

Fulfillment of Children's Support After Parental Divorce

Vidya Gumanti¹, Sumiyati B², Marwan³

Universitas Ichsan Gorontalo

Article Info

Article history:

Accepted: 11 June 2024

Published: 1 September 2024

Keywords:

Fulfillment;

Child Support;

Divorce.

Abstrak

Etymologically, livelihood means something that circulates because it is shared or given to people and makes the life of the person who gets it run smoothly. Because it is shared or given, the livelihood is physically used up or lost from its owner. This research is motivated by the negligence of a father regarding his obligation to provide support for his children after a divorce. Divorce does not result in the loss of a father's obligation to provide support for his children. The problem of this research is how to fulfill child support after divorce. The method used is normative-empirical legal research. Normative-empirical legal research is a research method which in this case combines normative legal elements which are then supported by the addition of data or empirical elements. The research results show that in implementing the obligation to provide support for children after a divorce, a father is negligent in carrying out his obligation to provide support for his children.

This is an open access article under the [Lisensi Creative Commons Atribusi-BerbagiSerupa 4.0 Internasional](#)



Corresponding Author:

Vidya Gumanti

Universitas Ichsan Gorontalo

Email: vidyagumanti45@gmail.com

1. INTRODUCTION

Marriage is the beginning of living together between a man and a woman as regulated in the applicable laws and regulations. Marriage is a legal relationship, namely a legal relationship between a man and a woman who has fulfilled the requirements of marriage forever. A marriage is not only based on physical ties or spiritual ties, but is a manifestation of physical and mental ties. The outer bond is reflected in the marriage contract, while the inner bond is a feeling of mutual love from both parties.

In a household between husband and wife, it is very possible for misunderstandings to occur between the two. Like one or both of them not carrying out their obligations. These situations can sometimes be overcome and resolved peacefully. In fact, to resolve these problems often results in hatred and constant fighting between the two. Thus, if the marriage relationship continues, the basic goals of domestic life will not be achieved, even though these efforts have been carried out as fully as possible. Therefore, there are many certain factors that cause divorce in a household.

As we know, many couples, especially young couples who have just got married, are still not ready physically and mentally to navigate the ship of their household. Mutual selfishness, not being wise in dealing with household problems, making decisions when emotionally unstable, and many other factors, make many people take the stand to end their marriage in court by means of divorce. Divorce in Islamic law is in principle permissible but hated by Allah, however, divorce is the last alternative that can be taken when domestic life is in a state that is no longer happy and cannot be maintained any longer.

The parties who become victims of parental divorce are children. As a result of parental divorce, it can affect children's behavior such as anti-social behavior, decreased school performance, low quality health, low self-esteem, dropping out of school and negative attitudes towards the family. Divorce can be said to be a disaster for children, but

if it occurs then this disaster needs to be worked on so as not to cause other disasters that are more dangerous.

Divorce of parents has legal consequences for the children resulting from the marriage, whether the father or mother is still obliged to care for and educate their children, solely based on the interests of the children, if there is a dispute regarding control of the children, the Court gives its decision. So the father is responsible for all the maintenance and education costs required by the child. If the father is in fact unable to provide these obligations, the court can determine that the mother must share in the costs.

Legal protection is a right for every citizen, as regulated in Article 27 paragraph 1 of the 1945 Constitution "All citizens have the same position under the law and government and are obliged to uphold the law and government without exception". The consequence of this article is that the law must be protector for every citizen, including children, because the constitution clearly states that Indonesia is a state of law.

The legal product in Indonesia that regulates marriage is Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning Marriage, which contains the principles and legal basis for marriage that have been implemented and apply to all Indonesian citizens. namely: "Marriage aims to create a family life that is *sakinah, mawaddah and rahmah*. The law also provides for divorce, but the Marriage Law seeks to reduce the number of divorces as much as possible. Lawmakers also realize that arbitrary divorce will not only result in the destruction of husband and wife, but also children who must be cared for and cared for properly so that children will not continue to fall victim to divorce.

Article 28b(2) of the 1945 Constitution states "Every child has the right to survival, growth and development and the right to protection from violence and discrimination" to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, as well as protection from violence and discrimination." One of the government's efforts to optimize child protection is the establishment of the Indonesian Child Protection Commission which is a mandate from Article 74 (1) of Law Number 23 of 2002 concerning Child Protection, namely in order to increase the effectiveness of monitoring the implementation of the fulfillment of Children's Rights, the Indonesian Child Protection Commission was formed. is independent.

Apart from the Child Protection Commission, the judiciary also has an important role in this matter in guaranteeing children's rights through court decisions. In divorce cases, one of the most important things for the judge to consider is the fate and future of the children resulting from the marriage. After a divorce, there is no such thing as a former child, the marital relationship between parents and children continues. forever bound. Don't let the fate of children become neglected after a divorce, because separation from their parents is already a psychological burden on the child, so don't add to it, because their civil rights will be neglected.

In Law no. 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, states the rights and obligations between parents and children. Article 45 paragraph (1) of Law No. 1 of 1974 stipulates that both parents are obliged to care for and educate their children as best as possible. Meanwhile, paragraph 2 states that it is further regulated that: "the obligations of parents referred to in paragraph 1 apply until the child marries or is able to stand alone, and these obligations will continue to apply even if the marriage of both parents breaks down."

As a result of the dissolution of a marriage due to divorce, the Marriage Law, Article 104 paragraph (1) states clearly that, "all costs of breastfeeding a child are borne by the father, if the father has died, then the costs of breastfeeding are borne by the person who is obliged to provide support for the father or guardian."

Based on this article, it means that even though the child's parents have separated or divorced, their obligation as parents to fulfill their obligations to their child is not broken. Children must continue to receive their rights, one of which is living as a child as intended by article 45 paragraph 1 of Law No. 1 of 1974 concerning marriage. Then this is confirmed by article 23 of Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection, paragraph (1) of which reads "The State, Government, Regional Government guarantees the protection, maintenance and welfare of children by taking into account the rights and obligations of parents, guardians or other people who are legally responsible for children." The existence of this article means that the State or Government must supervise to ensure the protection of children.

In this case, the researchers also took a case of a father who did not carry out his child support obligations, as stated in Register decision number 347/Pdt.G/2023/PA.Gtlo. In the case of a divorce petition for divorce, the wife sued for her husband's agreement to provide monthly child support for their 2 children. The Panel of Judges at the trial determined that the amount of child support that must be given was IDR 1,000,000 to each child. After the decision has permanent legal force (*incracht*). At the beginning of the divorce the father was still carrying out his obligation to provide for his child. However, in the last few months since the decision, *Incracht* has no longer come to provide support for his child, and if he provides support it is not in accordance with the amount of maintenance costs that have been determined.

On the other hand, judges as court organs have the task of examining and adjudicating cases. In the field of civil law, one of the duties of judges based on Law Number 48 of 2009 concerning Judicial Power Article 55 paragraph 1 is to supervise the implementation of decisions. The implementation of court decisions in civil cases is carried out by clerks and bailiffs led by the chairman of the court. The Chief Justice is obliged to supervise the implementation of court decisions that have obtained permanent legal force. Supervision of the implementation of this decision is carried out in accordance with statutory regulations so that the decision is implemented properly and smoothly by paying attention to human values and justice. The judge also supervises the implementation of the decision he handed down. This is intended so that the judge has a sense of responsibility for the decision handed down by him, whether there are any shortcomings or juridical errors in his decision, resulting in the implementation of the decision not being smooth or even the decision failing to be implemented due to errors in the judge's decision.

Seeing the problem of fulfilling child support. Of course, the protection of children and the implementation of their rights needs to be carried out optimally. So the matters involved in protecting children's rights after divorce are not just the fulfillment of the provisions in the law, but rather, when both parents who have divorced consciously and must be in good faith carry out their obligations according to the provisions that are in force, then the problems that arise from Divorce is about children who must receive their rights and legal protection fairly.

In fact, in society, there are still many children who are victims of divorce who do not receive the rights as children of divorced parents. Apart from that, even though there is a religious court decision which has decided on the amount of child support that the defendant (father) must pay every month, most of this decision is not obeyed by the father. Even if something is complied with, the amount is not in accordance with what was decided by the court. Especially if the father is married and busy with a new family. The obligation to provide support for children after divorce is increasingly being disobeyed.

2. RESEARCH METHOD

This type of research is normative-empirical legal research. Normative-empirical legal research is a research method which in this case combines normative legal elements which

are then supported by the addition of data or empirical elements. The type of normative-empirical research used by the author is to explore information in the field (Field Research). Normative-empirical research is used to analyze or find out to what extent regulations or laws and laws are operating effectively.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Research result

Divorce is a legal event whose consequences are determined by law, or a legal event that has legal consequences. Divorce gives rise to legal consequences of divorce. Pay attention to the contents of Article 41 of Law Number 1 of 1974 concerning Marriage Jo. Law Number 16 of 2019 concerning Amendments to Marriage Law Number 1 of 1974 confirms that divorce has legal consequences for former partners and children.

If a divorce occurs between a man and a woman, it does not necessarily eliminate their rights and obligations. Women's rights are men's responsibility. Likewise, men's responsibilities become women's rights. A right is not obtained until an obligation is fulfilled.

After a divorce, the father still has the obligation to support his children. Divorce does not result in the loss of the father's obligation to continue to support his children. Fathers must support their children until the children reach the age of 21 years.

Divorce is a legal event whose consequences are determined by law, or a legal event that has legal consequences. Divorce gives rise to legal consequences of divorce. The consequences of divorce create rights and obligations between husband and wife. According to Soemiyat, rights are something that belongs to or can belong to a husband or wife, which is obtained from their marital income. This right can also be taken away, if the person entitled to it agrees, if the other party does not fulfill his or her rights or salary. Obligations refer to things that another party must do or do to fulfill the other party's rights.

Article 38 of Law Number 1 of 1974 concerning Marriage Jo. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 about Marriage and Article 113 of the Compilation of Islamic Law (KHI) emphasizes that the breakdown of a marriage bond can be caused by several things, namely: 1) because of death, 2) because of divorce, 3) because of a court decision.

There are several legal consequences of divorce as regulated in Article 41 of Law Number 1 of 1974 concerning Jo's Marriage. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, namely a) Both the father and mother remain obliged to care for and educate their children, solely based on the interests of the child, if there is a dispute regarding mastery children, the court gives its decision; b) The father is responsible for all maintenance and education costs required by the child, if the father is in fact unable to provide these obligations, the Court may determine that the mother also bears these costs; c) The court can require the ex-husband to provide living expenses and/or determine obligations for the ex-wife.

The normative provisions in Article 41 letter c are related to Article 11 of Law Number 1 of 1974 concerning Marriage, which contains provisions normative that for a woman whose marriage breaks up, a waiting period applies, which then this article has explained in Article 39 PP Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, which contains the imperative provision that for a widow whose marriage is broken up due to divorce, then the waiting time for widows whose marriages have ended due to divorce, the waiting time for widows who are still menstruating is set at 3 (three) sacred times with at least 90 (ninety) days. If the

marriage breaks up and the widow is pregnant, a waiting period is set until she gives birth. (PP Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage).

The legal consequences of divorce on the rights and obligations of ex-husbands or wives which are regulated in Islamic law have been positivized in Article 149 of the Compilation of Islamic Law (KHI) which contains the imperative provision that if the marriage is broken up due to divorce, then used The husband is obliged to: a) Give appropriate mut'ah to his ex-wife, either in the form of money or objects, unless the ex-wife is qabla aldukhul; b) Providing maintenance, dowry and kiswah to the ex-wife during the iddah period, unless the ex-wife has been sentenced to talaq bain or nusyuz and is not pregnant; c) Pay off the dowry that is still owed in full and half if qabla aldukhul; d) Providing gifts to children who have not yet reached the age of 21 years.

The word livelihood comes from infak which means to spend and this word is not used other than for good things. The plural form of the word livelihood is nafaqaat which means Language means something donated or spent by someone for the needs of their family. Meanwhile, living according to sharia is the sufficiency given to someone in terms of food, clothing and shelter. There are two types of living, namely the living that a person is obliged to pay for himself if he is able and the living that a person is obliged to pay for others. There are three reasons that make this living obligatory, namely marriage, kinship relations and ownership rights.

Etymologically, livelihood means something that circulates because it is shared or given to people and makes the life of the person who gets it run smoothly. Because it is shared or given, the livelihood is physically used up or lost from its owner. In terminology, living is something that is mandatory given in the form of assets to obey in order to survive. From this understanding it can be seen that included in livelihood are clothing, food and shelter.

The obligation to provide maintenance occurs in three places and is due to the wife by marriage, hereditary relatives (nasab), servants or other people because they are under their care. Obligations due to marriage are the first basis and are more important than the other two reasons. Meanwhile, obligations due to lineage are more important than reasons under care. Priority is due to sequential lineages from closest to next.

From the definition above, it can be understood that maintenance is anything that has useful or material value that a husband can give to his wife, children and other family members as a responsibility to meet the needs of the people he supports. The provision of maintenance takes place after a valid marriage contract has occurred.

4. CONCLUSION

Based on the results of the author's research, it can be concluded that in carrying out the obligation to provide support for children after a divorce, a father is negligent in carrying out his obligation to provide support for his children.

5. BIBLIOGRAPHY

- Abidin, Zainal. Ibnu Mas'ud. 2007. *Fiqh Madzhab Syafi'i*. Bandung : Pustaka Setia.
- Ikhwanudin, Nandang. 2016. *Pemenuhan Kewajiban Pasca Perceraian di Pengadilan*. Vol. 10, No.1.
- Mardani. 2011. *Hukum Perkawinan Islam di Indonesia Modern*. Yogyakarta: Graha Ilmu.
- Syaifuddin, Muhammad. 2014. *Hukum Perceraian*. Jakarta : Sinar Grafika
- Umbara, *Undang - Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan & Kompilasi Hukum Islam* , 2013