

ANALYSIS OF LEGAL PROTECTION OF FULFILLMENT OF CHILDREN'S RIGHTS IN DIVORCE CASES IN MEDAN, NORTH SUMATRA

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Abstract

Divorce can be imagined as very sad when viewed from the perspective of a child's life. After a husband and wife officially divorce, Law No. 35 of 2014, especially Article 14, emphasizes that every child has the right to be raised by their own parents, unless there are valid reasons and/or legal regulations that indicate that the separation is in the best interests of the child and is the last consideration. This study aims to determine the fulfillment and legal protection that children receive in divorce cases. The obligations of both parents that must be fulfilled as regulated in Law No. 35 of 2014, Article 9 concerning child protection, state that when a divorce occurs, parents are still obliged to fulfill the child's rights with full affection. The results of this study were conducted to determine how children's rights are fulfilled in divorce in North Sumatra. This study was conducted with information sources from the Indonesian Child Protection Agency (LPAI) in North Sumatra. The results of this study indicate that with divorce, children's rights have not been fully fulfilled. However, to be able to realize this, awareness of both parents is needed that there are still children's rights that must be fulfilled after a divorce occurs.

Keywords: *Children's Rights, Legal Protection, Divorce*

A. BACKGROUND

A family that is built with the agreement of both parties, namely a man and a woman, Based on Article 45 paragraph 2 of Law Number 1 of 1974 concerning Marriage, it is stated that the obligations of parents referred to in paragraph 1 of the article apply until the child is married or can stand alone, which obligations continue to apply even though the marriage between the two parents has ended. In fact, divorce is an event that is not desired by both husband and wife in a household. The termination of the marriage bond between husband and wife which is carried out at the will of the husband and wife or because of a court decision, then this can be said to be a divorce. So the marriage can end or end due to several things including divorce, although divorce is considered legal and permitted in the eyes of the law, but not infrequently the rights of children will be difficult to fulfill.¹ Some of the reasons for divorce that often occur are due to continuous disputes, infidelity, economic reasons, and so on. During the divorce process, the issues that are often discussed are regarding children's rights. Fulfillment of children's rights must be fulfilled by both parents. Legal protection for children after divorce has been stated in Law No. 35 of 2014, amendments to Law No. 23 of 2002 concerning child protection, including all activities that guarantee and protect children and their rights so that they can live, grow and develop and participate optimally and be protected from violence and discrimination.² After that, there will also be a division of children's inheritance rights, including the inheritance rights of stepchildren.

According to the author, parents should be aware that after the marriage ends, the child is still their responsibility. In addition, regulations need to be made that firmly provide punishment for neglecting a child who is a victim of divorce so that irresponsible parties, one of which is the child's parents, will be afraid if they have the intention to neglect their child.³ The author believes that if parents whose marriage has ended are truly aware of their

¹Roode W, sociology of family law, (Jakarta: Bumi Aksara, 1991).

²Fikri, et al., Children's rights in Islamic family law, (Parepare: Nusantara Press, 2022), p. 38.

³Erfanda Warassandi, "Legal Protection for Children Due to Divorce Regarding the Right to Support", Muhammadiyah University of Surakarta, 2020, p. 6.

obligations to fulfill their children's rights, and the role of the Government, law enforcement, and the community work together to protect children's rights. Then it is likely that there will be no cases that affect children's rights. Children will live comfortably, happily, have guaranteed welfare and grow and develop well. Based on the description above, the author is interested in conducting research in the form of a Journal Proposal with the title "analysis of legal protection for the fulfillment of children's rights in divorce cases in Medan, North Sumatra".

B. FORMULATION OF THE PROBLEM

From the background explained above, the author formulates the problem as follows:

1. How is the implementation of the fulfillment of children's rights in divorce cases in Medan, North Sumatra?
2. How is the legal protection for fulfilling children's rights in divorce cases in Medan, North Sumatra?
3. How is the division of assets regarding the inheritance rights of adopted children in divorce cases in Medan, North Sumatra?

C. RESEARCH METHODS

This research is qualitative. Qualitative research is an assessment approach that aims to understand and explain a phenomenon in a natural context.⁴ The type of research used in this study uses normative legal research, namely by studying and analyzing secondary data and primary data which is intended to provide legal arguments as a basis for considering how the event should be according to law.⁵

The types of data in this study are secondary data and primary data. According to Sugyono, primary data is data obtained directly from the original source, namely the person who is the subject of this study. Primary data is collected through interviews and observations.⁶ directly by Mr. Drs. John Edward Hutajulu (head of LPAI NORTH SUMATERA). Secondary data is data obtained through agency documents obtained directly from the LPAI NORTH SUMATERA office.

D. RESULTS AND DISCUSSION

1. Implementation of Fulfillment of Children's Rights in Divorce Cases in Medan, North Sumatra

A child is someone who is born from a marriage. A child is a trust and a gift from God Almighty, so inherent in him is the dignity and honor of a whole human being.⁷ Rights are opportunities given to every individual to obtain, do, and have something they want.⁸ A child is someone who is born from a marriage. A child is a trust and a gift from God Almighty, so inherent in him is the dignity and honor of a whole human being.⁹

The source in this study said that: *"Usually the cases that I handle are the most numerous and it can be said that the average cause is infidelity, if it is an economic problem, domestic violence, and others, it is very rare but what is focused on in this case is the rights of the children that they have neglected."* This is certainly a serious concern because most parents often ignore the rights of children that are still attached. Children's rights regulated in the Law include:

- a. According to Article 28B paragraph 2 of the 1945 Constitution, "every child has the right to survive, grow and develop and has the right to protection from violence and discrimination."
- b. According to Law of the Republic of Indonesia No. 23 of 2002 Article 5 concerning child protection, "every child has the right to have a name as one of their identities and citizenship status." Article 7 paragraph 1 "every child has the right to know their parents, be raised and cared for by their own parents." Article 8 "every child has the right to receive social security and health services according to their physical, mental, and social needs." Article 9 paragraph 1 "every child has the right to receive education and teaching in order to develop themselves according to their interests and talents." Article 10 "every child has the right to express and have their opinions heard, receive, and seek information according to their age for self-development in accordance with moral values and propriety." Article 11 "every child has the right to rest and use their free time to socialize and be creative according to their interests and talents for self-development."

⁴M. Fatun Niam, et al., *Qualitative Research Methods*, (West Java: Widina Medina Utama, 2024), p. 2.

⁵Mukti Fajar and Yulianto Ahmad, *Normative Legal Research*, (Yogyakarta: Pustaka Pelajar, 2015), page 104.

⁶Sugyono, "Understanding primary data", (2016), page 225.

⁷Ester Stevany Putri, et al., "Fulfillment of children's rights in the context of divorce: Legal Analysis of Determination of Child Custody Rights Through Litigation", Vol 2, No 1 of 2024, page 21.

⁸Annisa, "Journal of Rights and Obligations in Indonesian Law", (2024).

⁹Ester Stefani Putri, et al., "Fulfillment of children's rights in the context of divorce: A legal analysis of the determination of child custody rights through litigation", vol 2, No.1 of 2024, page 21.

The divorce that occurred caused the child to not receive special attention, especially concerning the unfulfilled rights of the child after the divorce. When parents separate, symptoms also appear in the child whose rights are not fulfilled, where a child's life will definitely change drastically. Children who do not get a living from their parents will choose to work and become the backbone for their younger siblings. Lack of affection from parents also makes children feel inferior, have difficulty interacting with their surroundings because they feel ashamed of their condition, have inner conflict, and trauma that is difficult to remove.¹⁰

Fulfillment of rights of children after divorce can be said to be less effective and tend to be less than optimal. The problem of fulfilling children's rights often becomes a misunderstanding between ex-husband and ex-wife. Therefore, there needs to be firmness from Religion and the Government in regulating the obligation to fulfill children's rights. In essence, the most important right given by parents to children is affection, with affection it can be the initial foundation for parents to fulfill children's rights.

This is in accordance with Child Welfare Law No. 1 of 1979, Article 2, paragraph (1) which states that "children have the right to welfare, care, upbringing, and guidance based on good affection in their families or in special care to grow and develop naturally." However, the reality that occurs in society, especially in Medan, North Sumatra, is that when children become victims of divorce, they rarely get their rights as well as before their parents divorced. The resource person said that, "many parents trivialize their children's rights starting from the basics, such as the child's right to have an identity or birth certificate. This will certainly be a problem for the child's survival."

In the case of handling children's rights due to divorce victims, of course, in addition to the state, parents must also take part in resolving it because in essence, parents are the ones who have the strongest bond with their children. Parents must gain an understanding of children's rights that will not be released even during divorce. These rights regarding children are not only regulated in Law Number 4 of 1979, but also regulated through Presidential Decree Number 36 of 1990 which is the result of the ratification of the Convention on the Rights of the Child which was ratified by the UN on November 20, 1989.

In the Convention on the Rights of the Child, it is explained that there are four categories of children's rights, namely: The right to survival which concerns the right to a decent standard of living and health services. The right to development which includes the right to education, information, leisure time, arts and cultural activities, freedom of thought, belief and religion, and the rights of children with disabilities (special needs) to special services, treatment and protection. The right to protection which includes protection from all forms of exploitation, cruel and arbitrary treatment in the religious court process. The right to participation which includes freedom to express opinions, assemble and associate, and the right to participate in decision-making that includes him/herself.

2. Legal Protection of Fulfillment of Children's Rights in Divorce Cases in North Sumatra

Legal protection also protects human rights that are harmed by others.¹¹ Legal protection for children according to Sholeh Soeidy is all efforts aimed at preventing, rehabilitating, and empowering children who have been treated wrongly, exploited, and neglected in order to ensure the survival and growth of children physically, mentally, and socially. In essence, child protection in civil law includes several aspects, namely:

- a. Child's position
- b. Child's confession
- c. Adoption of a child
- d. Maturation
- e. Custody
- f. Guardianship
- g. Actions to regulate what children can take in order to protect children.
- h. Living expenses of children borne by parents due to divorce.¹²

According to Philipus M. Hadjon, legal protection can be divided into two types, namely: preventive legal protection and repressive legal protection.¹³ Preventive legal protection is protection provided by the government designed to prevent violations before they occur. This is stated in legal provisions designed to prevent violations and limit the fulfillment of obligations. In this preventive legal protection, legal subjects have the opportunity to file

¹⁰Anata Reyustina Almaidah, "Fulfillment of Children's Rights Post-Divorce", Proceedings of the National Seminar, IAAN 1234-5678, (2023), 1166.

¹¹Philipus M. Hadjon, "Legal Protection for the People in Indonesia", Surabaya Bina Ilmu, (1997), page 25

¹²Junaidi, "Legal protection for children in Indonesia", (2021), pp. 9-10.

¹³Phillipus M. Hadjon, Legal Protection for the Indonesian People, (Surabaya, PT. Bina Ilmu, 1987), page 29

objections or statements before the government's decision becomes final. The goal is to prevent disputes. Repressive legal protection is in the form of sanctions such as fines, imprisonment, and additional penalties if a dispute arises or a violation occurs. This category of legal protection includes the administration of legal protection by the general courts and the Indonesian state administration. The principle of legal protection against government actions is based on and originates from the concept of recognition and protection of human rights.¹⁴In the context of divorce according to Islamic Family Law, child custody is a very important issue and has major implications for the legal protection of children. Shaykh Kamil Muhammad Uwaidah, a scholar in the field of Islamic Family Law, stated that in a divorce situation, child custody is usually given to the mother. This is based on the view that mothers tend to be more emotional and attentive to their children. However, this perspective is not absolute, and there are several conditions that must be met by the child's caregiver.¹⁵

Child care and adoption In order to increase the effectiveness of the implementation of child protection, the Indonesian Child Protection Commission was formed, which has functions and duties in accordance with Article 75 of the Child Protection Law, namely:

a. Disseminating all provisions of laws and regulations relating to child protection, collecting data and information, receiving public complaints, conducting reviews, monitoring, evaluation and supervision of child protection violations.

b. Providing reports, suggestions, input and considerations to the president in the context of child protection. According to general knowledge, what is meant by a child is someone born from a relationship between a man and a woman. While what is meant by children or juveniles is someone who is still under a certain age and is not yet an adult and not yet married. The definition in question is the definition that is often used as a guideline in studying various issues regarding children.

3. Division of Assets Regarding Inheritance Rights of Adopted Children in Divorce Cases in Medan, North Sumatra

In family relationships, the status of a child is very important and its existence is expected for a married couple. Because it is considered as the successor to the lineage in the family so that happiness in the household is considered imperfect without a child. However, in some cases, many married couples are not blessed with children so that to have children, one way is to adopt a child or raise a child either from a family child or from someone else's child. The purpose of someone adopting a child, among others, is to continue this lineage, this is a motivation that can be justified, one way out as a positive and humane alternative to the instinct of the presence of a child in the arms of the family.¹⁶

The general definition of child adoption is the act of taking someone else's child based on the legal provisions in force in the society concerned.¹⁷

Law number 23 of 2002 concerning child protection defines adopted children by stating that adopted children are children whose rights are transferred from the legal guardian's family environment or other person responsible for the care, education and raising of the child into the living environment of the adoptive parents' family based on a court decision or ruling. The legal consequences of the adoption event concerning the status of the adopted child as the heir of the adoptive parents. This status is what often causes problems in the family. The problems that often arise in lawsuits are usually regarding the validity or otherwise of the adoption of the child and the position of the adopted child as the heir of the adoptive parents.¹⁸

Basically, inheritance is the process of transferring the inheritance of a deceased person to his heirs. Therefore, inheritance has several elements, namely:

1. Inheritance, is all the assets of a deceased person after deducting all his debts. If there is an element of inheritance or legacy, inheritance is still relevant. However, if there is no surviving family member, the inheritance of the deceased falls to the State.

¹⁴Philipus M. Hadjon, Op Cit, p. 30.

¹⁵Yeni Sabriani, "Legal Protection for Children in Divorce According to the Perspective of Islamic Family Law", (2023), 1972.

¹⁶Henry Alfia Oriza Zulaicha, Legal Review of the Inheritance Rights of Adopted Children Reviewed from Civil Law in Indonesia, (Semarang), 2024, page 2.

¹⁷Dhirjosisworo Soedjono, Introduction to legal science, (Jakarta: PT. Grafindo Persada), 2011.

¹⁸Kamil Ahmad, child protection and adoption law in Indonesia, (Jakarta: Raja Grafindo Persada), 2008, p. 53.

2. The heir or the person who leaves the inheritance is a family member who leaves the inheritance to the surviving family members. In this case, the important elements are the inheritance and the surviving family members.¹⁹

3. Heirs, are people who replace the testator in their position, either for all or part of the Civil Code does not distinguish between male and female children, between husband and wife. They have the right to inherit by receiving the same share. The share of male children is the same as the share of female children. The issue of inheritance of adopted children is not regulated in laws and regulations but is linked to the article above, with the existence of blood relations, parents have obligations to their children, and vice versa. This obligation cannot be transferred or eliminated, only the power of custody is transferred. So adopted children can inherit from their biological parents. In Law No. 54 of 2014 concerning child protection and Government Regulation No. 54 of 2007 concerning the implementation of adoption, it only regulates the status of the adopted child, not to the extent of regulating the distribution of inheritance for adopted children. After the existence of a Law that explicitly regulates the position or status of adopted children, it can be seen that there is no strong relationship between adopted children and adoptive parents so that both can inherit each other. According to Islamic law, adopted children cannot be used as targets for inheritance, because the main principle in inheritance is the relationship between blood/lineage/descent.²⁰

However, adopted children can obtain an inheritance by being given a will. The granting of a will as a fulfillment of the rights of adopted children to inheritance must be done fairly. The meaning of the word fair is that if the granting of the will has a value that is too large so that it reduces the rights of the heirs, the nominal value must be reduced according to the Civil Code. The limitation in this case is making a will, namely regarding the size of the inheritance that will be distributed to the heirs.²¹

E. CONCLUSION AND SUGGESTIONS

1. Conclusion

1. Fulfillment of children's rights after divorce in North Sumatra is less effective because it has not been implemented properly and the lack of responsibility by parents who are charged as they should be. In this case, parents still have obligations and responsibilities to fulfill children's rights.
2. The government has normatively made many efforts to protect children's rights legally, as can be seen from the large number of regulations that have been established regarding the protection of children's rights both before and after ratifying the Indonesian Convention on the Rights of the Child. However, until now, legal protection for children has not been implemented properly, as can be seen from the large number of children who are neglected after their parents separate, even though the child clearly has legal protection.
3. In terms of inheritance, the position of adopted children is different from biological children. This is because adopted children are not included in the group of heirs according to the law based on the provisions of Article 832 of the Civil Code, so that in order to become part of the heirs who must be appointed or designated as heirs with a will or testament, the distribution of inheritance rights of adopted children based on the parents' will has an uncertain share because it depends on the distribution of inheritance rights according to the will of the person making the will.

2. Suggestion

1. There needs to be clear and firm legal provisions and supervision of parents who neglect their responsibilities in fulfilling children's rights after divorce, so that the fulfillment of children's rights is effective. Parents are expected to have full awareness of their responsibilities as parents who can be said to be less than fulfilling children's rights after divorce.

¹⁹Abdulkadir Muhammad, Indonesian Civil Law, (Bandung: PT. Citra Aditya Bakti, 2010), page 201

²⁰Hilman Hadikusuma, Customary Inheritance Law, (Bandung: PT. Citra Aditya Bakti), 1990, page 35 Vol, 4 Number 2, December 2021

²¹Henry Alfia Oriza Zulaicha, Legal Review of the Inheritance Rights of Adopted Children Reviewed from Civil Law in Indonesia, (Semarang), 2024, page 64

2. Every child has the right to obtain legal protection, and also every child has the right to obtain justice in the eyes of the law, with the existence of Law No. 35 of 2014 concerning child protection, it should be able to guarantee every child's rights and can provide justice for children who are affected by problems related to the protection of their rights. It is hoped that the government or related institutions can see and review the implementation of legal protection regarding children's rights.
3. Compilation of Islamic law as positive law, should be able to provide the best solution to problems that exist in society, including regarding the position of substitute heirs regarding inheritance rights that are legally accountable.

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