

INNOVATION IN THE ENFORCEMENT OF CHILD SUPPORT ORDERS AFTER DIVORCE IN INTERFAITH MARRIAGES: A COMPARATIVE STUDY OF INDONESIA AND MALAYSIA



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Abstract

This article offers a comparative analysis of the two countries in terms of legal innovation and the enforcement of child maintenance orders following divorce in interfaith marriages, with a particular focus on the role and practice of the *Bahagian Sokongan Keluarga* (BSK) in Malaysia. Through a comparative approach, this study highlights both similarities and differences in legal enforcement mechanisms and provides recommendations to enhance the protection of children's rights in post-divorce child maintenance cases. This study finds that the fulfillment of child maintenance obligations in interfaith divorce cases, especially when the child is Muslim and the father is non-Muslim, presents complex legal issues. In Indonesia, the absence of a specialized institution similar to BSK results in enforcement of child support relying heavily on litigation processes, which are often hindered by jurisdictional and administrative limitations. Meanwhile, Malaysia, through BSK, has introduced administrative innovations, including mediation mechanisms and inter-agency coordination, which have accelerated the efficiency of child support fulfillment. Therefore, this recommends the establishment of a similar institutional unit in Indonesia, the harmonization of civil and Syariah data, and the development of standardized national operating procedures (SOPs) as reform efforts to better guarantee children's rights in interfaith marriages cases.

Abstrak

Artikel ini membahas perbandingan kedua negara dalam hal inovasi hukum dan penegakan putusan nafkah anak pasca perceraian dalam perkawinan beda agama, serta fokus pada praktik Bahagian Sokongan Keluarga (BSK) di Malaysia. Melalui pendekatan komparatif, artikel ini menyoroti kesamaan dan perbedaan dalam penegakan hukum serta memberi rekomendasi untuk meningkatkan perlindungan hak-hak anak dalam kasus nafkah pasca perceraian. Penelitian ini menemukan bahwa pemenuhan nafkah anak pasca perceraian beda agama, terutama jika anak Muslim dan ayah non-Muslim, menimbulkan masalah hukum kompleks. Di Indonesia, tanpa lembaga khusus seperti BSK, penegakan nafkah bergantung pada litigasi yang sering terhambat oleh masalah yurisdiksi dan administrasi. Sementara itu, Malaysia melalui BSK menghadirkan inovasi administratif seperti mediasi dan koordinasi antar lembaga yang mempercepat pemenuhan nafkah anak secara lebih efektif. Oleh karenanya penelitian ini memberikan kontribusi memberikan rekomendasi konseptual pembentukan unit serupa, harmonisasi data sipil dan Syariah, serta pengembangan SOP nasional sebagai upaya reformasi untuk lebih menjamin hak anak dalam perkawinan beda agama.



Background

The establishment of child support orders after divorce arises from the need to ensure the economic rights and well-being of children during the transitional period of family structuring. However, in practice, although court or religious court decisions may mandate the payment of child support, their implementation and enforcement frequently encounter serious obstacles. Common challenges include payment arrears by the obligor, difficulties in locating and summoning the obligor (often due to changes in residence or disappearance from the court system), and administrative barriers such as the absence of monitoring systems, arrears registries, and effective enforcement mechanisms. International studies note that the effectiveness of child support enforcement is highly dependent on the administrative and institutional mechanisms provided by each state or jurisdiction.¹ The study conducted by Ismail, using a case study in Kedah, also shows the same findings², as does research conducted in Australia.³

In the context of interfaith marriages, this complexity becomes even greater. When divorced parents come from different religious backgrounds or legal systems—for example, when one party is Muslim and the other non-Muslim—additional issues arise. These include the child's birth registration status, the jurisdiction of the competent court (between religious and general courts), the recognition of the marriage and its religious or civil affiliation, and the implications for enforcing child support orders. Normative legal research in the Indonesian context has highlighted that the legal status of the child and the differing religious status of the parents may weaken the basis for enforcement due to uncertainties surrounding the legality of the marriage or court jurisdiction.⁴ The same issue is also found in other countries, particularly Malaysia, which shares a socio-cultural context comparable to Indonesia.

In Malaysia, for example, a specialized institution called the Family Support Division (Bahagian Sokongan Keluarga, BSK) under the Malaysian Syariah Judiciary Department (Jabatan Kehakiman Syariah Malaysia, JKSM), has been established as an institutional response to address arrears in child and women's maintenance, including cases under the jurisdiction of the Syariah Court. This mechanism enables monitoring, advance payments, and coordination in enforcement execution. Statistics

¹ Mohd Hazwan Ismail and Jasni Sulong, "Enforcement Child-Maintenance Payment Using Judgement Debtor Summons and Judicial Notice: A Penang Case Study," *International Journal of Academic Research in Business and Social Sciences* 10, no. 7 (2020): 187–200, <https://doi.org/10.6007/ijarbs/v10-i7/7408>.

² Mohd Hazwan Ismail, "Settlement Of Arrears Of Alimony Payments Through Negotiations Family Support Division At The Syariah Court," *International Journal for Studies on Children, Women, Elderly and Disabled* 24, no. 1 (2025): 21–26.

³ Kay Cook, *Opening the Black Box of Child Support Financial Abuse Is Perpetrated* (Australia: Swinburne University of Technology, 2024), <https://smfa.com.au/wp-content/uploads/2024/10/Opening-the-Black-Box-of-Child-Support-2024-digital-version.pdf>.

⁴ Fina Puspita Martyana and Abdul Halim, "Legal Protection For Children In Interfaith Marriages: Comparative Study Between Indonesia And Other Countries," *International Journal of Science and Society* 6, no. 2 (2024): 793–803, <https://doi.org/10.54783/ijsoc.v6i2.1205>.

show that in the Federal Territory of Malaysia, from 2018 to 2022, a total of 1,489 child support applications were successfully resolved, and 287 enforcement cases were carried out by the BSK.⁵ However, recent studies indicate that weaknesses persist, including the lack of standardized assessments of the children's needs or the obligor's ability to pay, as well as differences between states that hinder the full effectiveness of the system.⁶

Meanwhile, in Indonesia, although the legal framework concerning child support obligations (under both civil law and Islamic family law) is regulated through legislation and religious court decisions, the execution process continues to face numerous obstacles. The absence of a specialized institution similar to the BSK, with full administrative mandate for monitoring and enforcing child support compliance, remains a major challenge. Furthermore, within the context of interfaith marriages, uncertainties regarding the legal status of the marriage and the child further weaken the enforcement of child support orders. For example, the study "Child Support Right in the Human Rights Perspective" shows that the fulfillment of child support rights in Indonesia lags behind Malaysia due to the lack of monitoring mechanisms and administrative enforcement systems.⁷

Therefore, this study is important because it offers a normative comparative perspective between two countries with pluralistic family law systems that face the reality of interfaith marriages in Indonesia and Malaysia. It specifically focuses on institutional innovations (such as Malaysia's BSK) and procedural-administrative mechanisms that could potentially be implemented or adapted within the Indonesian legal system. The novelty of this research lies in three main aspects: (1) emphasizing a juridical-normative analysis, rather than empirical approach, to map legislative frameworks, institutions, and enforcement procedures; (2) linking Malaysia's administrative institutional innovations with Indonesia's reform needs in the context of interfaith marriages and child support enforcement; and (3) formulating realistic normative recommendations—models that integrate Indonesia's family law principles with Malaysia's institutional practices without altering domestic legal foundations. Thus, this article not only describes the issues but also proposes a blueprint for institutional and procedural reform.

This research aims to address several fundamental questions: 1) How does the implementation of post-divorce child support fulfillment in interfaith marriages compare between Indonesia and Malaysia? 2) How relevant is the Family Support Division (BSK) model supporting the fulfillment of post-divorce child support rights

⁵ ova, "WP Syariah Court Settled 1,489 Child Maintenance Claims From 2018 To 2022," OVA Persist, 2023.

⁶ Sharipah Ruzaina *et al.*, "Child Maintenance after Divorce: Review on the Practices in Malaysian Shariah Courts," *Environment-Behavioral Proceeding Journal* 9, no. 29 (2024): 21 – 27.

⁷ Arief Syahrul Alam, Muhamad Chaidar, and Anisah Che Ngah, "Child Support Right In The Human Rights Perspective," *Sasi* 30, no. 3 (2024): 258, <https://doi.org/10.47268/sasi.v30i3.2193>.

in interfaith marriage cases in Indonesia? This study uses a normative juridical approach focusing on literature review and legal document analysis related to the enforcement of child support orders following divorce in interfaith marriages in Indonesia and Malaysia. A comparative approach is applied to compare the systems, mechanisms, and challenges of child support enforcement in both countries. Data are collected through the study of legislation, court decisions, academic journals, and other relevant secondary sources, producing a comprehensive understanding of institutional innovations and the effectiveness of child support enforcement in the context of interfaith marriages.

The System of Child Support Fulfillment in Divorces of Parents from Different Religions in Indonesia

Regarding the fulfillment of child support after divorce, a clear execution process is critically important. According to Sudikno Mertokusumo, execution refers to the implementation of a court decision that has obtained permanent legal force by the losing party in order to fulfill the obligations stipulated in that decision. In other words, execution represents the concrete realization of the contents of a court ruling, ensuring that the justice decided by the court can be effectively actualized.⁸

According to Subekti, execution is a legal action carried out by the court to compel the losing party to implement the contents of a court decision.⁹ Yahya Harahap further explains that execution is a legal action undertaken by the state through the court to compel the losing party in a case to comply with the contents of a judgment that has obtained permanent legal force (*in kracht van gewijsde*).¹⁰ Its main function is to ensure the concrete realization of adjudicated rights.¹¹ In general, the purpose of execution is to ensure that court decisions are not merely declarative but instead deliver tangible justice to the rightful party.¹²

The legal status of interfaith marriages in Indonesia has a direct impact on the juridical basis for enforcing child support obligations. The Constitutional Court's rulings concerning interfaith marriage cases affirm that the validity of a marriage depends on the religious provisions applicable to each party. When a marriage is not recognized under religious law, uncertainties arise regarding the registration and civil status of the spouses and their children. This situation consequently weakens the legal foundation for claiming and enforcing child support obligations from the father. Such uncertainty often requires additional civil legal efforts (such as child status

⁸ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1993), 23.

⁹ Subekti, *Hukum Acara Perdata* (Jakarta: Intermasa, 1995), 119.

¹⁰ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Prenada Media Group, 2005), 357.

¹¹ Sudikno Mertokusumo dan Pitlo, *Bab-Bab Tentang Penemuan Hukum* (Jakarta: Citra Aditya Bakti, 1999), 251.

¹² Zainal Asikin, *Hukum Acara Perdata Di Indonesia* (Jakarta: Rajawali Press, 2012), 126.

determination and paternal recognition), which increase the procedural burden on the mother or guardian and prolong the enforcement process.¹³

The unclear legal status of both the marriage and the child often frequently places children who are Muslim but born to non-Muslim fathers in a vulnerable position. This situation differs from cases in which the legal status of the child is clear, whether both parents and the child are Muslim or non-Muslim. When a child's religious status differs from that of one or both parents, jurisdictional issues frequently become obstacles to obtaining the child's rights, particularly the right to child support. The handling of birth registration, religious identification, and civil rights may differ between civil administrative institutions and religious courts. Recent juridical studies show that children born from marriages not recognized under religious law tend to be treated as illegitimate children in certain administrative contexts, thereby requiring the mother to undergo a legal process of establishing the father-child relationship through recognition in order to access child support rights from the father. This condition prolongs the legal steps that must be taken before child support enforcement can be carried out.¹⁴

From an institutional judicial perspective, the authority of the Religious Courts is considerably limited in cases involving non-Muslim parties or marriages that are not recognized under religious law. Meanwhile, District Courts (civil courts) possess authority to adjudicate child recognition and property disputes. However, access to effective child support enforcement mechanisms (such as wage garnishment or arrears registration) often suffers from poor inter-institutional coordination. Literature on court procedures and child protection consistently recommends procedural harmonization among institutions, including civil registration authorities, Religious courts, and District Courts, in order to expedite the enforcement processes. Nevertheless, implementation records continue to reveal gaps between normative regulations and practical application.

Administratively, Indonesia has not yet established a specialized institutional unit equivalent to Malaysia's Bahagian Sokongan Keluarga (BSK), which is responsible for monitoring child support arrears, coordinating enforcement processes, and providing interim payments. As a result, child support enforcement efforts in Indonesia remain fragmented, requiring mothers or guardian to file claims before the court, await judicial decisions, and then undertake enforcement processes involving the court office, bailiffs, and/or further civil actions. Studies published in academic journals over the past five years highlight persistent weaknesses in arrears registry systems, limited access to obligor identity and income data, and the lack of

¹³ Putusan Mahkamah Konstitusi Nomor 71/PUU-XX/2022

¹⁴ Hanafi Urwatil Usqo, Arifuddin Muda Harahap, and Ramadhan Syahmedi Siregar, "The Position Of Heirs From Interfaith Marriages In The Decision Of The Constitutional Court Number 71 / Puu- Xx / 2022 And Civil Inheritance," *Sosioedukasi: Jurnal Ilmiah Ilmu Pendidikan Dan Sosial* 14, no. 3 (2025): 1481 – 91.

administrative mechanisms for automatic wage garnishment, factors that collectively hinder enforcement effectiveness.¹⁵

In cases where the child is Muslim and the father is non-Muslim, recent court decisions show a judicial tendency to require proof of the parental relationship or formal paternal recognition before ordering child support enforcement against the non-Muslim father. This evidentiary process, including legal recognition, DNA testing, and determination of citizenship status adds both time and financial costs to litigation. Several recent empirical and juridical studies further indicate that relational factors (such as the obligor's reluctance, high mobility, and the institutional separation between religious and civil jurisdictions) significantly increase the likelihood of child support arrears. As a result, child protection remains suboptimal without specific procedural adaptations tailored to interfaith family situations.¹⁶

Due to these legal, juridical, and administrative obstacles, this study emphasizes the urgency of formulating normative innovations. These includes adapting institutional models (such as establishing a child support monitoring and coordinating unit similar to Malaysia's BSK), establishing a national registry of child support arrears, expediting paternal recognition procedures for the purpose of child support enforcement, and implementing administrative mechanisms such as automatic wage deductions with adequate guarantees of due process. These recommendations are based on a comparative study of BSK practices in Malaysia and recent evaluations in Indonesian legal scholarship, which indicate that institutional reforms and administrative digitalization are priority steps to narrow enforcement gaps, particularly in cases involving Muslim children with non-Muslim fathers.¹⁷

It can therefore be affirmed that the fulfillment of child support obligations arising from interfaith marriages in Indonesia, especially when the child is Muslim and the father is non-Muslim, continues to face significant structural and procedural obstacles. Uncertainty over marital status, the limited jurisdiction of Religious Courts, and the absence of specialized enforcement institutions like Malaysia's BSK result in slow and fragmented processes of verification, determination, and enforcement. Consequently, child protection remains suboptimal, as enforcement depends heavily on lengthy civil litigation and weak inter-agency coordination. Accordingly, normative legal reform and institutional strengthening constitute urgent priorities to ensure legal certainty and effectiveness in fulfilling child support across religious lines.

¹⁵ Alam, Chaidar, and Ngah, "Child Support Right In The Human Rights Perspective."

¹⁶ Himatul Ulya *et al.*, "Perlindungan Hukum Terhadap Anak Dari Perkawinan Beda Agama Dalam Memeluk Agama Dari Prespektif Hukum Islam" 2, no. 3 (2024): 121.

¹⁷ Siti Madihah Ruzmi, Asma Hakimah Ab Halim, and Fatimah Yusro Hashim, "Empowerment of the Family Support Division of the Selangor State Syariah Judiciary Department Under Syariah Law in Malaysia," *Malaysian Journal of Syariah and Law* 13, no. 2 (2025): 428 – 44, <https://doi.org/10.33102/mjssl.vol13no2.724>.

Mechanisms for Child Support Fulfillment After Divorce in Interfaith Marriages in Malaysia

The child support fulfillment system in Malaysia is primarily based on the authority of the Syariah Court to issue child support orders for Muslim children, even in cases involving a non-Muslim father. While jurisdictional issues and questions of family status recognition can be complex, but the Syariah Court continues to assert its role in enforcing child support for children legally identified as Muslim. Administratively, the establishment of Family Support Division (BSK) serves to bridge the gap between judicial rulings and practical enforcement by monitoring arrears, negotiating payment arrangements, and facilitating enforcement measures.¹⁸

In practice, Muslim children with non-Muslim fathers typically require confirmation of religious status and recognition of the parental relationship for child support orders to be effectively enforced. The Syariah Court often demands proof of relationship or paternal recognition before enforcement orders are implemented. In this context, the Family Support Division (BSK) plays an administrative support role by accelerating data tracing, coordinating the execution of court decisions, and providing technical advice to judges on periodic monitoring mechanisms. Recent studies emphasize the need for harmonization between civil registration systems and Syariah registries to expedite the processes.

The Family Support Division (BSK) also performs a proactive function in mitigating the risk of arrears by not only facilitating mediation between parties but also initiating administrative measures, such as issuing official notifications to the obligor's employer and maintaining arrears registries to facilitate wage garnishment when necessary. In cases involving Muslim children and non-Muslim fathers, cross-agency coordination (including birth registration, immigration, and employment departments) is crucial, as inconsistencies in identity and employment data often hinder enforcement efforts. Recent Malaysian legal literature highlights the effectiveness of such interventions.¹⁹

However, empirical studies show that BSK faces several operational challenges, such as variations in practices between states, limited resources for intensive monitoring, and the absence of standardized assessment mechanisms for determining the child's needs or the obligor's ability to pay. In interfaith cases involving Muslim children and non-Muslim fathers, these obstacles are exacerbated by the additional need of proving parental relationships and reconciling religious data in civil registration. Therefore, several studies recommend strengthening BSK's legal

¹⁸ M. Alpi Syahrin *et al.*, "Child Support Payments Post-Divorce: A Comparison of Indonesia and Malaysia With a Technological Approach," *Kosmik Hukum* 25, no. 2 (2025): 393–408, <https://doi.org/10.30595/kosmikhukum.v25i2.26197>.

¹⁹ Alam, Chaidar, and Ngah, "Child Support Right In The Human Rights Perspective."

mandate and establishing national standard operating procedures (SOPs) for interfaith cases.²⁰

Comparative studies also show that Malaysia's child support enforcement system is administratively more advanced due to the presence of a centralized enforcement-focused institution such as BSK. This institution provides services such as payment tracing, arrears registries, and coordination of wage garnishment. In cases involving Muslim children and non-Muslim fathers, BSK's tracing mechanisms and administrative interventions have demonstrated effectiveness in reducing arrears, particularly when reliable identity data are available and employer cooperation can be secured. However, the effectiveness depends heavily on the quality of data integration among agencies.²¹

Recent literature on privacy law and child protection emphasizes that enforcement efforts must guarantee due process and protect the human rights of both parents while prioritizing the best interests of the child. In interfaith cases, BSK's policies that prioritize mediation and administrative solutions (e.g., interim payments) often yield faster results than full litigation, but only if there are clear regulations regarding data collection, cross-agency data access, and legitimate wage garnishment mechanisms. Academic recommendations consistently suggest the establishment of standardized SOPs that maintain a balanced protection of rights.²²

The role of BSK in cases involving Muslim children and non-Muslim fathers is therefore crucial, as it bridges Syariah Court decisions with concrete administrative actions, such as tracing, mediation, and enforcement coordination, thereby accelerating child support fulfillment. However, to achieve optimal effectiveness, it is necessary to strengthen BSK's legal mandate, harmonize civil and Syariah registries, establish national SOPs, and set standardize assessments of children's needs. Evidence from legal scholarship published over the past five years shows that institutional adaptation and administrative digitalization are key to overcoming enforcement barriers in interfaith child support cases in Malaysia.²³

Based on these findings, it can be understood that Malaysia's mechanism for fulfilling child support after divorce obligations in interfaith marriages demonstrates that the authority of the Syariah Court can be effectively applied to Muslim children, even when the father is non-Muslim, provided that the paternal relationship is legally

²⁰ Ruzmi, Ab Halim, and Hashim, "Empowerment of the Family Support Division of the Selangor State Syariah Judiciary Department Under Syariah Law in Malaysia."

²¹ Tutik Hamidah et al., "The Dynamics of Urban Muslim Families Post-Divorce: The Contribution of Islamic Law in Building Resilience of Indonesian and Malaysian Families," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024): 363–81, <https://doi.org/10.18860/J-FSH.V16I2.27461>.

²² Akbarizan Akbarizan, Akmal Abdul Munir, and Akel Fernando, "Fulfillment of Children 's Rights After Divorce: A Comparative Study In," *International Journal of Law and Society* 2, no. 1 (2025): 210–15.

²³ iska Lis Sulistiani and Ira Siti Rohmah Maulida, "Comparison Of Alimony Enforcement Practices To Protect Women And Children In Family Law In Indonesia And Malaysia," *TAHKIM, Jurnal Peradaban Dan Hukum Islam* 8, no. 2 (2025): 73–88.

established. The Family Support Division (BSK) plays a key role by providing administrative support, monitoring arrears, facilitating mediation, and coordinating enforcement actions such as wage garnishment. Nevertheless, the overall effectiveness of this mechanism remains contingent upon jurisdictional challenges, gaps in registration data, and differences in practices between states. Accordingly, regulatory harmonization and further institutional strengthening of BSK are necessary to ensure the sustainable fulfillment of children's rights.

Cases on the Fulfillment of Child Maintenance Rights After Divorce in Interfaith Marriages in Indonesia and Malaysia

In the practice of family courts in Indonesia, child maintenance issues arising from interfaith divorces are often complex due to the division of legal jurisdiction between Religious Courts and General Courts, as well as the principle that the *hadhanah* (custody) of a Muslim child should ideally be placed with a Muslim caregiver. Although a father's obligation to provide maintenance is universal, its implementation becomes problematic when a Muslim child is cared for by a non-Muslim parent, creating jurisdictional ambiguities and increasing the risk of noncompliance by the father.²⁴ Field studies by Pitaloka, analyzing cases in the Religious Courts of Tangerang and Parigi, document several instances of child custody and maintenance issues following interfaith divorces. The findings show that judges often order child maintenance for Muslim children, yet implementation is hindered by factors such as unclear marital status, limited enforcement mechanisms, and low compliance by fathers, including non-Muslim fathers. The research recommends harmonizing legal norms, strengthening enforcement procedures, and providing special protection for Muslim children in interfaith divorce cases.²⁵

Studies discussed in the literature (for example, research on the Bogor Religious Court Decision No. 576/Pdt.G/2021/PA.Bgr) show a similar pattern in which the court orders the father to provide child maintenance, yet the claimant's family encounters significant obstacles in collecting and enforcing the judgment, resulting in the child's rights not being effectively fulfilled. Academic analyses of such decisions highlight the need to improve enforcement procedures, strengthen the role of social services and prosecutors in maintenance collection, and develop protective policies for children in interfaith marriages.²⁶

In relation to this matter, the author further solicited the opinions of judges of the Religious Courts concerning the legal status of a father's obligation to provide

²⁴ Saini Moh. Arifandi, "Hak Asuh Anak Pasca Perceraian Karena Perbedaan Agama Dalam Putusan Pengadilan Agama Maumere Nomor 1/Pdt.G/2013/Pa.Mur: Analisis Perspektif Hukum Keluarga Islam," *Baiti Jannati: Jurnal Hukum Keluarga Islam* 2, no. 1 (2025): 1–13.

²⁵ Husnul Pitaloka and Abdul Halim, "Pemeliharaan Anak Dari Perceraian Beda Agama Dalam Sistem Hukum Indonesia," *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 8, no. 3 (2021): 393–402.

²⁶ Muhammad Miftah, Kamalludin, and Yono, "Perlindungan Hukum Islam Terhadap Nafkah Anak Pasca Perceraian (Analisis Putusan Nomor 576/Pdt./G/2021/Pa.Bgr.)," *Jurnal Hukum Progressif* 8, no. 7 (2025): 14–21.

child maintenance where the father and the child profess different religions, particularly where the child is Muslim and the father is non-Muslim. Yengkie Hirawan, Vice Chairperson of the Kebumen Religious Court, explained that when an interfaith marriage occurs, such a marriage is considered invalid under Islamic law, and consequently any child born from the marriage is recognized as having lineage (*nasab*) only to the mother. With regard to the civil relationship between the child and the biological father, he noted that the Indonesian Council of Ulama (MUI) Fatwa Number 11 of 2012 concerning the Legal Status of Children Born Out of Wedlock provides a reasonable legal basis. The fatwa stipulates that while lineage is established solely with the mother, the child remains entitled to certain rights from the biological father, including maintenance and a share of the father's estate in the form of a mandatory bequest (*wasiat wajibah*). This position is also consistent with the Constitutional Court Decision Number 46/PUU-VIII/2010.²⁷

Salwi, a Justice of the Padang Religious High Court, also explained that Islamic law may be applied to parties in interfaith marriages such that the obligation to provide maintenance remains in effect notwithstanding differences in religious affiliation. Under Islamic law, maintenance obligations are not restricted by religion; therefore, even where the father is non-Muslim and the child is Muslim, the child remains entitled to receive maintenance until reaching independence or marriage.²⁸ Firdaus, a Judge of the South Jakarta Religious Court (Class I A), further explained that religion does not constitute a barrier to the provision of child maintenance. Under Islamic law, the obligation to provide maintenance for a child is absolute; therefore, even if the father is non-Muslim, he remains legally obligated to provide maintenance to the child following the dissolution of the marriage".²⁹

In Malaysia, although exact data indicating the number of child support enforcement cases arising from interfaith divorces are limited, several prominent cases have been found to bring significant changes to the legal mechanisms related to child support fulfillment after divorce, especially for children born to parents of different religions. One of the most prominent cases is *Indira Gandhi a/p Mutho v. Pengarah Jabatan Agama Islam Perak & Ors*, which substantially shaped the legal framework governing interfaith custody and maintenance issues. The case began when a father who converted to Islam unilaterally registered the conversion of the couple's three children without the consent of the mother (Indira) and subsequently obtained a *hadhanah* order from the Syariah Court. Indira Gandhi petitioned the Civil Court to invalidate the conversions and retain custody, and the matter eventually reached the Federal Court. On 29 January 2018, the Federal Court annulled the

²⁷ Yengki Hirawan (the Vice Chairperson of the Kebumen Religious Court), *Interview*, 26 January 2025

²⁸ Salwi (Justice of the Padang Religious High Court), *Interview*, 26 January 2025

²⁹ Firdaus (Judge of the Class I A South Jakarta Religious Court), *Interview*, 23 January 2025

children's conversions and affirmed the jurisdiction of the civil courts to review such administrative issues.³⁰

The core legal issue in the *Indira Gandhi* ruling concerned jurisdiction—specifically whether matters relating to a child's religious status fall exclusively within the jurisdiction of the Syariah Courts or may also be reviewed by the civil courts. The Federal Court held that civil judicial oversight is permissible where actions by religious authorities involve administrative decisions. This jurisdictional outcome has significant implications for child maintenance claims: where a Syariah Court determines that the child is Muslim, maintenance orders are typically issued and enforced within the Syariah system. Conversely, where the civil courts exercise jurisdiction, enforcement mechanisms differ accordingly.³¹

The ruling has practical implications for the enforcement of child maintenance in interfaith divorce cases. When disputes arise concerning the child's religion or custody, uncertainty may emerge regarding which authority has jurisdiction to order and enforce maintenance, thereby creating gaps in execution. Comparative studies show that jurisdictional conflicts often delay or weaken maintenance enforcement efforts, resulting in court decisions not being fully realized in practice.³² Field observations following the *Indira* decision indicate that many families continue to face obstacles where maintenance orders exist but enforcement is hindered by administrative procedures, discrepancies between civil and Sharia records, and limited enforcement capacity at the state level, leading to delayed maintenance payments.³³

At the implementation stage, the role of the Family Support Division (Bahagian Sokongan Keluarga, BSK) becomes crucial. BSK, a unit under the Malaysian Syariah Judiciary Department, is designed to assist in enforcing maintenance orders through mediation, registration and monitoring of orders, payment arrangement plans, and enforcement efforts such as official notices and asset seizures. BSK programs, including e-Maintenance initiatives and community mediation, aim to resolve arrears without prolonged litigation while supporting maintenance recipients throughout the enforcement process. Academic and practical evaluations show that BSK improves compliance through non-litigation approaches and administrative mechanisms such as payment scheduling and social support referrals. However, challenges remain,

³⁰ Justices Zulkefli et al., "PRESS SUMMARY FEDERAL COURT OF MALAYSIA *Indira Gandhi a / p Mutho v Pengarah Jabatan Agama Islam Perak & Civil Appeal No . 01 (F) -17-06 / 2016 (A) (Appeal No . 17) Indira Gandhi a / p Mutho v Kementerian Pelajaran Malaysia & Anor Civil Appeal No . ,*" no. March 2009 (2018): 1 – 16.

³¹ Trevor Padasian, "Unilateral Conversion in Malaysia – Back from the Brink," Skrine.com, 2018, <https://www.skrine.com/insights/newsletter/december-2018/unilateral-conversion-in-malaysia>.

³² Norfadhilah Mohd Ali et al., "Penentuan Agama Kanak-Kanak Apabila Salah Seorang Ibu Bapa Memeluk Islam Menurut Perspektif Undang-Undang Dan Syariah: Kajian Kes *Indira Gandhi A/P Mutho*," *Malaysian Journal of Syariah and Law* 7, no. 2 (2019): 27 – 39.

³³ Asiah Aqilah Abdul Ghani et al., "Delays in the Enforcement of Child Support Orders Among Muslims: An Administrative Perspective in Malaysia and Indonesia," *Al-'Adalah* 22, no. 1 (2025): 91 – 124, <https://doi.org/10.24042/adalah.v22i1.26698>.

including limited state resources, incomplete data integration between civil and Syariah systems, and cases where the child's religious status is disputed. Post-*Indira* policy recommendations therefore include strengthening BSK's institutional capacity, enhancing cross-institutional coordination protocols, and clarifying maintenance enforcement mechanisms in situations involving overlapping jurisdictions.³⁴

It can be understood that the implementation of child maintenance fulfillment following interfaith marriages in both Indonesia and Malaysia faces substantial practical challenges despite different legal backgrounds. Indonesia continues to struggle with overlapping jurisdiction between religious and civil courts, uncertainties regarding marriage status and the child's religious affiliation, and relatively weak enforcement mechanisms, making court orders difficult to execute effectively. Meanwhile, Malaysia, particularly following the *Indira* ruling, benefits from clearer jurisdictional precedents and operational instruments such as the Family Support Division (BSK), which facilitates mediation and enforcement. However, Malaysia still faces challenges related to data integration and institutional capacity. In essence, Malaysia demonstrates more advanced administrative enforcement tools, while Indonesia requires stronger inter-institutional coordination and enforcement mechanisms.

The Role and Innovations of BSK in Efforts to Fulfill Child Support After Divorce in Interfaith Marriages

The Family Support Division (Bahagian Sokongan Keluarga, BSK) was established to bridge the gap between Syariah Court decisions and their enforcement in practice. Its main tasks include monitoring arrears, conducting pre-enforcement mediation, tracing obligors, and coordinating administrative actions such as notifying employers. In cases involving Muslim children with non-Muslim fathers, BSK plays a crucial role in ensuring that proof of the parental relationship and the child's religious status is properly documented so that the Syariah Court can issue enforceable orders. This administrative function reduces reliance on lengthy litigation, which often disadvantages the child's best interests.³⁵

BSK's innovations include early mediation approaches and data-tracing services designed to accelerate the enforcement process. In interfaith cases, tracing facilities help identify the employment and asset trails of non-Muslim fathers who may have relocated, thereby making wage garnishment or asset seizure more feasible. Recent literature emphasizes that such administrative interventions lead to faster resolutions

³⁴ F. S. Muhammad *et al.*, "Strengthening the Family Support Division (BSK) on Alimony for Muslim Women," *Global Journal Al-Thaqafah* JULY2024, no. SPECIALISSUE (2024): 99 – 113, <https://doi.org/10.7187/GJATSI072024-7>.

³⁵ Alam, Chaidar, and Ngah, "Child Support Right In The Human Rights Perspective."

compared to litigation-based enforcement, provided that data harmonization between civil registration and Syariah registries is ensured.³⁶

BSK also develops mechanisms for interim payments and child economic support programs to prevent gaps in meeting children's basic needs during ongoing legal processes. In cases involving Muslim children and non-Muslim fathers, interim payments enable the fulfillment of the children's rights even while parental recognition status is still being contested in court. Studies on the adequacy of support highlight the need for consistent standards in assessing the children's needs to ensure that interim decisions are both effective and fair.³⁷

BSK's administrative mechanisms also include cross-agency coordination; for example, with civil registration offices, employment agencies, and banking institutions, to address identity data issues that often hinder enforcement in interfaith cases. For Muslim children with non-Muslim fathers, this collaboration helps ensure that identity proof and income data can be verified more quickly. Applied studies recommend the establishment of national SOPs to standardize these actions so that BSK's innovations do not solely depend on regional policies.³⁸

Although effective in many cases, field studies show that BSK faces several limitations, including variations in practices among states, limited resources for intensive monitoring, and the absence of standardized national regulations specifically handling interfaith cases. In cases involving Muslim children and non-Muslim fathers, obstacles in proving parental relationships and discrepancies in religious registration often delay enforcement. Therefore, the literature recommends strengthening BSK's legal mandate, allocating adequate resources, and integrating national data systems to enhance the sustainability of enforcement efforts.³⁹

In short, BSK's innovations, including pre-enforcement mediation, tracing mechanism, interim payments, and cross-agency coordination demonstrate a promising administrative model for improving post-divorce child support fulfillment, including in interfaith marriages involving Muslim children and non-Muslim fathers. However, full effectiveness requires harmonization of civil and Syariah registries, national SOPs, and due-process safeguards to protect the children's rights without infringing upon parental rights. These recommendations are reflected in recent

³⁶ Endad Musaddad *et al.*, "Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (2025): 1–14, <https://doi.org/10.24090/volksgeist.v8i1.12214>.

³⁷ R Kadir *et al.*, "Child Maintenance in Malaysia: Are the Amounts Sufficient?," *Geografia-Malaysian Journal of Society & Space* 19, no. 2 (2023): 79–91, <https://doi.org/10.17576/geo-2023-1902-06>.

³⁸ Mohd Hazwan Ismail, "Addressing Maintenance Arrears without Litigation: Family Support Division (BSK) Mediation as an Early Resolution Mechanism," *International Journal of Academic Research in Business and Social Sciences* 15, no. 9 (2025): 1110–22, <https://doi.org/10.6007/ijarbss/v15-i9/26464>.

³⁹ Ruzmi, Ab Halim, and Hashim, "Empowerment of the Family Support Division of the Selangor State Syariah Judiciary Department Under Syariah Law in Malaysia."

studies evaluating BSK's role as evidence of successful administrative institutionalization.⁴⁰

It can therefore be concluded that the innovations and institutional role of the Family Support Division (Bahagian Sokongan Keluarga, BSK) in fulfilling child support after divorce in interfaith marriages, particularly when the child is Muslim and the father is non-Muslim—demonstrate an adaptive and responsive institutional model. Through mediation, tracing, interim payments, and cross-agency coordination, BSK effectively bridges the gap between Syariah Court decisions and real-world enforcement. Although challenges remain in jurisdictional coordination, data registration, and regional disparities, the presence of BSK has proven to enhance certainty and access to child support rights. Moving forward, regulatory harmonization and strengthened national SOPs will be key to sustaining this model.

Comparison and Relevance of BSK in Fulfilling Child Support Rights Post-Divorce in Interfaith Marriages in Indonesia

The child support enforcement system in Indonesia tends to be fragmented: court decisions, whether from religious or civil courts, are often not immediately followed by effective administrative mechanisms for tracking obligors or enforcing payments. In contrast, Malaysia places enforcement functions within a specialized unit, the Family Support Division (Bahagian Sokongan Keluarga, BSK), which acts as a liaison between Syariah Court rulings and operational steps such as tracing, mediation, and coordination of wage garnishment. This institutional difference is particularly relevant in interfaith marriage cases, where Muslim children with non-Muslim fathers require swift administrative intervention to secure child support rights.⁴¹

In such cases, the main issues involve proof of kinship and the synchronization of civil registration data, two factors that often hinder enforcement. BSK functions not only as an administrative enforcement body but also as a facilitator for data verification and cross-agency coordination (including civil registration, employment, banking institutions), thereby minimizing identity-related obstacles. Recent studies highlight that without a unit similar to BSK, litigation for paternal recognition significantly increases time and costs, reducing the chances of fulfilling children's rights.

Relevant BSK innovations include pre-enforcement mediation, payment tracing, interim payments, and established cooperation standards with employers for wage garnishment mechanisms. These approaches are particularly effective when obligor identity and income data are accessible; therefore, research emphasizes the

⁴⁰ Hamidah *et al.*, "The Dynamics of Urban Muslim Families Post-Divorce: The Contribution of Islamic Law in Building Resilience of Indonesian and Malaysian Families."

⁴¹ Alam, Chaidar, and Ngah, "Child Support Right In The Human Rights Perspective."

importance of national data integration. Empowered with a strong legal mandate and data access authority, BSK is able to reduce arrears more effectively than systems that rely solely on litigation-based enforcement. This presents a practical model that Indonesia may explore for interfaith cases.⁴²

However, comparative analysis also reveals limitations within the BSK system. Disparities in practices among Malaysian states, resource constraints, and privacy or data issues reduce the consistency of enforcement outcomes. Therefore, adapting this model to Indonesia would require the development of national SOPs, institutional capacity strengthening, and robust data-protection regulations to ensure that tracing and wage-garnishment mechanisms do not violate human rights. Policy literature emphasizes that merely replicating BSK's structure without regulatory harmonization and adequate national resource allocation would struggle to deliver full benefits.⁴³

The relevance of BSK to the Indonesia-Malaysia context is also evident in its preventive role: early mediation and administrative interventions reduce the court burdens and shorten the time needed to fulfill child support obligations. In interfaith marriages, where the process of paternal recognition may be lengthy, the interim-payment mechanism implemented by BSK becomes crucial to meet the child's needs while legal proceedings are ongoing. Comparative studies recommend that Indonesia pilot a similar coordination unit at the provincial level to test its effectiveness.⁴⁴

Normatively, transferring BSK-type practices to Indonesia would require legal adjustments: a mandatory legal basis for a monitoring unit, authority to access administrative data, and judicial-administrative mechanisms to order wage garnishment. Academic recommendations emphasize that such reforms must uphold due-process guarantees, such as the obligor's right to defense, while accelerating child protection outcomes. Multi-country comparative studies show that the combination of procedural reforms and institutional strengthening yields the best results in reducing arrears levels.⁴⁵

BSK thus provides a relevant and practical administrative institutional model to improve child support fulfillment following divorce in interfaith marriage cases. For contextual adaptation in Indonesia, several steps are necessary: (1) harmonization of civil and Syariah registries, (2) pilot coordination units at the regional level, (3) national SOPs for tracing and interim payments, and (4) guarantees of data protection and due process. Recent literature from the past five years supports that phased

⁴² Muhammad et al., "Strengthening the Family Support Division (BSK) on Alimony for Muslim Women."

⁴³ Arsad Wan Nailah, Abdullah Syahiza, Hassan Hasnisah, and Arif Rahayati, Ahmad Muhammad, "Influence of Psychological Well-Being and School Factors on Delinquency , During the Covid-19 Period Among Secondary School Students in Selected Schools in Nakuru County : Kenya," *International Journal of Research and Innovation in Social Science (IJRISS)* VII, no. 2454 (2023): 1175–89, <https://doi.org/10.47772/IJRISS>.

⁴⁴ Hamidah et al., "The Dynamics of Urban Muslim Families Post-Divorce: The Contribution of Islamic Law in Building Resilience of Indonesian and Malaysian Families."

⁴⁵ Akbarizan, Munir, and Fernando, "Fulfillment of Children ' s Rights After Divorce : A Comparative Study In."

institutional adaptation, rather than direct institutional transfer, represents the most realistic strategy to enhance enforcement effectiveness.

Indonesia, in fact, possesses an institution that could potentially support the fulfillment of child support rights after divorce, including in interfaith marriages, namely the Indonesian Child and Women Protection Commission (KPAI). KPAI focuses on the broader protection of children's rights, including the right to child support, but its role is more oriented toward advocacy and policy oversight rather than direct administrative enforcement. Although KPAI plays a strategic role in monitoring the implementation of children's rights, providing policy recommendations, and receiving reports of rights violations, it does not yet possess operational mechanisms to directly intervene in mediation, tracing, or execution of child support obligations.⁴⁶

Conversely, BSK in Malaysia functions as a specialized administrative unit that manages the entire process of child support enforcement, from pre-enforcement mediation and payment tracing to coordinating wage garnishment and inter-agency cooperation. This operational role enables BSK to provide a rapid and practical response in following up court decisions, particularly in complex interfaith marriage cases. A study by Bahiyah *et al.* demonstrates that the BSK's approach significantly reduces child support arrears and accelerates the fulfillment of children's rights after divorce.⁴⁷

The fundamental difference between KPAI and BSK is that KPAI is primarily normative and supervisory in nature, whereas BSK is an executive unit that directly carries out administrative and operational functions. This distinction makes BSK more effective in addressing the specific challenges of child support enforcement, especially those related to identity verification, income data, and the crucial inter-agency coordination needed in the context of interfaith cases.⁴⁸

Nevertheless, KPAI still plays an important role in broader aspects of child rights protection through legal advocacy, public education, and policy strengthening. Integrating KPAI's supervisory roles with BSK's administrative execution could form an ideal institutional framework for Indonesia. Recent studies recommend establishing a specialized unit similar to BSK under the coordination of KPAI or

⁴⁶ Wardah Nuronyah, *Hukum Perlindungan Anak Di Indonesia* (Nusa Tenggara Barat: Yayasan Hamjah Diha, 2022), 12.

⁴⁷ Bahiyah Ahmad, Raihanah Hj Azahari, and Asmak Ab Rahman, "Assessing The Rate Of Child Maintenance (Financial Support) From A Shariah Perspective The Case Of Malaysia," *Al-Jāmi'ah: Journal of Islamic Studies* 58, no. 2 (2020): 293 – 322, <https://doi.org/10.14421/ajis.2020.582.293-322>.

⁴⁸ Ismail, "Addressing Maintenance Arrears without Litigation: Family Support Division (BSK) Mediation as an Early Resolution Mechanism."

another relevant institution in order to optimize the effective and equitable enforcement of child support obligations.⁴⁹

In conclusion, comparison between Indonesia and Malaysia shows that the existence of BSK as a specialized institution in Malaysia provides a significant advantage in ensuring the fulfillment of post-divorce child support in interfaith marriage cases. The structured administrative model—including mediation, tracing, interim payments, and cross-agency coordination—bridges the gap between court decisions and actual enforcement, a gap that Indonesia has yet to fill. For Indonesia, the relevance of BSK lies in its potential to drive institutional reform, harmonize civil and Syariah data systems, and strengthen enforcement mechanisms to better protect children's rights. With appropriate contextual adaptation, BSK practices can serve as a strategic reference for national system renewal.

Conclusion

The fulfillment of child support following divorce in interfaith marriages presents complex legal issues, especially when the child is Muslim and the father is non-Muslim. In Indonesia, the absence of a specialized institution similar to BSK results in child support enforcement relying heavily on litigation, often leading to delays due to jurisdictional challenges, proof-of-paternity requirements, and civil-registration administrative issues. Fragmented institutional authority and the lack of systematic monitoring mechanisms lead to low obligor compliance and postponement of the child's basic rights fulfillment. This situation highlights the need for a more proactive and integrated institutional approach to ensure the protection of children's rights.

Comparative analysis with Malaysia shows that the presence of the Family Support Division (Bahagian Sokongan Keluarga, BSK) introduces significant administrative innovations through mediation, tracing, interim payments, and cross-agency coordination, which accelerate the fulfillment of child support without relying solely on litigation. This model has proven more responsive in handling interfaith cases, especially where the child is Muslim and the father is non-Muslim, as BSK effectively bridges the gap between Syariah Court decisions and actual enforcement. Therefore, Malaysia's experience offers valuable lessons for Indonesia: establishing a similar specialized unit, harmonizing civil and Syariah data systems, and developing national SOPs are key reforms to better guarantee children's rights in interfaith marriages.

⁴⁹ Ahsanul Fahmi, Muhammad Na, and Nur Anshari, "Judicial Practices In Enforcing Post-Divorce Maintenance Rights For Women And Children In Indonesia," *Indonesian Private Law Review* 6, no. 2 (2025): 103–16, <https://doi.org/10.25041/iplr.v6i2.4608>.

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