



Children's rights after divorce decision at banda aceh sharia court in human rights perspective

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Abstract

This study aims to know and analyze the Rights of Children after Divorce Decision in the Syar'iyah Court of Banda Aceh in the perspective of Ham. This research is obtained by conducting or reviewing and reviewing the literature and legislation, especially those related to the subject matter or discussion. In addition, it also conducts direct observation (field research) in depth on the subject matter of the data analysis used is descriptive analysis. The results showed that of the 9 (Nine) decisions of the Syar'iyah Court of Banda Aceh, where the Council of Judges did not include the child's right to good care, guidance and love from his parents, to get education, to get clothing, board and food in a reasonable manner, as well as other rights that support the growth and development of children in a good and reasonable manner so as to be contrary to human rights, religion and the provisions of legislation in Indonesia. Thus, it is recommended that the government with the House of Representatives to immediately make new legislation that can guarantee welfare and legal protection and establish institutions that can guarantee the fulfillment of the rights of post-divorce children who are victims or displaced as a result of parental divorce and recommended to the Council of Judges of the Syar'iyah Court of Banda Aceh to ensure the fulfillment of Children's Rights after divorce. religion and the provisions of the Legislation in Indonesia. Thus, it is recommended that the government with the House of Representatives to immediately make new legislation that can guarantee welfare and legal protection and establish institutions that can guarantee the fulfillment of the rights of post-divorce children who are victims or displaced as a result of parental divorce and recommended to the Council of Judges of the Syar'iyah Court of Banda Aceh to ensure the fulfillment of Children's Rights after divorce. religion and the provisions of the Legislation in Indonesia. Thus, it is recommended that the government with the House of Representatives to immediately make new legislation that can guarantee welfare and legal protection and establish institutions that can guarantee the fulfillment of the rights of post-divorce children who are victims or displaced as a result of parental divorce and recommended to the Council of Judges of the Syar'iyah Court of Banda Aceh to ensure the fulfillment of Children's Rights after divorce.

Keywords: post-divorce, human rights, child support

Introduction

Paand basically the marriage is performed for a time forever until the death of one of the spouses. This is exactly what Islam wants. But in certain circumstances, there are things that require the dissolution of the marriage in the sense that if the marital relationship continues, then harm will occur. In this case Islam justifies the dissolution of marriage thus is the best way out.

A The child is a trust from Allah SWT that has been bestowed on married couples, so it becomes an obligation for husbands and wives to educate and care for their children while their children have not been able to stand on their own. The presence of the child itself in the marriage gives rise to a legal relationship between the child and the parents.

Pa The scholars have agreed that a man is obliged to support his children. Because a child is his flesh and blood, he is part of his parents. Just as he is obliged to provide for himself and his family, he is also obliged to provide for his flesh and blood.

Sejust as marriage gives rise to rights and obligations, divorce also has legal consequences for both parties and also for the children born. The children must live in a family that is not as harmonious as it should be. For example must live in a family with single parents such as with a mother or with

Se Dad's people only.

Keti When a parent is divorced, the child's growth in an ideal standard may be difficult to achieve because his physical and spiritual needs cannot be fully met. If it is also associated with the material or physical needs of children living in families where both parents are divorced, the child's growth and development will certainly experience serious obstacles if the child's material or physical needs in the form of maintenance costs and education costs until adulthood is not clear.

Terjadi divorce and idah period is over, the woman who used to be his wife is now turned into an ex -wife. The marriage bond has been broken, they are no longer husband and wife so they are not obliged to be supported by her husband. However, the right to alimony for the child is not broken, the obligation to finance the child does not only apply as long as the father and mother are still bound in the marriage, but also continues after the divorce.

It's ridiculous children, neglecting their sustenance, neglecting their responsibilities, including major sins that are not appropriate for a Muslim. Child support is something that can not be left out of the issue of child support, both the basic things and the problems that arise in the matter of child support.

Right-Children's rights are also gaining international

attention. Through the United Nations (UN) has been ratified (Convention on the Rights of the Child) which is the Convention on the Rights of the Child and hereinafter referred to as the KHA which was ratified on November 20, 1989. To date it has bound 191 participating countries. So efforts to promote, disseminate and enforce children's rights are mobilized around the world. The rights of the child, enshrined in the Convention on the Rights of the Child, are an international instrument that legally binds ratification countries to implement the 54-article KHA. As a convention, the ratification states have an international legal obligation to incorporate it into national law and integrate it into positive national legal norms so that they apply and have binding legal force.

However, in his project at the Banda Aceh Syar'iyah Court, the fulfillment of children's rights is not fulfilled as a father's obligation in religion or in the provisions of international law, we can see in the details of the case below:

- a. Item Number 117/Pdt. G/2018/MS-Bna
- b. Item Number 239/Pdt. G/2018/MS-Bna
- c. Item Number 247/Pdt. G/2018/MS-Bna
- d. Item Number 249/Pdt. G/2018/MS-Bna
- e. Item Number 132/Pdt. G/2019/MS-Bna
- f. Item Number 223/Pdt. G/2019/MS-Bna
- g. Item Number 226/Pdt. G/2019/MS-Bna
- h. Item Number 3/Pdt. G/2019/MS. Bna.
- i. Item Number 14/Pdt. G/2019/MS. Bna.

Based on the data of the case above, the entire decision does not include the rights of children after divorce, thus the rights of children have been deprived by law that causes children to lose their rights and based on these facts, of course this is a big question, whether child support is really noticed by the Council of Judges of the Syar'iyah Court of Banda Aceh.

Based on the presentation of data and facts above, this issue is interesting to be raised as a scientific work in the form of a Legal Journal with the title: "Children's Rights After Divorce Decision at the Sharia Court of Banda Aceh in the Perspective of Human Rights"

Research Methods

This research is intended to describe or describe the object of research systematically. While the type is to use two research methods, namely combining normative (doctrinal) and empirical research by using a normative juridical approach that seeks to identify and then describe the implementation of the biological father's responsibility for child support after divorce based on Banda Aceh Syar'iyah Court Decision related to children's rights.

The source of data in this study is the primary data conducted by using direct observations in the field related to the material discussed and conducting open interviews with relevant parties. Decendant data conducted by using or studying the literature related to the material discussed and related to the substance of the problem. Data analysis,

The data obtained or collected in this study is mainly secondary data which is quantitative data, then the data analysis technique used is quantitative analysis, where the data processing process is after the data has been collected and considered sufficient then the data is processed and analyzed deductively based on to the basics of general knowledge and then examine the issues that are specific to the existence of this analysis and then draw a conclusion.

Problem Statement

1. AIs the decision of the Judicial Council of the Syar'iyah Court of Banda Aceh regarding child support already fulfilling the provisions of human rights?

Discussion

Dalam Islam, the Court is a place to decide disputes that occur and end disputes by establishing Islamic law for the disputing parties. With the existence of the courts, Islamic laws become authoritative and can be implemented effectively in social life. The existence of a court is very important. If the condition of the court is good, then the condition of the people will also be good. Similarly, conversely, if the condition of the courts is bad, then it becomes a bad mirror of society and the state.

Based on the provisions of PP No. 9 of 1975 Article 19 letter f and Article 22 paragraph (1) and also in the KHI Article 129, regulates to the Syar'iyah Court which must be filed by the husband (applicant) who wants to file for divorce.

Divorce that occurs on the initiative of the husband (divorcee), then the ex -wife is entitled to alimony born from the husband during the period of iddah. This is listed in article 149 KHI letter (b). And in article 151 of the KHI it is obligatory that the ex-wife who is in the period of iddah must take care of herself, not accept proposals and not marry another man "then the logical consequence of this obligation is that the ex-husband must pay alimony, as a right to be obtained as a result of such obligations, unless the wife applies nusyuz.

Consequences of divorce law on the position, rights and obligations of the ex -husband (Petitioner) according to article 41 letter c of Law No. 1 of 1974 is that the court/Syar'iyah Court can oblige the ex -husband to provide living expenses and determine an obligation for the ex -wife. Normative provisions in article 41 letter c of Law No. 1 of 1974 is related to article 11 of Law No. 1 of 1974 which contains the normative provision that a woman who is divorced has a waiting period, which later this article has been described in article 39 PP No. 9 of 1975 which contains imperative provisions

That for a widow whose marriage is broken due to divorce, then the waiting time for a widow who is still coming months is set 3 times holy with at least 90 days. If the marriage is dissolved, while the widow is pregnant, then the waiting time is set until she gives birth.

Consequences of divorce law on the position of rights and obligations of the ex -husband according to article 41 letter c of Law No. 1 of 1974 in accordance with Islamic law. If there is a divorce between husband and wife according to Islamic law, then the consequence of the law is that the ex -husband is imposed on his ex -wife to give appropriate mut'ah in the form of money or goods and provide sustenance, clothing and residence during the ex -wife during iddah, as well as paying dowry, talaq talak agreement and other agreements.

Paying alimony for his children, the husband who divorces his wife is obliged to pay alimony for his children, that is, expenses for the maintenance and educational needs of his children, as long as it is according to the position of the husband. the obligation to provide for the children must be continuous until the child reaches puberty and has an income, this is in accordance with the words of God (QS.LXV: 6) which states: if they are your ex-wives have

children, then give them their wages. In this verse it is clear and definite that the husband is obliged to pay wages to his ex-wife to take care of his children, as proof, that the husband is obliged to provide for the needs of his children. So, it is clear that the alimony is for the wife and her children, while the alimony obligation remains in effect, even though the wife has been divorced by her husband.

In some cases in the Syar'iyah Court of Banda Aceh can be seen that in Case Number 117/Pdt.G/2018/MS-Bna, Case Number 239/Pdt.G/2018/MS-Bna, Case Number 247/ Pdt. G/2018/MS-Bna, Case Number 249/Pdt.G/ 2018/ MS-Bna, Case Number 132/Pdt.G/2019/MS-Bna, Case Number 223/Pdt.G/2019/MS-Bna, Case Number 226/ Pdt. G/2019/MS-Bna, Case Number 3/Pdt.G/2019/MS. Bna, Item Number 14/Pdt.G/2019/ MS. Bna, where the Council of Judges does not include the rights of children in its decision.

The decision of the Judge of the Syar'iyah Court of Banda Aceh has violated the provisions of the ex-husband's obligation to the child who needs and still needs support in the form of fulfillment of related needs, especially the child's right in the form of alimony for daily and financial for the child's education.

The above decision does not grant the rights of children after divorce filed by the father, where the Syar'iyah Court of Banda Aceh has violated its authority in the form of fulfillment of children's rights as in Provisions in Indonesia have stipulated that the state must participate in protecting the rights of children and provide facilities for child protection. However, the implementation of the law on child support protection is still very weak.

There is no institution that can ensure that child support is actually carried out by the father after the decision of the Syar'iyah Court of Banda Aceh, where child support remains in force. Protection of child support rights after divorce is still limited to the rules laid down in law and has not been fully implemented. This causes the case of abandoned children because they are not given alimony is still a big problem for Indonesia.

The fact that the child was abandoned because he was not given alimony after the divorce of his parents, is the cause of the lack of public understanding of the law. Parents who are going to divorce, must understand what will be their rights and obligations after the divorce. When filing for divorce, then the rights of the child must be established in a decision to have permanent legal force and can be executed when the father is negligent in carrying out his obligations.

Basically the judge is passive and can only decide what is written in the application, but the judge can be active in mediation to remind the parties of their rights and obligations when the divorce occurs. The judge, who is the mediator, must remind about the importance of including the child's alimony in the decision, because the people who file for divorce do not all know about the alimony. With the active attitude of the judge when mediating by informing each other what are the rights and obligations of each other, and informing the legal consequences and legal efforts that can be taken when one of the parties is negligent in carrying out his obligations,

In legislation in Indonesia, there are already provisions governing the administrative and civil legal sanctions that can be applied to husbands who ignore the Court's decision to provide child support until adulthood.

However, such administrative and civil sanctions cannot be an effective legal means of forcing the husband to make a Court decision. There is no mechanism in the Marriage Law that can be used to ensure that the decision of the Religious Court that punishes the husband to pay alimony is actually implemented.

The necessity of the ada institution that can monitor and ensure that the child's maintenance is carried out in accordance with what has been set. The government needs to create an institution that specifically controls the issue of child support after divorce, so that the judge's decision is not just a mere decision, but realized in accordance with the content of the decision. Because it is the duty of the state to protect and monitor the rights of children, the state must also facilitate children so that what their rights are can be obtained as they should be.

Since the law has provided that children whose parents are divorced must still have the same rights as when the parents are not divorced, then the state must make a strict and clear legal sanctions against parents who are proven to have neglected their obligations, so that no child is abandoned after the divorce of his parents for not being given alimony.

Conclusions and Recommendations

Based on the background of the problems and discussions that have been explained and discussed above, so that the following conclusions can be drawn:

- a. That Divorce cannot eliminate or cannot abrogate the obligations that must be fulfilled by the parents to their children. Children must still have the right to good care, guidance and love from their parents, education, adequate clothing, board and food, and other rights that support the child's growth and development in a good and reasonable manner. not contrary to human rights.
- b. That the fulfillment of the responsibilities of a biological father after divorce and the role of the Council of Judges of the Syar'iyah Court of Banda Aceh in enforcing court decisions is the understanding and practice of Islamic rules and the implementation of human rights that provide legal certainty for children.
- c. That the Judicial Council must also consider the economic factors of divorce applicants in order to provide legal certainty and the fulfillment of human rights for children after divorce.
- d. Judges of the Syar'iyah Court of Banda Aceh have a role in the execution of decisions against biological fathers who do not carry out their obligations, namely in the realm of execution of the case.

Based on the background of the problems and discussions that have been explained and described above, so that for the development of knowledge it is necessary to recommend this research is as follows:

- a. It is recommended that the government with the DPR to immediately make new legislation that can guarantee welfare and legal protection and establish institutions that can guarantee the fulfillment of the rights of post-divorce children who are victims or displaced as a result of parental divorce.
- b. It is recommended to the Council of Judges of the Syar'iyah Court of Banda Aceh to ensure the fulfillment of Children's Rights after divorce as well as children's rights.

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