

# The Effect of Law Divorce for Parents' Responsibility to Children

Yusriana\* Sri Istiawati Deliani

University Of Amir Hamzah Medan, Jl. Willem Iskandar Psr. V Barat, Medan Estate 20221, Indonesia

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## Abstract

The divorce happens between a husband and a wife does not decrease the responsibility to responsible for the children's life. The goal of this research is to know how far the parents' responsibility to children after divorcing and finishing of parents' responsibility problems to the children after the divorce. This research used normative research method. The discussion explains that a divorce will not be a handicap for the couple who had divorced to fulfill the necessity of the children that must be filled. The parents are required to maintain, educate, and protect the children having in the marriage. The cost of children maintenance is borne by the father, the mother holds the under age children's custody. If the parents' responsibility to the children after the divorce becomes a problem it can be finished as a family. If it can not be thus it can be finished through the court.

**Keywords:** Parents' responsibility, Deforce, Parents and children.

## 1. Introduction

Marriage is the born inner bond between a man and a woman as a husband and wife in order to form happy and everlasting family based on belief in the one and only god (Harahap, 1975:11).

Marrying in Moslem is a veneration to Allah SWT, marriage law is "mubah"(possible) basically. Next, the law can be changed based on someone related, so, the law of marriage can be required (a must), sunnah (suggested goodness), "haram" (forbidden), "makruh" (hated) and "mubah" (may) (Basyir, 2007:14)

A marriage started with love both of husband and wife, will run well, everlasting, based on belief with the one and only God. The happiness and peace that's hoped in marriage sometimes short and not close the possibility of a divorce even they have been careful in choosing.

Divorce is a low treatment that's allowed by Moslem in urgent condition (Sabiq:9). The effect of the divorce will have impact to the law, one of is the parents keep having responsibility for the maintenance of the children in marriage time.

The child having by a couple must be taken care, built till they be mature/adult. It is arranged in Indonesia Law, beside that, in section 104 the first book about people chapter-V KUHP defined that a couple of man and woman fasten themselves in marriage cord, that's why both of them had been tied in both side engagement in saving their children.

Parents' responsibility in taking care their children is done since the child is in the womb. The responsibility covers the child's nursing since in the womb till they're born and be adult. Include the child in the womb, the status is same with the child that had been born if the necessity needed relate with the womb necessity, as said in section 2.

The child that is born in alive condition, having a right to alive, its explanation is in 28B subsection (2) The Basic Law Republic of Indonesia 1945 (UUDNRI 1945) explains that "every children are required to have a protection and having the same right to live and develop". The rule of the parents also as the responsibility holder to save all the right of the children so that they are not be the victims in individual or team, direct or indirect.

Essentially, children can not protect they themselves from the done that causes mentality, physically, social in any sides of their life. The children need to have protection do nthat they have no disadvantages, mantality, physically, ofr social. The children also have a right for the service to develop the ability and social life (Gultom, 2012:69). The children also have a right of protection of environment that can endanger or inhabit the growth reasonable (Wadong, 2000:18).

On the law number 1 Year 1974 about the marriage, state about the right and obligations between parents and children. Stating in UU No.1 year 1974 Section 45 subsection (1) namely: "both of parents are required to maintain and educate their children as good as possible".

Meanwhile in subsection 2 stated that: "Parents' obligation meant in section 1 is done until the child marries or can be independent. The obligation is done till the marriage between both of them is broken".

Based on the section means that eventhough both of the parents had diforced, but the obligation as the parents to give the right to the children is not broken/stop. The children must get their right as a child as the meaning of section 45 subsection 1 year 1974 about Marriage.

But, it's so ironic that much right of the children do not guarantee children's right that have left by their parents.

Next, section 105 subsection 1 Compilation of Islamic Law stated that the protection of 'mumayis' child or not 12 years old yet is the right of their mother. If it's proved that their mother has been out from Islam and hold

another religion so the right of the mother is lost.

For the parents that given the right to save their children they have saved them as a good as possible. This safe is not only livelihood as formal education and informal education.

Whoever that have children's protection, based on section 41 UU No 1 year 1974, the father keep having obligation to give protection cost until the children in 21 years old.

The maintenance of children (hadhanah) and the maintenance cost if this district Court for the problem thus the court has a right. Religion Court for the Moslem and District Court for others. For the Moslem Lohsemawe, so the problem that having right to handle this case Syar'iyah court has a right to handle this case that relates with hadhanah (children maintenance) and the cost if there is problem between them.

## 2. Material And Method

This research is held by analyzing the Decision of Syar'iah Court Lhoksmawe Number 0202//Pdt.G/2015/MS-LSM 7 September 2015. This case is given by the wife (given divorce) and the claim of the children's maintenance and the cost of maintenance to the husband and the wife as the plaintiff in this case sued the husband at the right of the maintenance and the cost of maintenance is given to the cost of the children is given to the husband. The judge granted the claim of the wife. That's why in this research the researcher take a formula of the problem:

- a. How is the parents' responsibility to the children after the divorce?
- b. How is the Justice's consideration in deciding the parents' responsibility to the children after the divorce.
- c. How is the effect of law for the parents that do not do the responsibility to the children after the divorce?

The goal of this research are:

- a. To know the responsibility of the parents to the children after the divorce.
- b. To know the justice's consideration in deciding about the parents' responsibility to the children after the divorce.
- c. To know the effect of law for the parents' that do not do the responsibility to the children after the divorce.

The kinds of this research is Normative Law (Fajar, 2009:153). Normative Law Research always takes an issue from the law as regulation system that is used to give "justification" prescriptive about a law event, so the normative law research makes norm law system as the centre of the study (Fajar, 2009:36). The result of normative law research so that will be better the value or the reasoning in the research, the researcher needs to use an approachment in any analysis (Fajar, 2009:184), namely Statute Approach and Conceptual approach.

## 3. Result and Discussion

### 3.1 Parents' responsibility to the children after the divorce.

Cause of marriage breakdown as described in Law Number 1 Year 1974 Section 38 jo Article 113 KHI is stated: Marriage may be terminated due to (a) death, (b) a divorce, and (c) on a court decision.

The breakup of marriage due to death, it is an omnipotent provision against man. If either party dies or dies either husband or wife, then there is a direct breaking of the marriage relationship.

The breakup of marriage due to divorce, according to the Act is known there are 2 (two) ways, namely:

1. Divorced divorce, and
2. Divorce.

Divorce is a divorce dropped by a husband, while divorce is a divorce lawsuit filed by his wife and his proxy to the court.

Section 37 point (1) has stipulated permanently that the divorce case acting and domiciled as the plaintiff is the wife, on the other hand the husband is placed as the defendant. Thus each has a certain path in the effort of divorce and wife through divorce attempts (Harahap, 1990: 252).

With the above provisions, has opened the possibility to each party (husband or wife) to divorce through the path and form of divorce, namely divorce and divorce divorce. The disclosure of the divorce of one of his purposes to avoid the arbitrariness of the husband from the domination of divorce rights and to neutralize the realization of harmony and harmony of the household and certainly not to open a wider path of divorce.

Divorce or divorce is the last alternative as an emergency exit, when household nahtera can no longer be maintained wholeness and continuity (Rafiq, 1995: 169).

Furthermore, in the positive law in Indonesia the reasons for the divorce can be seen in Article 19 of Government Regulation Number 9 Year 1975 jo Section 116 KHI mentioned that the reasons for the occurrence of divorce are:

- a. One party commits adultery or becomes a drunkard, compactor, gambler and so on that is difficult to cure.
- b. One party leaves the other for 2 (two) consecutive years without the permission of the other party and is without valid reasons or because of anything other than its ability.
- c. One party is sentenced to 5 (five) years imprisonment or a heavier sentence after marriage takes place.

- d. One party commits atrocities or severe persecution that endangers the other party.
- e. One party gets a disability or an illness with the consequence of not being able to fulfill the obligation as a spouse.
- f. Between husband and wife continuous disputes and quarrels and no hope of living in harmony again in the household.
- g. The husband violated attachment divorce.
- h. Religious transfers or apostates that cause disharmony in the household.

The legitimacy of a divorce so that the divorce has legal effect is a divorce is carried out in front of the court. Divorce conducted outside the courtroom is not recognized its validity.

As mentioned in the UUP of Section 39 paragraph (1) stated: "Divorce is only done in front of the court of competent court after the trial court is trying and unsuccessful to reconcile the two parties".

In the case of divorce in the sharia law lhoksemawe with registration number 0202 / Pdt.G / 2015 / MS-NGO is a divorce accounted by the wife in the background of the ongoing dispute and there is no hope of living in harmony again in the household. And there is also violence in the staircase done by the husband to the wife.

In the event of a divorce will have legal consequences for the child, wife and property acquired during the marriage as described in Section 41, 37 of Law Number 1 Year 1974.

In this case the discussion is the result of divorce against the child regarding the responsibility of parents to children after the divorce.

Form of the parents' responsibility to the children will not stop cause of the devorce. The parents still have an obligation to do the responsibility as paying the cost of life and give the best place to live and give a leaving so throw the children can develope and grow as it seems.

If the ex-husband is not able for the children's cost, it might be children's life cost division with ex-wife. For cost division that's done by both of parents involve all children's necessity, so all the childre's right can be guaranteed well and the children have a right to live, grow, develop, addapt well based on the human dignity. Next, to certain education cost for the children , it's better to decide it together. Eventhough it refers to the country law or religion, the cost is one of father's responsibility.

As good parents, eventhough there is a devorce in a household, parents can make a deal to be able to watch over and maintanance the children that's done by ex-husband and ex-wife. If one of the of the parents does not hold the right of children custody when the age of the children is still under age, it's better to spend the time to meet and care them. The parent who hold the children custody, it might not be probid them to meet other parent who doesn't have custody. As good parents, don't show the odd in front of the children. Because it can disturb the phycology of the children. The finishing is used to make the children getting their own rightfrom the parents and can growth well. Besides that, the welfare of the children can be real even if there is a devorce.

As it arranged in Section 41 subsection 1 Statute Number 1 year 1974. The effect of broken marriage because of devorce is: father or mother keep having an obligation to maintin and educate the children, only based on the children's importance if there is an odd about the cusdity, the court gives the dicision. If there is a devorce, things can be done by the parents keep maintaining and educate the children just for the children's necessity till the children can be independent as defined in section 45 subsection (2) the statute number 1 year 1974.

And than the discussion about the parents' responsibility after the divorce also said on section 149 D Law Islamic Compilation tell that: " if a marriage is break because of divorce, thus the ex-husband is required to give "hadhanah" cost for the child who is not up to 21". The meaning of "hadhanah"based on section 1 g Islamic Law Compilation is: "the maintanance of the children, namely to save, maintain, and educate till the child is independent".

Section 1 paragraph 1 of Law Number 23 Year 2002 reads: The child is a person aged 18 (eighteen) years including a child who is still in the womb. The provisions of this article are the same as those contained in law No. 1 of 1974, the difference being that in this article does not pertain to the marriage of the child. Article 1 paragraph 1 of Law Number 23 Year 2002 reads: The child is a person aged 18 (eighteen) years including a child who is still in the womb. The provisions of this article are the same as those contained in law No. 1 of 1974, the difference being that in this article does not pertain to the marriage of the child.

According to law number 1 of 1974 a man who reaches 18 years old but has married or never married is no longer categorized as children.

Another right that's on the children, include the parents' ability to the children is arrange in Statute Number 23 year 2002 bout children protection. Section 4 stated that: " every child has right to be alive, grow, develope and participate reasonable based on the prestige, dignity, and humanity, and having protection from the crime and discrimination".

Section 2 law number 4 of 1979 on child welfare formulates the rights of children as follows:

1. The child shall be entitled to the welfare, care, upbringing and guidance based on his or her love both in the family and in the special care to grow and develop properly.
2. The child has the right to service to develop his or her social abilities and abilities, in accordance with the

personality of the nation to become a good citizen.

3. The child is entitled to maintenance and protection both during and after birth.
4. The child shall be entitled to protection of the environment which may endanger or impede normal growth and development.

About the parents' responsibility also stated in section 9 statute number 4 year 1979 that stated that "parents are the first time to responsible for the children's welfare as religion, physic, and social".

Likewise listed in the provisions of law 39 of 1999 on human rights Section 51 paragraph 2 which is usually called the human rights law where after the breakup of a woman's marriage also participate in the same rights and responsibilities to the former husband ie all things related to the interests of his children.

In divorce decision in Syar'iah court Lhoksemawe 0202 /Pdt.G/2015/MS-LSM decided that the cost that is given to the father Rp 1.200.000 every night to the child. Based on section 105 c Islamic Law Compilation that stated that: "in divorce the cost of maintenance is bear by the father".

Based on that case the father is require to give the life cost to the children every month, and for the importance of the children, both of parents are required to give the teaching as good as possible. The custody is given to the mother cause of the child is under of 3 years old.

### **3.2 Judge's consideration in disconnecting the decision about the Parents Responsibility to the Children after the Divorce.**

Based on the divorce decision number 0202/Pdt.G/2015/MS.LSM the side is legitimate to divorce, that the judge's consideration to grant the divorce because both of side have the odd and always fight, and no hope to come back. The reason of the odd is started with the husband's affair with the senior and he often make a violence in the household to the wife by hitting, slapping, gripping mouth and cheek til it's bleeding.

The treatment of the husband is a prohibited treatment in Islam as nation or religion, that a police as a servant of the citizen that service every demand know that "every people is forbid to make a violence in household to the person in household environment". Physical environment is a done that cause an illness, hurted or injured.

In this case the defendant had done the criminal act to the plaintiff that had done the forbidden violation statute number 23 year 2004 about "the violence in household to the plaintiff and the children".

The judge of Syar'iyah Lhoksemawe breaks the issue without the appearance of the husband by granting the lawsuit of the wife as the plaintiff. From the decision also decide that the cost for the 3 years old child who lives with her mom as defined in section 105 subsection (a) Islamic Law Compilation sounds: in the divorce, the children maintenance who is not 12 years old yet is the right of her mother. Next, the cost that must be bear by the father is RP. 1.200.000 every month till the child on 21 years old that is given to the wife as the plaintiff. The judge decide the amount by considering the age is still young, even if like that til the nominal can be changed based on the child's development that's getting bigger and it's getting much. The mother also can ask the cost for education and health out of the cost that has been fined.

Based on the section number 66 subsection (5) statute number 7 year 1989 about the Religion Court also stated that "the begging about the child safe, children's cost, wife's cost, and the wealth can be given together with the begging of divorce or after the promise has been spoken. In the decision that has observed by the researcher that the demands of child's cost is made in the lawsuit of the divorce that's done by the wife that claim so that the husband gives the cost and give the custody to the mother.

To define about the cost loading namely cost of the children that is bear by the husband thus the judge uses the consideration that defendant's job is police that has firm salary, for fulfilling the responsibility as a father to the child so the judge fair thought according to the defendant law is given to pay the cost of the child in the maintenance of the plaintiff based on the plaintiff's demands namely RP. 1.200.000 every month.

### **3.3 The Effect Of Law For The Parents Who Doesn't Do The Responsibility To The Children After The Divorce.**

In decision data that discuss by the researcher namely the decision number 0202/Pdt/2015/MS.LSM, where in the decision of divorce that's filed by wife, decided by father, and upbringing to give the cost to a child in the safe of the mother because under of age.

Next, the effect of law for the parents that do not do the responsibility to the children after the divorce. The thing that have to maintain after the divorce is the realization to keep saving and do not decrease the right that must be given to the children. Directly impact for the children as the victim of the divorce is they do not live with both of their parents, where, automatically they will live with one of their parent. As the impact, there will be less-watching over of the responsibility that must be given, for supporting the children's growth.

The impact of undelivery responsibility of the parents to the children after divorce, or the lax of the parents in filling the necessity the right gotten by the children after divorce can be done the submission to the court. About the problem of parents' obligation to the children is the case of civil law, if no report, no follow-up.

Someone who has civil law case, can beg to the court in that place in the environment. To know the case of parents' responsibility to the children, based on the law that wants by the begger to finish that case. If the begger is a moslem, most of them use Islamic Law Compilation and the Marriage Statute to finish the problem, so the begger can use the finishing with Religion Court (Stahl, 2004:19). If the begger want to use KUHP-civil, so the begger can use the finishing with the District Court. After the trial and the decision comes from the judge, the pleated side can give the pleas to the applicant. The pleated can give pleas execution.

Remembering that the decision of the court has a fixed and binding strength, the decision also has executorial strength. Namely the strength where the court decision can be asked the pleas to execute with the tool of country if: a) the part ought to do the obligation, do not do it voluntarily with the decision of the court, (b) or deliberately neglect to not do the decision. Thus, can be asked the pleas to execute the decision forced namely the pleated give the execution pleas to the related court (Stahl, 2004:19).

Next, the chairman of the court will publish the firm of the plaintiff, filled the order to the bailiffs so that the applicant appear in the aanmaning. The chairman of the court will deliver the warning so that in 8 days after the warning, the peated warning execution do the decision. If in 8 days after the warning, the applicant raports that the pleated does not do the execution yet, the chairman of the court publish the execution order. After given the execution, so that tyhere is no mis-doing as the custody of children, then next the taken of custody is done. Based on section 49 sub-section (1) Marriage Statute that said:

“one of or both of the parents can be revokes the power of a child /children or more for particular time in vertical line and the siblings that has been adult and authorized official with the court decision in the things that: a) he really ignore the obligation to the children; b) he behaves very bad”.

If the parents' power is revoked, the parents still have an obligation in doing the maintainance to the children, based on the section number 49 subsection (2) Marriage Statute that defines that parents have been free from their power to the biological children but not from the obligation to maintain their biological children.

The explanation is the effort for the parents who do not do the responsibility to the children. Different with the parents who are not clever or not able to fill the necessity of the children. About the term of power liberation of parents do not find in the marriage statute. The parents' libertion of power is arranged explicitly in KUHP-civil, as defined in section 39 KUHP-civil. Marriage Statute only arrange about the revoked of parents' power.

#### 4. Conclusion

1. Divorce will not loose or abort parents' obligation to the children, the obligation is still same. The children must have the right as the children, the right to get the maintainance well, getting guidance and love from the parents, getting the education, clothing, food, and another rights that support the growth of the children well and reasonable.
2. The thing becomes judge's consideration in deciding the divorce division in Syar'iyah court Lhoksemawe the decision number: 0202/Pdt/2015/M.LSM considers the law and the basic problem. be in household cause the divorce happens because of the odd and continue to the violence, it can be happened because the husband affair with the boss/senior. The husband is required to give the cost to the 3 years old daughter Rp. 1.200.000 every month. In this case the child is still under of 12 years old so the mother's right to maintain based on the law.
3. The effect for the parents that do not do the obligation to the children, thus can be strived 2 things. First, to the part that's burdened the cost, if they do not do the obligation, they will be execution. Second, to the custody holder if do not do the obligation thus it can be asked the pleas of custody revoked. But the revoked does not cause the obligation as the parents to the children be lost.

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