
Analysis of Judges' Considerations in Determining Child Support After Divorce (Study of Judge's Decision Number 0233/Pdt.G/2017/MS-MBO)

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ABSTRACT

A child's livelihood is everything a child needs to grow and develop, for example food, clothing and shelter. The responsibility for child support lies with the parents. However, in the case of divorce, the father is still responsible for the child's life even though the child is being raised by the mother. The child's income level does not determine the minimum or maximum gross income that must be adjusted to the father's economic strength. If the father cannot really provide for the child's needs, the responsibility for the child's expenses lies with the mother. Judge's decision no. 0233/Pdt.G/2017/MS_MBO shows that the panel of judges reduced the nominal amount of child support requested by the defendant from the plaintiff. The child's expenses were initially claimed to be IDR 1,600,000, - set by the jury at only IDR 600,000, - with an additional 20% per year, the child's income will be reduced compared to the IDR originally requested. Therefore, this article will be serious about the basis of the judge's intention to reduce the amount of child support and how the child's income is determined according to Islamic law. The research methods used are field research and library research. The results of the study explain that the main basis for the judge's consideration was to reduce the child's income by the amount required due to the father's inability to pay for it. Second, the determination of child support in the decision is in accordance with Islamic law because the rules of Islamic law explain that the implementation of child support by the father must be in accordance with the father's financial capabilities.

Keywords: Child Support, Divorce, Rules**INTRODUCTION**

In our personal lives and in society, there are certainly families that are harmonious and families that lack harmony. For a family that has harmony, there are definitely many aspects that make the family harmonious, in terms of communication, from the socialization side, from husband to wife or wife to husband, as well as parents to their respective children.

For families that lack harmony, questions can be asked about how to teach or how to treat family members. The lack of harmony can be seen from the situation in the family itself. Which in the end can be considered to last a long time or end in divorce.

Children are definitely victims, aka the result of divorce itself, children are the final spearhead of the breakdown of previously harmonious family ties. Before discussing the consequences of divorce itself, there is an aspect that will be discussed in this article, namely regarding the income allocation, aka financial intake for children whose families are divorced. Is it from the father or from the mother?

Divorce is the severance of the spiritual and physical bond between husband and wife, giving rise to a marital relationship and giving rise to many legal consequences regarding rights and obligations. One of the rights and obligations that arise in divorce is the obligation of the ex-spouse to guarantee certain rights of the ex-wife and children. The rights that women and children can obtain after divorce are regulated in the Marriage Law and Islamic General Law No. 1 of 1974.

Divorce is one of the options for disharmony in the family itself, there is no longer any opportunity for the family to be together. In the divorce process, quite a few minor children are cared for by their mothers.

In those cases, mothers are left alone to take care of their families which are no longer intact. It is mandatory to find funds to support one's own family, because the ex-husband no longer provides funds for maintenance after the divorce. So what should a mother do if she is no longer given support from her previous husband?

Adhering to the principles of marriage is intended for eternal pleasure for the lovebirds involved. According to Wahbah al-Zuhaili, marriage is a contract regulated by sharia so that a man can enjoy sexual relations with a woman. Meanwhile, the Islamic Law Law (WHI) underlines that marriage is a very powerful means of obeying Allah's commands, the fulfillment of which is worship.¹

However, marriages are not always smooth because every marriage inevitably has problems in the family which lead to friction in the husband and wife's affairs. Quarrels can even end in separation if the couple does not make efforts to reconcile. Even though a divorce has been stipulated which does not create a relationship between the two parties' status, the husband is obliged to support the children born in the marriage.

The wife will also experience how to live a life without financial input from her ex-husband, while the next life without her husband will still have to carry on with various matters that use money. From taking care of their children, from taking care of themselves and other matters that might use funds that will be increasingly drained.

There are many cases in Indonesia which are essentially divorce and ultimately calculating the life of the abandoned partner or vice versa children must also be considered.

Means of livelihood are all matters and exigencies that occur in accordance with situations and conditions, for example clothing, food, shelter, and others. Children have the authority to seek income to support themselves even if the marital status of both parents violates the child's right to receive support from his father. The ulama, the enforcement of child support has also been justified by state regulations, as stated in Article 105 of the Law Code (KHI) which regulates that (a) The mother's right to care for children who are not yet mummified, i.e. under 12 years of age, (b)) The care of a child who has a mummy is chosen by the child from among the parents who are guardians. rights, c) Maintenance costs are borne by the father.

Therefore, raising children is the husband's responsibility according to his financial capabilities. If the husband is deemed to be able to pay child support in full, he is obliged to do so without any reduction. There is no minimum or maximum limit for child support, but life is adjusted to suit your needs. If you want to reduce your child's income, you must be very careful not to harm the child. This reduction in age requirements is stated in decision no. 0233/Pdt.G/2017/MS-MBO.²

What considerations can the judge give to the situation in the case at trial? The judge's decision is very, very important in the situation at issue. Moreover, this is about the child's livelihood which goes on for the child to live his life. Food, clothing, anything else that offends Baba Son in his life.

How do parents live their lives after the divorce process, how do their children live with whom or under the same roof with whom? Should it be with a man or father or woman or mother?

Or will the child be able to live his life after his parents divorce, how will he live his life with his parents separated? The costs that are present in his life are how he will live it all.

RESEARCH METHODS

This research article uses normative juridical research methods by examining library materials, namely primary and secondary legal materials.³The data collection technique uses library research, by collecting data and information or legal materials related to the substance of the research. After the legal

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² Putusan Mahkamah Syar'iyah Meulaboh, Nomor 0233/pdt.G/2017/MS-MBO

³ Khudzaifah Dimiyati & Kelik Wardiono, 2004, *Metode Penelitian Hukum, Surakarta:Fakultas Hukum UMS*, hal. 4.

materials are collected, analysis is carried out and appropriate conclusions are drawn regarding the problems contained in the problem formulation. This research applies data analysis techniques using deductive logic. This conclusion is based on an analysis of disputes regarding child support after divorce which have become court decisions and have permanent legal force. This brand dispute will be analyzed according to existing regulations, from a brand law perspective in order to understand its essence and intent in resolving the legal problems discussed in this research

RESULTS AND DISCUSSION

Understanding and Legal Basis for Living

Etymologically, life begins with the Arabic word Al-nafaqah which means "taken". Supporting is also defined as spending, namely what is given to the wife, father to children, relatives as their basic needs. Life is shopping which is a core necessity. We mean that these basic needs are basic needs that are needed by those who need them. Referring to Abdurrahman, livelihood means all the costs of life.

It is the authority of the wife and children to obtain food, clothing and a number of other basic necessities even though the wife is a well-off woman. Referring to Kamal Muchtar, life is "shopping, basic needs". The problem is the basic needs of those in need.⁴

Meanwhile, referring to Wahbah al-Zuhaili, life, according to the fuqaha's argument, is shopping, that is, just eat. Meanwhile, referring to Wasman and Nuroniyah, maintenance is a set of affairs and needs that are in line with the situation and conditions, for example food and clothing, shelter, etc. The amount of the mandatory allowance is only in accordance with the needs and requirements and takes into account the circumstances and abilities of the person who must provide a living in accordance with the customs and customs of each place.⁵ Initially, a number of arguments explained can be interpreted that life is what human beings should give for their own sake or for other things they are entitled to receive, whether in the form of food, clothing, shelter, etc. All of these requirements must be complied with depending on the conditions.

The benchmarks regarding costs for children are stated in the Koran and other rules. The benchmark is in the Koran, namely:

- Surah al-Baqarah verse 233
- In Surah ath-Thalaq verse 6, If a woman is pregnant, he will provide support until she gives birth. Then if they breastfeed your baby, pay for it, it is better for parents to negotiate satisfactorily for the welfare of their child, both in terms of health, education and other topics.
- Apart from the Koran, the Marriage Law and Islamic Law also provide the legal basis for maintenance obligations.

Provisions of the Marriage Law no. 1 of 1974 first documented marriage, various regulations contained rights protection and child protection. Later, regulations were made by the government for the same purpose, namely to protect and guarantee the care of children. When Child Protection Law no. 23 of 2002 was promulgated. This law was even replaced by Law No. 35 of 2014 which amended the 2002 Child Protection Law.

Marriage Law Number 1 of 1974 concerning Marriage provides an explanation that the protection and responsibility for child care is explained in article 41, that in the event of a divorce, the father and mother must be responsible for caring for and teaching their children, that fathers are responsible for all the burden of care and schooling. needed for their children. Therefore, the dissolution of the parents' marriage is not an excuse for neglecting child custody. Also in the context of guaranteeing and protecting child custody rights in Article 45, parents are obliged to care for and teach their children as effectively as

⁴ Kamal Muchtar, *Asas-Asas Hukum islam Tentang Perkawinan...*, hlm.15

⁵ Wasman dan Wardah Nuroniyah, *Hukum Perkawinan Islam di Indonesia*, Cet. I (Yogyakarta: Mitra Utama, 2011), hlm. 252.

possible.⁶

In Article 26 of the Child Welfare Law regarding the burdens and responsibilities of the family and parents, it is explained that parents have the duty and responsibility to care for their children. Meanwhile, in Article 31 paragraph 2 chapter VI regarding the power of recipients, it is explained that if someone from a parent, sibling, or third degree of family or higher cannot carry out their duties, guardianship can be transferred to a ruling body. The provision of Lembaga care can be carried out in or outside social facilities. Meanwhile, the environment also has the greatest opportunity to take a role in protection, whether it is carried out by individuals, children's social organizations, NGOs, educational institutions, religious organizations, commercial organizations or the media.

The benchmark rules applied to ensure the realization of children's rights are based on the Republic of Indonesia Law of 1945 and the basic principles of the Convention on the Rights of the Child which was inaugurated in 1990 and subsequently outlined in Law Number 23 of 2002 concerning Child Protection. Based on something that is inherent in the child's personality, namely that rights must be protected and maintained so that they can develop well.

Looking at the meaning of a number of rules, it can be concluded that the legal basis for child support according to positive law in Indonesia is:

1. Marriage Law no. 1 of 1945. This law explains that child care is the responsibility of the parents even if a divorce occurs. Divorce is not a factor in avoiding the obligation to support children, but parents are always obliged to guarantee support and other costs until the child is old enough or independent.
2. Islamic Law Collection. According to Islamic law, the obligation to provide for children lies with the parents. More specifically, in the case of divorce, the father as head of the family must be primarily responsible for providing for the child according to his abilities. However, if the father is unable to meet the needs, then the mother is obliged to help with the child's needs.
3. Law No. 35 of 2014 replaces Law No. 23 of 2002 concerning child protection. Based on this rule, it is explained that parents must support their children even after divorce. In the event that the father, mother or relative, brother or sister is unable to care for them, the support obligation is transferred to the authorized institution.

Rights and Obligations to Provide a Living

The reasons for the obligation to pay maintenance can be classified into 3 reasons, namely because there is always a kinship/familial relationship, because of property and because of marriage. that is, in the presence of kinship relations, a person can obtain other people's material wealth. Hence the status of close family, rights and obligations arise. This also applies to the maintenance obligations of both partners, children or both parents. Families with straight vertical relationships force someone to support. The situation is in line with Imam Malik's comments taken by Zakaria Ahmad Al-Barry:

"Fathers take care of their children, children take care of their fathers, and mothers take care of them."

For education and special education costs, this is necessary when the child is small, but if the child has reached adulthood and is able to work and own property, the father is not obliged to meet the child's needs. child. In this chapter, if a child has grown up but is still seeking knowledge, then the obligation to provide for him does not fail. In line with Imam Hanafi's comments:

"A child has grown up, if he continues to seek knowledge, then the father is obliged to provide for

⁶ Bunyi lengkap pasal 45 bab X Hak dan Kewajiban Antara Orang Tua dan Anak Undang- Undang No. 1 tahun 1974 Tentang Perkawinan adalah "(1) kedua orang tua wajib memelihara dan mendidik anak-anak mereka sebaik-baiknya. (2) kewajiban orang tua yang dimaksud dalam ayat (1) pasal ini berlaku sampai anak itu kawin atau dapat berdiri sendiri, kewajiban mana berlaku terus meskipun perkawinan kedua orang tua putus"

him."

Thus, the husband or father must support his wife and children because the father is the head of the family. According to the summary of Islamic law, the obligation to support and support children is regulated in articles 104 and 106. As in article 104 of the summary of Islamic law, it is explained that all responsibility for the child's support is the responsibility of the father. If the father has died, the responsibility for breastfeeding is borne by the party responsible for supporting the father or guardian.

Apart from that, Article 106 of the Islamic Law Code stipulates that parents are obliged to maintain and develop the assets of their minor children, aka their guardians, and are not permitted to transfer or mortgage them, other than in emergency situations for the sake of interests and welfare. a child's request or a fact that can no longer be avoided.

Furthermore, based on Article 26 of the Child Welfare Law regarding the duties and responsibilities of family and parents, it explains that parents have burdens and responsibilities in terms of caring for, educating and protecting their children. Likewise, the Marriage Law, the General Islamic Law, and the Child Welfare Law stipulate that parents are primarily responsible for providing for children during marriage and after divorce.

Child Support After the Divorce Process

Parents are responsible for the upbringing or upbringing of their children. Parenting or caring for children is the fulfillment of various aspects of children's needs, both primary needs and secondary needs.

Based on Article 42 of Marriage Law no. 1 of 1974, it is stated that a legitimate child is a child born as a result of a valid marriage. According to Article 99 of the Republic of Indonesia Presidential Instruction no. 1 of 1991 concerning the Compilation of Islamic Law in Indonesia, which stipulates that a legitimate child is a child born during and as a result of the marriage of a legitimate person with a child conceived by a legitimate partner outside the womb and born to that woman.

The scholars agree that fathers are obliged to provide for their children. In another reference, it is also said that fiqh scholars agree that children must receive support from their father on the condition that if the father can support them, at least he can also work to earn a living. If there is no property or inability to work due to disability or other reasons, the father is not obliged to support the child. Fiqh scholars also agree that child custody must be given in accordance with the child's basic needs and in balance with the father's situation.

In Indonesia, the positive law regarding child maintenance after a divorce is regulated in Article 149 letter d of the Islamic Law Book which explains that "if the marriage is broken up due to divorce, the ex-husband must provide hadhanah costs for his children under 21 years of age. So all the costs of the child's education and all the child's needs are the father's responsibility to cover them. In this regard, the nominal amount for the maintenance and upbringing of the child is determined by the judge, this amount is equated with the father's financial strength and the number of other people to care for the child. borne by father.

The consequence of the Divorce Law regarding the status and protection of children's rights based on Article 41(a) of the Marriage Law No.1 of 1974 is that parents are always obliged to care for and guide their children. on the basis that it is in the best interests of the child, if there is a dispute regarding child custody, then the court will decide. The legal consequences of divorce for children are definitely only valid for husbands and wives who have children in their marriage, but not for husbands and wives who do not have children in their marriage.

Sudarsono further explained that living costs for the maintenance and upbringing of children are the father's responsibility, with other responsibilities being the father's responsibility.

Based on the judge's considerations, this can be waived if the father, in the judge's opinion, is financially unable to meet all the child's needs, the court can assume that the mother must share in these costs. If in the judge's opinion the father and mother are deemed equally incapable, then the court can

appoint a guardian based on article 50 of the Marriage Law no. 1 of 1974.

Both parents, even though they are divorced, are still responsible for the child's support, even though the child lives with the mother, the father is still responsible for the child's support. In this regard, parents always have the obligation to educate and care for their children until they understand their own needs, in this case the mother has the right to do so.

According to Hilman Hadikusuma, it is explained that every child who has not yet reached adulthood or has reached adulthood but lives in poverty and has no assets has the right to receive income from parents who are able to pay.⁷ Meanwhile, Wahyu Ernaningsih and Putu Sawati further explained their views on the legal consequences of divorce on the lives of their children as follows:⁸

1. The obligation to support children does not disappear because of the dissolution of the marriage after divorce.
2. Child care costs are borne by the father (until the child is an adult or self-employed, working/earning an income or married). Financial obligations remain with the father even though childcare is not his. This means that the father always has the obligation to support the child even though the right to raise the child belongs to the mother, grandparents, aunts, etc.
3. If the father is unable to provide maintenance (living), the court can decide that the mother must bear the child's living expenses.

Basic Legal Considerations from the Judge for Determining Child Support in Judge's Decision Number 0233/Pdt.G/2017/MS-MBO.

At the beginning of the decision, the Panel of Judges will first explain their legal considerations based on the reality of the situation during the trial as stated in Decision Number 0233/Pdt.G/2017/MS-MBO, namely:

- a. After reconsidering, the panel of judges was of the opinion that it was true that a marriage had occurred between the plaintiff and the defendant on January 4 2014 at the Kuala Lumpur Regency Religious Affairs Office, so the marriage relationship was declared valid. effective. .
- b. The panel of judges was of the opinion that the household between the plaintiff and the defendant could not be rebuilt because the mediation process did not reach an agreement.
- c. Considering the demand for dowry, the college judge always forced the applicant to pay the amount of 2 mayam gold as an obligation unless the respondent waived it. However, the defendant remained adamant, so the plaintiff had to return 2 gold nuggets.
- d. Regarding the issue of alimony for Madhiyah, the panel of judges said that the plaintiff's objection to not paying due to divorce could not be accepted because the plaintiff had stopped providing alimony to the defendant 10 months ago. madhiyah allowance to the defendant.
- e. Regarding iddah maintenance, setting it at Rp. 3,000,000,- considers this amount to be reasonable.
- f. Regarding child support, reduce the amount requested by respondents from IDR 1,600,000 to IDR 600,000 plus 20% every year until the child is old enough.

Based on these legal considerations, it appears that the Trial Panel considered the plaintiff's ability to respond to the defendant's request. In the original lawsuit, the Defendant claimed that the need to fulfill a child's life was IDR. 1,600,000,- per month. However, the applicant did not accept the request for child support, because the applicant argued that the cost of a child who had not yet been mumayyiz, the life cost of Rp. 1,600,000,- is quite a large amount, especially since the plaintiff only works as an entrepreneur with an irregular income every month. Indeed, with a mediocre economy, the plaintiff worked as a manual laborer at the PLN office. Therefore, the applicant cannot pay this amount every month for the expenses of his child.

⁷ Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut perundangan, Hukum Adat, Hukum Agama*, (Bandung: Mandar Maju, 2007), hlm. 125

⁸ Ibid, hlm. 372-373

As a result, the panel of judges finally determined the amount of alimony that had to be paid by the plaintiff to be IDR 600,000 plus 20% per year. The judge needs to pay attention to this because according to Islamic law, the obligation to care for children must be in accordance with the parents' abilities, not forcing the will of one party. As stated in Marriage Law no. 1 of 1974, Article 41(3) regulates that the court can force an ex-husband to meet living expenses and determine the ex-husband's obligations after marriage. Because children are the joint responsibility of husband and wife, they must work together to care for and educate them.

Based on this description, the author concludes that the basis that must be considered by a judge in determining post-divorce child support is the husband's ability to provide this income, as the father of his children. It appears that this is based on the wife's initial request for child support beyond her husband's means, so the Panel of Judges determines child support after divorce based on the husband's capabilities minus demands beyond the wife's capabilities. husband.

CONCLUSION

If a woman is pregnant, he will provide support until she gives birth. Then if they breastfeed your baby, pay for it, it is better for parents to negotiate satisfactorily for the welfare of their child, both in terms of health, education and other topics. 1 of 1974 which was the first to document marriage, various articles contained rights protection and child protection. Later, laws were made by the government for the same purpose, namely protecting and guaranteeing children's parenting rights.

In Article 26 of the Child Welfare Law concerning the obligations and responsibilities of family and parents, it is explained that parents have duties and responsibilities to care for, educate and protect their children. The legal basis used to guarantee the realization of children's rights is based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child which was ratified in 1990 and subsequently outlined in Law Number 23 of 2002. Based on something inherent in children namely rights that must be protected and maintained in order to develop naturally. 1. Law Number 1 of 1945 concerning Marriage. In the Islamic Law Association, the obligation to provide for children lies with the parents. However, if the father is unable to meet his child's needs, then the mother is obliged to meet his child's needs. Based on this law, it is explained that parents are obliged to support their children even after divorce. In the event that the father, mother or relative, brother or sister is unable to care for them, the support obligation is transferred to the authorized institution.

Likewise with the maintenance obligations of both partners, children or both parents. This is in accordance with Imam Malik's comments quoted by Zakaria Ahmad Al-Barry:. For education and special education costs, this is necessary when the child is still small, but if the child has reached adulthood and is able to work and own property, then the father is not obliged to meet the child's needs. In this case, if the child has grown up but is still seeking knowledge, then the obligation to provide for him does not fail. According to the Compilation of Islamic Law, the obligation to care for and provide support for children is contained in Article 104 and Article 106.

Every parent has responsibility for the care or upbringing of their child. Based on Article 42 of Marriage Law no. 1 of 1974, it is stated that a legitimate child is a child born in or as a result of a valid marriage. When you talk about children after divorce, you should also talk about alimony. When a husband divorces his wife, he is obliged to pay child support, namely childcare costs and the child's needs, only according to the husband's position. The scholars agree that fathers are obliged to provide for their children.

If there is no property or inability to work due to disability or other reasons, the father is not obliged to support the child. In Indonesia, the positive law regarding child maintenance after the divorce process is regulated in Article 149 letter d of the Islamic Law Book which explains that "if the marriage breaks up due to divorce, the ex-husband is obliged to provide baiya hadhanah for his children under 21

years of age. So all the costs of the child's education and all the child's needs are the father's responsibility to fulfill them. The legal consequences of divorce on the position and protection of children's rights according to article 41 (a) of the Marriage Law no. 1 of 1974, parents always have the obligation to raise and educate their children alone. Based on the interests of the child, if there is a dispute over child custody, the court will issue a decision. Of course, the legal consequences of divorce for children only apply in cases where the husband and wife already have children in marriage, but not in cases where the husband and wife do not have children in marriage.

Sudarsono further explained that living costs for the maintenance and upbringing of children are the father's responsibility, with other responsibilities being the father's responsibility. Based on the judge's considerations, this can be waived if the father, in the judge's opinion, is financially unable to meet all the child's needs, the court can assume that the mother must share in these costs. Both parents, even though they are divorced, are still responsible for the child's support, even though the child lives with the mother, the father is still responsible for the child's support. In this regard, parents always have an obligation to educate.

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