contestation of the legal norms of the verdict, the reduction of the legal norms of the verdict or the distortion of the legal norms of the verdict [6].

In the case of this research, the court decision regarding the wife's *madliyah* livelihood should at least not contain legal uncertainty in the decision, whether there is a contestation of the rule of law of the verdict, namely the rules of law that are in the decision of the wife's *madliyah* livelihood, there should be no two legal principles that are opposite each other, so that these rules do not support each other in the implementation of the decision of the wife's livelihood. Reducing the legal norms of the verdict, in the decision of the wife's *madliyah* livelihood, the judge must be able to formulate a legal rule that can avoid the reduction of the law as long as the obligation to provide a wife's *madliyah* livelihood by the husband,

on the other hand, the decision may not embody a legal rule which will reduce the legal rule regarding the obligations of the husband which in fact proved to have neglected his obligation to provide for his wife's *madliyah* livelihood. Distortion of the legal norms of the verdict, in this research, the verdict of *madliyah* livelihood passed by the judge must formulate a law that is in accordance with the actual facts that occur in the trial, on the other hand, the rule of law in the decision must not distort a fact in the trial, so that from what the wife should have, that is the right to earn a *madliyah* livelihood, it becomes that she cannot get her right. To create a decision that can guarantee legal certainty in accordance with the circumstances and conditions of the case in hand, the judge must be able to create a verdict with legal certainty through three of the four fundamental things in creating legal certainty [6], namely first, the law created by the judge through his decision must be able to become a law for both parties in the case to obey it. Second, the law created by the judge must be passed on the basis of a fact, it means that the law formulated in the judge's decision must be based on the facts that have happened to both parties in the case. Third, the legal facts resulted from the process of case examination must be formulated by the judge in a clear manner, so that the clear formulation of legal facts can avoid misinterpretation and be easy to implement.

References

1. Al-Hayati, Ra'd Kamil. (2004). *Solving Family Disputes According to the Qur'an and Sunnah*. Yogyakarta: Mitra Pustaka.
2. Basyir, Ahmad Azhar. (2007). *Islamic Marriage Law*. Yogyakarta: UII Press.
3. Kamal, Musthafa. (2002). *Islamic Fiqh*. Yogyakarta: Citra Karsa Mandiri.
4. Kusumaatmadja, Mochtar. (2000). *Introduction to Law*. Bandung: Alumni.
5. Lubis, S., Marzuki, H.W.A., & Dewi, G. (2018). *The Civil Procedure Code of Religious Courts in Indonesia*. Jakarta: Kencana.
6. Radbruch, Gustav. (1975). *Rechtsphilosophie*. Stuttgart: K.F. Koehler Verlag.
7. Raharjo, Satjipto. (2000). *Law Science*. Bandung: PT. Citra Aditya Bakti.
8. Rahman, Abdur. (2002). *Complete Explanation of Allah's Laws (Syari'ah)*. Jakarta: Raja Grafindo Persada.
9. Suadi, Amran. (2018). Peranan Peradilan Agama Dalam Melindungi Hak Perempuan Dan Anak Melalui Putusan Yang Memihak Dan Dapat Dilaksanakan / The Role of Religious Court in Women and Children Rights Protection Through Partial and Executable Decision. *Jurnal Hukum Dan Peradilan*, 7 (3), 353. <https://doi.org/10.25216/jhp.7.3.2018.353-374>.
10. Swantoro, Heri. (2018). *Execution Dilemma When Civil Execution is at a Crossroads of Learning from the District Court*. Jakarta: Komunikasindo.
11. Zein, Satria Effendi M. (2004). *Problematic Contemporary Islamic Family Law*. Jakarta: Kencana.

Еди Марсис, докторант, юридический факультет, Университет Бравиджая, Восточная Ява, Индонезия, г. Маланг.
e-mail: edimarsis@student.ub.ac.id

Сударсоно, профессор, юридический факультет, Университет Бравиджая, Восточная Ява, Индонезия, г. Маланг.
e-mail: sudarsono@ub.ac.id

Масручин Рубаи, профессор, юридический факультет, Университет Бравиджая, Восточная Ява, Индонезия, г. Маланг.
e-mail: masruchin@ub.ac.id

Сити Хамида, доцент, юридический факультет, Университет Бравиджая, Восточная Ява, Индонезия, г. Маланг.
e-mail: hamidah@ub.ac.id

Об отсутствии правил выполнения обязательств по обеспечению женщин средствами к существованию (Мадлен) в законе о индонезийском религиозном правосудии

Положения закона о выполнении обязательств по обеспечению женщин средствами к существованию (Мадлен) в нормативно-правовых актах индонезийского религиозного правосудия, особенно в нормах ст. 70 Закона № 7 от 1989 «О религиозных судах» с изменениями и дополнениями, внесенными Законами № 3 от 2006 г. и № 50 с 2009 г., создают сомнения в их направленности на обеспечение Мадлен. Это непосредственно влияет на доверие населения, особенно женщин, в религиозных судах, которые должны защищать права женщин и решать правовые вопросы, непосредственно связанные с обеспечением их средствами к существованию (Мадлен) после развода. На состояние выполнения решений судов в отношении обязательств по Мадлен негативно влияет ряд факторов: 1) неполнота правового регулирования, включая выполнение решений в части обеспечения прав жены и детей, одним из которых является Мадлен; 2) высокая стоимость выполнения; 3) отсутствие имущества, на которое может быть обращено взыскание; 4) проблема человеческих ресурсов; 5) низкое правосознание населения. Чтобы принять решение, которое гарантирует правовую определенность по обстоятельствам конкретного дела, судья должен иметь возможность принять решение, которое бы соответствовало следующим требованиям: во-первых, такое решение должно стать законом для обеих сторон по делу, которые должны неукоснительно соблюдать его; во-вторых, решение должно быть принято на основании фактов, установленных по делу; в-третьих, содержание решения должно быть четко сформулировано судьей, чтобы избежать неправильного толкования и препятствий в его исполнении. Усилия, направленные на обеспечение правовой определенности решений религиозных судов, заключаются в завершении разработки нормативных положений и создании механизмов их выполнения.

Ключевые слова: религиозное правосудия; обеспечения прав женщин; нормы по выполнению судебных решений; средства к существованию Мадлен.

Рекомендоване цитування: Marsis E., Sudarsono, Ruba'i M., Hamidah S. Due to the absence of rules for the execution of Madliyah livelihood in the law of the Indonesian religion justice. *Проблеми законності*. 2021. Вип. 153. С. 186–198. doi: <https://doi.org/10.21564/2414-990X.153.223682>.

Suggested Citation: Marsis, E., Sudarsono, Ruba'i, M., Hamidah, S. (2021). Due to the absence of rules for the execution of Madliyah livelihood in the law of the Indonesian religion justice. *Problemy zakonnosti – Problems of Legality, issue 153, 186–198*. doi: <https://doi.org/10.21564/2414-990X.153.223682>.

Надійшла до редколегії 01.02.2021 р.