



Legal protection for the fulfillment of children's rights in divorce cases in the Jantho Syariah Court

Nurul Iman¹, Ilyas Yunus², Efendi²

¹ Faculty of Law Universitas Syiah Kuala, Banda Aceh, Indonesia

² Lecture, Faculty of Law Universitas Syiah Kuala Banda Aceh, Indonesia

Abstract

Divorce is divided into two types, namely Divorce by Talak and Divorce by Lawsuit. Divorce by Talak is regulated in Article 114 of the KHI which states that "The termination of a marriage due to divorce can occur through talak or based on a divorce lawsuit." Furthermore, Article 129 of the KHI explains that "A husband who wishes to divorce his wife must submit an application, either verbally or in writing, to the competent Religious Court in the area where the wife lives, accompanied by reasons and a request for a hearing to be held." Meanwhile, Divorce by Lawsuit is regulated in Article 132 Paragraph 1 of the KHI which states that a divorce lawsuit can be filed by the wife or her attorney to the Religious Court in the Plaintiff's place of residence, unless the wife leaves the residence without her husband's permission. The court only has the authority to determine who and with whom the child will be cared for in the future after the verdict is made, thus giving responsibility to the Jantho Sharia Court. The truth is that the verdict can be realized in all aspects of society or even become a boomerang later because of the many verdicts after the trial that were not declared to have run in accordance with the verdict, even inversely due to social factors in the community itself, especially regarding child custody. The research method used in this study is an empirical legal research type, the data obtained is primary data through interviews in the field.

Keywords: Legal protection, children's rights, divorce

Introduction

Divorce is the process of terminating a marriage between a husband and wife. Article 207 of the Civil Code (KUH Perdata) explains that divorce is the termination of a marriage through a judge's decision, filed by one of the parties based on reasons stipulated in the law. Subekti in his work states that divorce is the termination of a marriage through a judge's decision or a request from one of the parties in the marriage bond. In addition, Article 39 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that: "Divorce can only be carried out before a court hearing after the relevant Court has attempted and failed to reconcile the two parties."

Divorce is divided into two types, namely Divorce by Talak and Divorce by Lawsuit. Divorce by Talak is regulated in Article 114 of the KHI which states that "The termination of a marriage due to divorce can occur through talak or based on a divorce lawsuit." Furthermore, Article 129 of the KHI explains that "A husband who wishes to divorce his wife must submit an application, either verbally or in writing, to the Religious Court with jurisdiction in the wife's domicile, accompanied by reasons and a request for a hearing." Meanwhile, Divorce Lawsuit is regulated in Article 132 Paragraph 1 of the KHI which states that a divorce suit can be filed by the wife or her attorney to the Religious Court in the Plaintiff's domicile, unless the wife leaves the domicile without her husband's permission.

Various factors that encourage a wife to file for divorce against her husband, show the importance of the roles and responsibilities that must be carried out together, involvement is not only needed from the husband and wife, but also from family members, society, and the government. It is undeniable that every relationship has challenges, and in the context of marriage, problems often arise that can lead to divorce. This raises the question of how the Jantho

Religious Court can minimize marriages that result in divorce and what is the mechanism for resolving the high divorce rate in the Jantho Aceh Besar area.

So that in this article I want to research further in a Thesis study entitled Legal Protection for the Fulfillment of Children's Rights in Divorce Cases at the Jantho Syar'iyah Court. With the aim of Researchers trying to show that husbands often ignore their responsibility to provide for their children and wives. On the other hand, wives also pay less attention to their rights after divorce. Many women focus more on the divorce process itself than on the rights they should receive afterwards, The type of research used by the author is qualitative research with descriptive data that includes phenomena, events, activities, and opinions of individuals or groups. The approach applied is descriptive analysis, which aims to understand the phenomena experienced by research subjects through written and oral data.

Research method

This type is empirical juridical. Empirical juridical research is field/direct research, empirical research methods include research on legal identification and legal effectiveness. The population in this study relates to divorce cases registered at the Jantho City Sharia Court in the period from 2022 to 2024. The sample in this study is in the form of case handling which includes discussing children's rights in divorce cases at the Jantho City Sharia Court in the period from 2022 to 2024. Data collection in empirical juridical research uses data collection through interviews with informants and respondents. The research approach uses a legislative, conceptual and analytical approach, as material as a basis for a researcher's thinking framework to analyze the problems raised by the researcher in this study.

Discussion

A. Implementation of Legal Protection for Children is Not Optimal in Divorce Cases at the Jantio City Sharia Court

The obligation to fulfill the rights mentioned above must be carried out in all conditions. Regarding children's rights after divorce, this has been regulated in the Marriage Law and the KHI. Article 41 of the Marriage Law states that after divorce, parents still have the responsibility to care for and educate their children for their benefit. The cost of maintaining and educating children is the responsibility of the father. However, if the father cannot fulfill this obligation, the mother is also responsible for the costs. This is in line with Article 149 letter d of the KHI which states that the ex-husband is obliged to provide hadhanah maintenance to his children. Hadhanah maintenance includes the costs of maintaining, caring for, and educating children until they are adults. Article 105 letter c of the KHI also emphasizes that the responsibility for child maintenance costs after divorce lies with the father.

The obligations that must be fulfilled are the rights that children must obtain after divorce. This is as regulated in Article 4 of Law No. 23 of 2002 where children have the right to live, grow, develop and participate fairly in accordance with human dignity and receive protection from violence and discrimination. These rights are the manifestation of the obligations of both parents as regulated in Article 1 of Law Number 9 of 1979 concerning Child Welfare where child welfare efforts are first and foremost the responsibility of parents. From these several things, the rights of children which are the obligations of parents must continue to be fulfilled regardless of the conditions, whether the parents are still bound by marriage or after divorce.

Legal protection for children covers all children without exception, including those involved in the legal process. Based on Article 3 of Law Number 35 of 2014, which is a revision of Law Number 23 of 2002 concerning child protection, the purpose of this protection is to ensure that children's rights are fulfilled. This aims to ensure that children can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination, in order to create happy, healthy, and prosperous Indonesian children.

Understanding child protection and its objectives is in line with the human rights conventions stipulated in the 1945 Constitution of the Republic of Indonesia. Article 22 B paragraph (2) of the Constitution emphasizes that every child has the right to live, grow, and develop, and has the right to receive protection from violence and discrimination. The 1945 Constitution of the Republic of Indonesia is the basis for child protection, as stipulated in Article 2 of Law Number 35 of 2014 which amends Law Number 23 of 2002 concerning Child Protection. This law emphasizes that the implementation of child protection must be based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Child protection is a shared responsibility of all elements of society, both the state and civil society, who must protect children as if they were protecting state assets, considering that children are important assets for the progress of the nation in the future.

Article 20 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which is obliged and responsible for the implementation of child protection includes the state,

government, society, family and parents. The form of obligations and responsibilities of the state and government are contained in Articles 21 to 25 of the relevant laws, stating the following:

- a. The State, Government, and Regional Government are obliged and responsible to respect the fulfillment of Children's Rights without distinguishing between tribe, religion, race, class, gender, ethnicity, culture and language, legal status, birth order, and physical and/or mental condition.
- b. To guarantee the fulfillment of Children's Rights as referred to in paragraph (1), the state is obliged to fulfill, protect, and respect Children's Rights.
- c. To guarantee the fulfillment of Children's Rights as referred to in paragraph (1), the Government is obliged and responsible to formulate and implement policies in the field of implementing Child Protection.
- d. To guarantee the fulfillment of Children's Rights and implement policies as referred to in paragraph (3), Regional Governments are obliged and responsible to implement and support national policies in implementing Child Protection in the regions.
- e. The policies as referred to in paragraph (4) can be realized through regional efforts to build Child-Friendly Districts/Cities.
- f. Further provisions regarding Child-Friendly District/Cities policies as referred to in paragraph (5) are regulated in a Presidential Regulation.

In Article 24 of Law Number 35 of 2014, which is an amendment to Law Number 23 of 2002 concerning Child Protection, it is stated that "The State, Government, and Regional Government are required to guarantee that Children can exercise their rights to express opinions according to the age and intelligence level of the Child." Children have the right to have space to express opinions, discuss, and express complaints in public. It is important for all elements of society to listen to this as an evaluation for the comfort and development of children.

Child protection is a responsibility that must be borne by all elements of society, not only by families. These elements include community organizations, academics, and child observers. Protection can be carried out both directly and indirectly. Direct protection means that the activity is directed directly at the child who is the target of handling. This activity can include protection from various threats, both from outside and within the child, education, coaching, mentoring, prevention of hunger, and efforts to maintain children's health in various ways, as well as providing facilities for self-development.

Indirect child protection refers to activities that are not directly aimed at children, but rather at other individuals who play a role in the protection efforts. Examples of these protection efforts can be seen in the role of parents or other parties involved in various initiatives to protect children from various threats, both from outside and from within the child itself. Those who are responsible for caring for, fostering, and accompanying children make various efforts, such as preventing hunger, ensuring health, and providing facilities for children's self-development. In addition, they also play a role in the implementation of the criminal justice system related to child protection.

All elements of society must be involved in supporting the growth and development of children. Children who have

been exploited economically and/or sexually have the right to protection and the child must not be pushed aside or degraded. Child protection is an effort made so that every child can exercise their rights and obligations. Child protection is a manifestation of justice in a society. So that child protection must be attempted in various areas of national and social life. Child protection concerns various aspects of life and livelihood, so that children can truly grow and develop naturally in accordance with their basic rights. Bisma Siregar, said that the legal aspect of child protection is more focused on children's rights regulated by law and not obligations, considering that legally (juridically) children are not yet burdened with obligations.

However, regarding the Legal Consequences for Divorced Parents Based on Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 and the Compilation of Islamic Law Regarding Negligence in Fulfilling a Number of Children's Rights, it states that there are implications for parents who neglect to carry out their hadhanah obligations, being subject to punishment in the form of revocation of parental control rights over the child. This provision is also in line with the Compilation of Islamic Law which states that parental rights in the care of their children can be revoked and transferred to other people who according to law have the right to carry out these responsibilities.

Meanwhile, in Article 156 letter c (Compilation of Islamic Law) the revocation of parental rights over control over their children states that "if the holder of hadhanah is unable to guarantee the physical and spiritual safety of the child, even though the costs of living and hadhanah have been met, then at the request of the relative concerned, the Religious Court can transfer the right to hadhanah to another relative who also has the right to hadhanah. Even though the parents' authority is revoked, they are still obliged to provide maintenance costs to the child. Overall, children, in addition to having protection from the state, also have the right to maintenance from their parents, through education. Specifically, Indonesia has legal regulations aimed at protecting children, namely Law Number 23 of 2002 concerning Child Protection.

This law regulates the rights and obligations of children, in Article 4 of this law it is stated that "every child has the right to live, grow, develop, and participate fairly in accordance with human dignity and dignity, and to receive protection from violence and discrimination."

a. However, there are several other regulations that specifically provide divisions into several categories, especially in Article 8 of Government Regulation Number 10 of 1983 as amended by Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants regarding the division of assets in a divorce as follows: If the divorce occurs at the will of a male Civil Servant, he is required to submit a portion of his salary for the livelihood of his ex-wife and children. Civil Servants who are required to submit a portion of their salary for the livelihood of their ex-wife and children are required to make a written statement. The division of the salary is one third (1/3) for the male Civil Servant concerned, one third for his ex-wife and one third for his children. If there are no children from the marriage, then the portion of the salary that the male Civil Servant is required to submit to his ex-wife is half (1/2) of his salary.

- b. The right to a portion for the ex-wife is not given if the divorce occurs at the will of the wife, namely if the divorce occurs because the wife has been proven to have committed adultery and/or the wife has been proven to have committed cruelty or serious abuse, both physically and mentally, against her husband, and/or the wife has been proven to be a drunkard, drug addict, and gambler who is difficult to cure and/or the wife has been proven to have left her husband for two consecutive years without her husband's permission and without a valid reason or because of something beyond her ability. If the divorce occurs at the will of the wife, then she is not entitled to her ex-husband's income.
- c. The provisions of paragraph (4) namely; "The distribution of salary to the ex-wife is not given if the reason for the divorce is because the wife committed adultery, and/or the wife committed cruelty or serious abuse, both physically and mentally, against her husband, and/or the wife has become a drunkard, drug addict, and gambler who is difficult to cure, and/or the wife has left her husband for two consecutive years without her husband's permission and without a valid reason or because of something else beyond her ability." does not apply if the wife asks for a divorce because she is polygamous. If the ex-wife of the civil servant in question remarries, then her right to a portion of her ex-husband's salary is revoked from the time she remarries.

As per applicable law, if there are indications of violations, then in Article 15 paragraph (1) of Government Regulation Number 10 of 1983 as amended by Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants, it states that:

- a. Civil servants who violate one or more of the obligations/provisions of Article 2 paragraph (1), paragraph (2), Article 3 paragraph (1), Article 4 paragraph (1), Article 14, do not report their divorce within a period of no later than one month from the date of the divorce, and do not report their second/third/fourth marriage within a period of no later than one year from the date of the marriage, shall be subject to one of the severe disciplinary penalties based on Government Regulation Number 30 of 1980 concerning Civil Servant Disciplinary Regulations;
- b. Female civil servants who violate the provisions of Article 4 paragraph (2) shall be subject to the disciplinary penalty of dishonorable dismissal as civil servants;
- c. Superiors who violate the provisions of Article 5 paragraph (2), and officials who violate the provisions of Article 12, shall be subject to one of the severe disciplinary penalties based on Government Regulation Number 30 of 1980 concerning Civil Servant Disciplinary Regulations.

In the context of the hadhanah rights decision as explained above, both the mother and the father have demanded in the petition of the lawsuit and its response that the child be placed under their care. To show that they are the ones who have more right to care for the child after the divorce, the steps taken are to prove the reasons for the judge to hand over custody rights to them. The things that need to be proven include that they have fulfilled the pillars and

requirements for caring for the child, that they have a bloodline bond with the child, and have acted well in guarding and maintaining the child's life when placed under their care. All of this is regulated in the pillars and requirements that must be met by prospective caregivers. Rights that are products of religious court law only apply to the applicant when the application is submitted and in principle do not apply to the respondent, but only when the application is submitted. Thus, the requirements only have unilateral legal force, the decision is of a declaratory nature, the order is only of a confirmation and declaration nature and is not an absolute requirement for the implementation of custody rights. Child custody rights in principle do not include executive power, for the execution or implementation of the decision, moreover, during the implementation of custody rights, executive power is transferred to the judge. Child custody is an issue raised during divorce and its resolution depends on the judge's decision. Of course, the terms and procedures that must be followed to determine which parent has the right to care for the child are if the judge orders one of the two to care for the child, that decision must be respected. If a child born from an unregistered marriage only has a civil relationship with his mother and the mother's family in accordance with Articles 42 and 43 of Law Number 1 of 1974, there is no civil relationship with his father. This problem means that the child cannot claim his rights against his father. A marriage certificate serves as proof of marriage, namely state recognition of the validity of a marriage.

The implementation of law in court can be given the right to appeal for the plaintiff or defendant who objects to the court's decision, then for those who never attended the trial and the contents of the decision were notified to the defendant and objected, then the legal remedy is *verzet*, meaning resistance from the defendant to the decision that was handed down, then the defendant has no right to appeal, but with his objection he can file a resistance or *verzet* so that the process at the first level is reprocessed when submitting an answer, reply, duplicate, and finally until the judge makes a decision whether to uphold the decision or grant the application by canceling the previous decision by the same panel of judges. Efforts to overcome divorce lawsuits can also be through socialization carried out by the Marriage Advisory, Development, and Preservation Agency and the KUA. Efforts that have been made by BP4 to reduce the number of divorce lawsuits are socialization to the wider community about the nature of marriage, which can be done through religious studies or from the local sub-district KUA by providing marriage guidance to couples who want to get married, including In cases of divorce lawsuits, the wife does not get the rights obtained from the divorce from her partner or from her husband, but the wife will get rights from the court, such as getting a divorce certificate when the lawsuit is granted, meaning that if the wife files the lawsuit, it does not burden the husband to pay for everything, but only the wife's rights in court. In the view of the Supreme Court, among others, allowing the Judge to grant the rights of the plaintiff or the wife contained in his lawsuit but the cause of the lawsuit is true from his partner or the husband, such as the husband often beats his wife or the husband has left his wife for a long time and other reasons, then it is recommended for the Judges to grant the rights of the wife and the wife is not nusyuz.

Implementation of Efforts to implement legal protection for children's rights in Divorce Lawsuits at the Jantho City Sharia Court is not much different from what has been regulated in the Child Protection Law, Marriage, and also in the provisions of the Compilation of Islamic Law, in its implementation it has been running systematically and bindingly, however, regarding how it can run in the future according to the decision is not the responsibility of the Sharia Court, because the duties of the Sharia Court are bound to determine the rights of the child who will be cared for by whom and the process and determination in a civil manner, although it is regulated regarding witnesses, the one who executes it is already in a different realm from the Sharia Court itself.

Nevertheless, the Jantho Syar'iyah Court since 2020 has continued to improve electronic Court services (e-Court), which has implemented electronic court socialization on December 21, 2018 in accordance with the letter of the Director General of the Religious Court Number: 3128 / DJA / HM.02.3 / XI / 2018 concerning Electronic Case Administration in the Supreme Court e-Court as a form of concern for the community due to the large number of divorce cases recorded in the previous 5-year period.

Conclusion

The implementation of legal protection for children still needs more attention, especially in the implementation of divorce case decisions at the Jantho City Sharia Court, a child very importantly needs the role of parents in it, therefore regulations related to child custody are formed. Provisions related to child custody are explained in Article 7 paragraph (1) of Law Number 23 of 2002 concerning child protection and Article 14 of Law Number 35 of 2014 concerning amendments to the Child Protection Law. In Article 7 paragraph (1) of Law Number 23 of 2002 concerning child protection. Decisions made by judges in carrying out their duties in Court have legal consequences for every decision they make. To ensure the best protection for children in every decision, the judge must of course consider various aspects that affect the child's future. Especially related to the requirements that must be met by a caregiver. This aims to ensure that children are not given to people who are not entitled to receive them or do not meet the criteria for caregivers that have been set out in the law. Regarding the legal efforts that can be taken by the injured party in implementing legal protection for children's rights in divorce cases at the Jantho City Sharia Court, in the trial, the plaintiff or defendant who objects to the court's decision can be given the right to appeal, then for those who never attended the trial and the contents of the decision were notified to the defendant and objected, then the legal effort is a denial, meaning that the defendant's objection to the decision was made, then the defendant has no right to appeal, but with his objection he can file a denial or denial so that the process at the first level is reprocessed when submitting an answer, reply, duplicate, and finally until the judge makes a decision whether to uphold the decision or grant the application by canceling the previous decision by the same panel of judges.

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