



Parents' Responsibility for Children's Rights After Divorce

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Abstract. The responsibility of parents towards children's rights even though they are divorced remains attached until the child reaches adulthood and is able to be independent. The responsibility is attached to the male parent or father. Many divorce cases end up in the Religious Courts, but the Decisions of the Religious Court Judges, especially regarding the fulfillment of children's rights, are not implemented and law enforcement is considered to be very weak. The implementation of parental responsibility, especially fathers, for the fulfillment of children's rights has not been fully implemented, due to: substance factors: because there are no sanctions; structural factor: because there is no supervisory agency; cultural factors: due to low legal awareness.

Keywords: Parental Responsibilities · Children's Rights · Divorce

1 Introduction

Law No. 1 of 1974 on Marriage states in article:

“Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead”. The direction of Article 1 above is that the state guarantees a person's right to marry in order to form a happy family, in accordance with the guidance of their respective religions. This gives direction that a person holds a marriage not only because his rights are guaranteed by the state, but also as a form of carrying out religious worship from the person concerned.

The ideal purpose of marriage according to marriage law is to form a happy and eternal family based on the One Godhead, as confirmed in Article 1 of Law Number 1 of 1974 concerning Marriage. In reality, the ideal purpose of marriage is difficult to realize, in fact there are many unhappy family or household lives. The condition of the marriage that underlies the relationship between husband and wife in a family or household is so bad it is not seen from any perspective, the marital relationship is better terminated than continued.

The dissolution of marriage, due to the will of husband and wife or the will of both, due to disharmony, is referred to as “divorce”, which stems from not carrying out the rights and obligations as husband or wife as they should according to applicable marriage law. Concretely, the disharmony between husband and wife that creates the will to break

the marital relationship by means of divorce, above all relationships between men and women who do not respect each other, do not keep each other's secrets, household conditions are not safe and peaceful, and crosses occur. a very principled dispute or disagreement.

It is true that the presence of children in a marriage, according to Erna Wahyuningsih and Putu Samawati, is something every couple dreams of, for them children are an extraordinary gift from God, they must be cared for and cared for properly. A marriage breaking up for a variety of reasons causes problems, but is ultimately justified by the court reading out the divorce decree. At the time of the termination of the marriage due to the divorce of the two husbands and wives, inevitably the children will become victims [1].

A marriage in which the marriage obtains offspring/children has legal consequences for the responsibility of parents to fulfill the rights or livelihood of the child. Parental responsibility for children's rights is still attached even though their marriage is broken up due to divorce.

The legal consequences of divorce on the position and protection of children's rights according to Law no. 1 of 1974 regulated in Article 41 letter a is that both fathers and mothers still have the duty to maintain and educate a child solely on the basis of the child's interests is determined by the court in cases of dispute over the disposition of the child. Of course, the consequences of divorce under child law apply only to spouses with children and not to spouses without children.

Article 41(b) of Law No. 1 of 1974 states that fathers are responsible for the maintenance and education costs of all children. If the father is in fact unable to meet these obligations, the court can rule that the mother will also bear the costs.

Divorce carried out by a husband and wife has consequences for their children both morally and materially. Morally, the children bear the consequences that their parents are no longer together in a household and automatically the attention and affection that is poured out on the children are not like when they were together. Materially, it is given a living, which is the right of a child obtained from his parents. Divorce will cause legal consequences that are so many and complicated, whether it is regarding custody and maintenance of children who are still small or underage, inheritance, division of property, and so on, but in this paper the focus is on custody and maintenance rights. Children who are still small or underage, because children are the future of the nation.

Article 45 of Law no. 1 of 1974 regulates the rights of children, where it is stated that children have certain rights that must be fulfilled by parents. A child's right to a decent livelihood, including food, clothing, shelter, education and health, is child survival (nutrition) that must be met by parents, especially fathers, both during marriage and after divorce.

In practice, the provisions of Article 41 and Article 45 of Law no. 1 of 1974 is often not heeded. An example of a case is the implementation of the fulfillment of child support in cases Number 205/Pdt.G/2015/PA.Smg and Number 2521/Pdt.G/2016/PA.Smg, namely ex-husband (father) or applicant for convention/defendant reconvention from both cases. Does not meet the child's livelihood. The child's income which has become his obligation is not carried out according to Already final decision of Semarang religious court. In both

of these cases they have children who are underage who should receive child support from the convention applicant/reconviction defendant (father).

Whatever the reason, In any case, divorce is a disaster for children, who will not be able to simultaneously enjoy the love of their parents, which is so important for their spiritual growth. Child protection issues and parental obligations towards children are addressed in various laws and regulations.

2 Findings and Discussion

1. Definition of Children

Article 1 (1) of Law No. 23 of 2002 on the Protection of Children stipulates that a child is any person who has not reached the age of 18, including children still in the womb. From the wording of Article 1(1) of the Child Protection Act above, it is clear that a child means a person who has not reached the age of 18.

The unitary state of the Republic of Indonesia to ensure the well-being of each of its citizens, including the protection of children as a human right. A child is a commission and a gift from Almighty God, and has dignity and worth as a whole human being. Children are the sprout, the potential, the young generation with special qualities and qualities that follow the ideals of the national struggle, play a strategic role and ensure the future survival of the country and the state.

Child protection ensures that children live optimally in accordance with human dignity, grow, develop, participate, are protected from violence and discrimination, and achieve high quality Indonesian children with noble character and prosperity.

2. Parental Accountability for Children's Right After Divorce Has Not Been Completely Implemented

The factors that Influence over enforcement of children's rights was not fully exercised by parents after divorce, namely the substance, structure and culture factors, as proposed by Lawrence M. Friedman with Legal System Theory [2].

a. Substance Factor

The implementation of parental responsibility, especially fathers, for children's rights after the divorce has not fully provided legal protection for children, because there is no formal juridical basis that shows legal protection for children. In Article 41 and Article 45 of Law Number 1 of 1974, it does not contain a clause what if the parents, especially the father, do not fulfill their obligations or do not fulfill the rights or livelihood of the child. The rights or livelihoods of children which have become their obligations are not carried out according to the decision of the Religious Court.

According to the laws and regulations of Indonesia, there are already provisions governing civil legal sanctions that can be applied to husbands who ignore the Court's decision to provide for their children to adulthood, however, these civil sanctions cannot be an effective legal means to force husbands to commit crimes sentence. There is no mechanism in the Marriage Law that can be used to ensure that the decision of the Religious Courts that punishes the husband to pay a living is actually implemented.

It can be interpreted that the Marriage Law does not regulate sanctions that have coercive power regarding living money in divorce decisions, so that they can actually be implemented, because sanctions that have coercive power are in the domain of criminal law. Here it can be concluded that Law Number 1 of 1974 does not regulate criminal sanctions that can be imposed on parents (fathers) who do not carry out the decisions of the Religious Courts. With no such criminal sanctions regulated, there is no mechanism in the Marriage Law, which can be used to ensure that the decision of the Religious Courts that punishes the husband as a father paying a living, is actually implemented.

Referring to the fact that the laws and regulations governing parental responsibility for children's rights after a divorce have not fully provided legal protection, This is inconsistent with the purpose of the law itself, as stated by Gustav Radbruch, namely to achieve justice, benefit, and certainty. This objective is closely related to making the law as a guide, both formally and materially, to the conduct of all legal acts, both by the legal entity concerned and by law enforcement officers formally empowered with the legal mandate to ensure its proper functioning. Legal Norms Applicable to Social and National Life.

b. Structural Factor

Judging from the aspect of the legal structure concerning law enforcement officers, the responsibility of parents after a divorce in providing a living for children does not include institutions or legal entities that are authorized to supervise and report to Authorities for Violations Related to Issues of Realizing Children's Rights. Thus, from the construction of Friedman's legal system, the implementation of parental responsibility for children's rights is not supervised at all by law enforcement, all phenomena and only rely on the awareness and morality of the parents alone. In a legal state system like the Indonesian state, the vacuum of legal apparatus in supervising and providing certainty of the Court's decision, absolutely must be held, in order to keep the law running normally, Responds to the principle of legal certainty and can satisfy the principle of justice.

c. Cultural Factor

Cultural factors are also one of the factors that influence the ineffectiveness of Legal protection for children's rights after parents' divorce, because their legal awareness is low, they tend to not obey the rules.

Legal culture is the totality of factors that determine how the legal system finds its logical place within the cultural framework of the general public [3]. From the cultural aspect, especially parents as perpetrators of divorce, legal protection for children as victims of their parents' divorce contains values of protecting human dignity and respect for human rights in their implementation, therefore it is necessary to change attitudes and behavior patterns to can apply these values in the practice of parental responsibility to children after divorce in Indonesia. Changes and improvements from the cultural aspect can be done by socializing these values in society (divorce actors), also through related institutions such as the Religious Courts, Office of Religious Affairs, Ministry of Women and Children Empowerment, Ministry of Social Affairs and the Indonesian Child Protection Commission to provide legal protection for children due to

the divorce of their parents. Changes in legal culture also need to be supported by improvements in terms of structure and legal substance.

3 Conclusion

The implementation of parental responsibility, especially fathers, for the fulfillment of children's rights after the divorce has not fully provided legal protection for children, because: the substance factor, namely the Marriage Law does not regulate sanctions that have coercive power regarding children's rights in divorce decisions, so it cannot be implemented, because sanctions that have coercive power are in the domain of criminal law; structural factors, namely the implementation of parental responsibility for children's rights is not supervised at all by law enforcement officers, all phenomena and only rely on awareness and morality from parents alone; cultural factors, namely low legal awareness, tend not to obey the rules, weak law enforcement.

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