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IDEAL REGULATIONS IN FULFILLING CHILDREN'S SUPPORT POST PARENTS' DIVORCE IN INDONESIA

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Abstract

Problems regarding the maintenance of children after the divorce of parents are always a problem, because many children's rights are neglected by parents, so they are not taken care of, especially matters relating to children's basic rights, namely the need for food, shelter, education and other facilities. other supporting facilities. Even though the two parents are no longer united in a marriage bond, the problem of fulfilling the maintenance of children is the responsibility of the parents and this should not be delegated to other people. After the divorce of the parents, therefore, it is necessary to discuss the importance of regulation in fulfilling the maintenance of children after the divorce of parents in Indonesia.

Keywords: *Regulations, Child Feed, Indonesia*

Abstrak

Permasalahan tentang nafkah terhadap anak setelah perceraian orang tua selalu menjadi masalah, karena banyak hak anak yang diabaikan oleh orang tua, sehingga tidak terurus, terutama adalah hal-hal yang berkaitan dengan hak dasar anak, yaitu Kebutuhan Pangan, tempat tinggal, pendidikan dan fasilitas-fasilitas penunjang lainnya. Walaupun Kedua orangtua tidak bersatu lagi dalam satu ikatan Perkawinan, namun Permasalahan pemenuhan nafkah terhadap anak merupakan tanggung jawab orangtua dan hal ini tidak boleh dilimpahkan kepada orang lain. Pasca perceraian orang tua, oleh Karena itu, maka perlu dibahas tentang pentingnya Regulasi dalam pemenuhan nafkah anak pasca perceraian orang tua di Indonesia.

Kata kunci: Regulasi, Nafkah Anak, Indonesia

INTRODUCTION

Humans are creatures that are perfect and have the highest degree compared to other creatures created by God, even so. Basically humans are creatures that cannot live individually, humans are creatures that live in a relationship with each other.¹ Thus it can be said that humans must make contact with other humans both physically and mentally. With this attachment, humans need a partner in their life and from these couples comes the name of marriage. The purpose and purpose of a marriage² is to be able to carry out a life, with association justified by the state and religion which is a noble way to manage a household with the hope of the birth of children with the hope and desire to strengthen brotherly and friendly relations among husband's and wife's relatives, this brotherly and friendly relationship is expected can and will become something that will lead to mutual assistance between one another, and the realization of a household will become the basis of a prosperous society. In the teachings of Islam, marriage is not merely a relationship or an ordinary civil contract, but has a value other than that, which is also a worship.³

In Article 41 of Law Number 1 of 1974 concerning Marriage, explains that if a divorce⁴ If this happens, the problem between the two

¹ Basically, humans are social beings, which in principle are creatures that cannot separate themselves from other human relationships. Humans as social beings, because basically humans have the urge to interact with other humans. The relationship between one human and another human is based on social needs (social need) to be able to live in groups with other humans. Human interaction with one another is always based on similarities.

² Marriage according to Law Number 1 of 1974 article 1, is a physical and spiritual bond between a man and a woman as a wife with the aim of forming a family (household) that is eternally happy based on the one and only God. See Law Number 1 of 1974 concerning Marriage. Marriage is something that leads to things related to a marriage bond or relationship. In principle, the term marriage has a broader meaning than the term marriage, marriage refers to a bond that is made or made by husband and wife to live and live together, then marriage is understood to refer to things that arise in the implementation of marriage, thus a marriage does not only cover the terms and pillars of marriage and how the marriage must be carried out, but also relates to issues of rights and obligations of husband and wife, maintenance, childcare, divorce, guardianship and so on. See Jamhari Makruf dan Saepudin Jahar, *Hukum keluarga, Pidana dan bisnis kajian perundang-undangan, Fikih dan Hukum Internasional*, (Jakarta; Kencana Prenadamedia Group, 2013), p. 24.

³ Ahmad Rofiq, *Hukum Islam di Indonesia*, (Jakarta: PT Raja Grafindo Persada, 1998), p. 69, see also Iman Jauhari, *Perlindungan Hukum Terhadap Anak Dalam Keluarga Poligami*, (Jakarta: Pustaka Bangsa, 2003), p.3, In the book it is stated that a marriage is a very important event in human life because with marriage, humans can build a household and can be fostered in accordance with religious norms and sharia. Besides being able to give rise to rights and obligations, marriage also creates legal relations between the two parties, both from the spouses themselves and from the families of both parties. A marriage is not only based on birth bonds or mental ties, but the accumulated manifestation of physical and spiritual bonds. The outer bond is reflected in the existence of the marriage contract, while the inner bond is a feeling of mutual love between the two parties.

⁴ A filing for a divorce case filed by a husband is called a divorce petition for talak, the husband as the applicant and the wife as the respondent. Whereas if the filing of a

parties, namely the husband and wife will not just be finished, there will be legal consequences that must be carried out by the divorced parties. Basically, of course, parental divorce is something that really shakes up a child's life and will have a bad impact on the child's development and growth, in this case, the child is the person who benefits most from the divorce of his parents. Because of this problem, it will be difficult for a child's growth to materialize because the child's needs, both spiritually and physically, cannot be fully met. After the parents divorce, the rights attached to the child cannot be properly guaranteed according to the needs and interests of the child.

In Article 47 of Law Number 1 of 1974 concerning Marriage, children who have not yet entered into marriage or children who have not reached the age of 18 (eighteen) years are basically still under supervision and still under the authority of their parents. The power of parents over children includes a legal action, both inside and outside the court. Furthermore, based on Article 50 paragraph (1) that "Children who have not reached the age of 18 (eighteen) years or have never been married, who are not under the authority of their parents, are under the authority of a guardian".⁵

The scholars have agreed that a man must bear the maintenance of his children. Because the 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. Therefore maintenance is an obligation, the obligation for maintenance is based on Q.S. Al-Baqarah verse 233 follows:⁶

﴿ وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بِوَالِدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدَيْهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴾

divorce case is filed by the wife it is called a divorce suit, the wife as the plaintiff and the husband as the defendant.

⁵ In the life order of society in Indonesia, between parents and children is clearly seen in the "alimentatieplicht" relationship which is a parent's obligation to a child to be able to provide a decent living until a child has the ability to live independently, the ability to earn their own living. , for example already working, sometimes even children are financed by their parents even though they are already married, for example to continue their education to a higher level. This depends on the condition of the parents of each child. On the other hand, sometimes a child has been burdened with the obligation to make a living since graduating from elementary school and even helping his parents to reduce the burden on their life.

⁶ Al-Qur'an Surah Al-Baqarah verse 233

233. Mothers should breastfeed their children for two full years, that is, for those who wish to complete breastfeeding. and the father's obligation to provide food and clothing to mothers in a ma'ruf way. Someone not burdened but according to ability levels. let not a mother suffer misery because of her child and a father because of his child, and the heir is also obliged to do so. if both want to wean (before two years) with the consent of both and deliberation, then there is no sin on both of them. and if you want your child to be nursed by someone else, then there is no sin on you if you pay according to what is due. fear Allah and know that Allah is Seeing of what you do.

The issue of post-divorce child support often becomes a problem because some children's rights are neglected and not taken seriously, especially those related to the basic rights of children, namely maintenance, education, housing and other supporting facilities. Even though the parents are no longer united in one family, the issue of providing for the child's maintenance remains the responsibility of the parents and this should not be transferred to other people. That based on the provisions of Article 41 of Law Number 1 of 1974 concerning Marriage, the consequences of breaking up a marriage due to divorce are:

- a. Both the mother and the father are still obliged to look after and educate their children, solely based on the interests of the child, if there is a dispute regarding the control of the children, the Court shall make a decision;
- b. The father is responsible for all the costs of raising and educating the child, if in reality the father is unable to fulfill this obligation, the court may determine that the mother must share the costs;

There are several scientific works that write about child support, one of which is in a dissertation written by Zakaria, stating that Indonesia's positive law, namely in Law number 1 of 1974 and the Compilation of Islamic law, does not strictly regulate the lowest amount of child support after each divorce. months and does not regulate strict sanctions against fathers (former husbands) who do not provide (neglect) the child's maintenance after the divorce decision.

Based on this, in addition to not strictly regulating the lowest amount of post-divorce children's income every month and not regulating strict sanctions against fathers (former husbands) who do not provide (neglect) the child's maintenance after the divorce decision, there are things that become material for the author's thoughts related with Ideal Regulations in Fulfilling Children's Livelihood After Parent's Divorce in Indonesia

METHOD

This study uses a qualitative research method with the type of library research (library research) with an empirical normative-juridical approach that examines the reciprocal relationship between law and social phenomena, namely law is not only studied in law books which state that law applies to the formation and realization of social order. by installing the concept law is a tool of social engineering, but also having to study law in action by being aware of the existence of social conditions in society and then looking for solutions to every problem.⁷

To find the ideal regulation in fulfilling children's subsistence after parents' divorce in Indonesia, this study uses a progressive legal theory approach. According to Satjipto Rahardjo, law is not something static, absolutely final, stagnant and unchanging, but can always change or flow, because law is in the process of becoming (law as a process, law in the making). This is quite interesting when at the level of common sense it is recognized that man-made laws can certainly change or be changed by themselves according to the needs or times. In the concept of Progressive Law, the changes referred to are perhaps dynamic changes. Does this change occur automatically or change itself (potentially) without the action (actus) changing as in the idea of Heraklitos, the Ancient Greek philosopher, namely that everything is never constant, but always changes by itself. Apparently, "becomes" or "flows" in Progressive law is attached to the act of changing. If change, "becomes" and flows" it is placed in a deconstructive postmodern context.

⁷ Burhan Ashshofa, *Metode Penelitian Hukum* (Jakarta; Rineka Cipta, 2013) p. 50., Sabian Ustman, *Dasar-dasar Sosiologi Hukum Makna Dialog antara Hukum & Masyarakat dilengkapi Proposal Penelitian Hukum* (Legal Research), (Yogyakarta; Pustaka Pelajar, 2009), p. 135-138

DISCUSSION

The ideal concept of regulation for decision-making by judges in fulfilling child support after parental divorce in Indonesia.

Due to the importance of Renewal of Regulations or the concept of Ideal Regulation for decision-making by judges in fulfilling a child's livelihood after parental divorce in Indonesia, namely:

1. Circular of the Supreme Court

In the event that there are no statutory regulations, then the *Rechtsverfijning* method can be used. Legal narrowing is used for a statutory regulation whose scope is too general and broad. In narrowing the law, exceptions or new deviations will be formed from general regulations applied to specific events or legal relations with explanations or constructions by giving characteristics, in this method the most important thing is the concept of Progressive law.⁸

In order to support the smooth implementation of general duties the Judicial power is an independent power to administer justice in order to uphold law and justice carried out by the Supreme Court and the Judiciary Bodies under it, so that they are more efficient, effective, transparent and accountable. The Supreme Court and the Judiciary Bodies under it are agencies that provide services both internally to the Supreme Court and Judicial Bodies under it as well as externally to the People Seeking Justice. In the context of the application of the Chamber System in the Supreme Court of the Republic of Indonesia, one of which is to maintain the unity of the application of law and the consistency of decisions, the Supreme Court can formulate a Supreme Court Circular, namely a decision regarding the child's support must be carried out and submitted by the father before the talaq pledge is pronounced in front of him. trial, namely until the child has completed the age of majority, provided that he still refers to the Supreme Court Circular Number 3 of 2015 concerning the Enforcement of the Formulation of the results of the 2015 Plenary Meeting of the Supreme Court Chamber of Commerce as a guideline for the Implementation of duties for the Court: Point c point 14 states that: "Amar regarding the burden of child maintenance, it should be followed by an addition of 10% to 20% per year of the specified amount, excluding education and health costs.

2. Adjusting to the method of Systematic Interpretation or Logical Interpretation. In this method, the interpretation of legislation by linking it with legal regulations or other laws or with the entire legal system. The procedures for interpreting this law may not deviate from or leave the

⁸ According to Satjipto Raharjo, the power of progressive law does not rule out or deny the presence of positive law in the field of law, but is always anxious to ask "what can I do with this law to give justice to the people". In short, it can be said that in the progressive legal paradigm, the law is not only a prisoner of the system and laws, but the justice and happiness of the people are above the law.

statutory system, while the rules that need to be adjusted are as follows:

- a. For State Civil Apparatuses, the determination of obligations by husbands to ex-wives and children is regulated in Article 8 PP No. 10 of 1983 jo. PP No. 45 of 1990, namely if a divorce occurs at the will of a male civil servant, then he is obliged to give up part of his salary for the livelihood of his ex-wife and children. Obligations determined by article 8 letter a Number 10 of 1983 jo. PP No. 45 of 1990 is a form of legal protection for the rights of ex-wives and children after a divorce which is desired by civil servants. Efforts that must be made by the wife if the husband is reluctant to pay/finance the maintenance of the child after the divorce is by bringing a copy of the Court's decision to the husband's place of work and giving it to the chairman or treasurer where the husband works, so that the husband's salary will be deducted according to the amount of income that is not paid after a court decision. In connection with the case of Civil Servants who do not fulfill their obligations after a divorce violates Article 7 paragraph (2) PP No. 53 of 2010, namely moderate disciplinary sanctions in the form of demotion but and the institution authorized to apply sanctions, namely the Regional Civil Service Agency.
- b. For TNI/Polri, BUMN employees or employees whose salaries are related to the State Budget, it is better to make special rules as stipulated in PP No. 10 of 1983 jo. PP No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants with Efforts that must be made by the wife if the husband is reluctant to pay/finance the maintenance of the child after the divorce is by bringing a copy of the Court's decision to where the husband works and giving it to the chairman or treasurer where the husband works , that way the husband's salary will later be deducted according to the amount of maintenance that is not paid.
- c. For workers who work for companies and the like that are related to the private sector, it is better to make special regulations or revisions to the Labor Law, namely Law Number 13 of 2003 concerning Manpower in conjunction with Law Number 11 of 2020 concerning Job Creation, adjusted according to the provisions that have been regulated in PP No. 10 of 1983 jo. PP No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants with Efforts that must be made by the wife if the husband is reluctant to pay/finance the maintenance of the child after the divorce is by bringing a copy of the Court's decision to where the husband works and giving it to the chairman or treasurer where the husband works , that way the husband's salary will later be deducted according to the amount of maintenance that is not paid.

3. Revised the Elucidation of Law Number 35 of 2014 concerning Child Protection.

In the event that the laws and regulations are unclear or incomplete, the method of Systematic Interpretation or Logical Interpretation may be used. In this method, the interpretation of laws and regulations is by linking them with legal regulations or other laws or with the entire legal system. The procedures for interpreting this law may not deviate from or leave the statutory system.

In Law Number 35 of 2014 concerning Child Protection, Article 76B states that Everyone is prohibited from placing, allowing, involving, ordering to involve Children in situations of abuse and neglect. In Article 77B Everyone who violates the provisions referred to in Article 76B, shall be punished with imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). That the denial of payment of a child's maintenance based on the decision of the religious court is part of neglect, because the decision made by the panel of judges is a decision that has been considered so that it is something that has already considered the harm and benefits, therefore, in the elucidation of law number 35 of 2014 concerning Child Protection, Article 76B, namely Self-explanatory, amended to: "Abandonment is meant, among other things, the Parent's (Father's) Denial of Payment of a Child's maintenance based on a Religious Court Decision that has permanent legal force.

CONCLUSION

The Ideal Regulation in Fulfilling Child Support After Parental Divorce in Indonesia, namely formulating a Supreme Court Circular, namely a decision regarding the child's *amar amar* must be carried out and submitted by the father before the *talaq* pledge is pronounced in front of the court, that is until the child completes the age of adulthood, with permanent provisions referring to the Supreme Court Circular Number 3 of 2015 concerning Enforcement of the Formulation of the results of the 2015 Supreme Court Chamber Plenary Meeting as a guideline for the implementation of tasks for the Court: Point c number 14 states that: "Amar regarding the burden of child maintenance should be followed by an addition of 10% to 20 % per year of the specified amount, excluding education and health costs. For Civil State Civil Apparatuses, TNI/Polri, BUMN employees or employees whose salaries are related to the State Budget refer to the provisions of PP No. 10 of 1983 jo. PP Number 45 of 1990, it is better to make special rules as stipulated in PP Number 10 of 1983 jo. PP No. 45 of 1990 concerning Marriage and Divorce Permits. For workers who work for companies and the like that are related to the private sector, it is better to make special regulations or revisions to the Labor

Law, namely Law Number 13 of 2003 concerning Manpower in conjunction with Law Number 11 of 2020 concerning Job Creation.

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