



Legal Analisis Of Judge Consideration In Settlement Of Divorce Decision Case (Study Of Baubau Pa Decision Number 0298/Pdt/2019/Pa.Bb)

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ABSTRACT

This study aims to determine: to know and examine how judges consider in the settlement of divorce cases. The research method used in Ziniz's research is Empirical Normative Law research. Legal research is a research method that seeks to find the law in the law that is actually or should be, examines how the law works in society, then uses research methods, the quality of the method. The collection of data and information was carried out at the Bau-Bau Religious Court. The second stage used in this research consists of: Primary, secondary and tesier legal instruments. Depending on the nature of the research and the research material, all available information will be carefully analyzed, with the help of which the collected data are sorted according to their categories and explained in the search for answers to research questions. By using the reduction method, conclusions are drawn from the prepared data and research results. The judge's consideration in deciding the decision on parental responsibility is very appropriate by considering the income of the parents based on the evidence brought before the trial.

Keywords: Parents, judge's consideration, PA Baubau

1. Introduction

Divorce is a very frightening event for every family (Husband, Wife, and Children). The causes of divorce can vary, including failure to communicate causing quarrels, infidelity, domestic violence, economic problems, early marriage, cultural changes, and so on. After the divorce there are adjustments that must be made by both parties (ex-husband and ex-wife) to their new life. Especially financial problems, let alone their marriage, a child was born.

If in the family the father and mother are good, harmonious and loving, the child will get positive elements from his personality and if the parents are religious and obedient in carrying out religion in everyday life. then the child will get a religious experience that becomes an element in his personality. The noble purpose of a marriage is to improve oneself and piety to Allah SWT. Marriage means we are able to control lust rather than wrong steps. And every intercourse between husband and wife to avoid disobedience is a reward from Allah SWT. And verily the order is a noble and blessed bond.

Children are an issue that has always been a concern of various elements of society. What is his position and rights in the family and how should he be treated by his parents, even in the life of society and the state through his policies in caring for children, biological fathers are obliged to provide maintenance for their biological children and a child right after birth has the right to receive maintenance from his father, both in the form of clothing, shelter, and other needs even though the child's parents' marriage has broken up. suffering from the divorce of his parents (Effendi, 2014).

The foundation of the father's obligation to provide for the child apart from the kinship relationship is also due to the condition of the child who is not yet independent and is in need of spending, his life depends on having a party responsible for guaranteeing his living. The people closest to the child are the father and mother, if the

mother is responsible for caring for the child at home, the father is responsible for providing for his child (Syaifullah, 1999). The father is only obliged to provide for his biological child as long as his biological child is in need of a living, he is not obliged to provide for his child who has assets to finance his own life. On the other hand, offspring should do good and serve their parents sincerely. Parents are the cause of his birth in the world.

Article 9 of Law No. 4 of 1979 concerning Child Welfare (UU Kesejahteraan Anak, 1979), states that parents are the first to be responsible for the realization of children's welfare both physically, physically and socially. The responsibility of parents for children contains the obligation to care for and educate children in such a way, so that children can grow and develop into healthy, intelligent people, pious to God Almighty, devoted to both parents, virtuous and willing, and capable of Continuing the ideals of the nation based on Pancasila (M. . Harahap, 2012). The joint obligation between husband and wife in building and establishing a household will fade if the household that is being built experiences shocks and even worse if when the household disbands, this matter has previously existed and is regulated in the Marriage Law.

Child rearing also implies a parental responsibility to supervise, provide proper service and meet the needs of the child's life from his parents, the obligation to take care of the child is permanent until the child is able to stand on his own (Raharjo, 2000). In several laws and regulations, we can see several things that regulate the obligations of parents towards children, including: 1) parents' obligations to children after divorce according to the Marriage Law Number 1 of 1974 (UU Perkawinan, 2019). Legally, obligations between husband and wife will arise if the marriage has been carried out or carried out, in other words, the obligations of a wife or husband will not exist if a men and women have not yet married. 2) Equal obligations and rights between husband and wife when accompanied by the same obligations, namely the obligation to foster and uphold the household which is expected to become the basis for building a household which is expected to become the basis for building a household.

In Article 45 of Law Number 1 of 1974 it is stated as follows:

1. Both parents are obliged to care for and educate their children as well as possible.
2. The obligations of the parents referred to in paragraph (1) of this article apply until the children marry or are independent, which obligations continue even if the marriage between the two is broken.

Furthermore, in Article 47 of Law Number 1 of 1974 it is stated as follows:

- a. Children who have not reached the age of 18 or have never been married are under the authority of their parents as long as they are not deprived of their authority.
- b. The parents represent the child regarding legal actions inside and outside the court.

From several explanations of Law No. 1 of 1974, it can be concluded that the Marriage Law regulates the obligations of parents towards their children even if the household has broken up due to divorce. The obligations of the parents include: a. Parents are obliged to care for and educate their children as well as possible. b. Parents represent children regarding legal actions inside and outside the court.

As stated in article 41 of the Marriage Law, it is explained that the father is responsible for all the costs of caring for and educating the child, this obligation continues to apply even if the parental authority is revoked. Parents' obligations to children after divorce according to the Compilation of Islamic Law (KHI). In view of Islamic teachings towards children, children are placed in a noble position. Children get a special position and place in the Nash Al-Qur'an and Al-Hadith, therefore in the view of Islam the child must be treated humanely, given education, teaching, skills, skills and akhlakul karimah so that the child can later be responsible in socialize themselves to meet the needs of life in the future (Prodjodikoro, 1989).

In the Compilation of Islamic Law (KHI) which contains material laws regarding marriage, inheritance and also endowments which are systematically formulated in concrete Islamic law in Indonesia, because several things are reviewed regarding the provisions in the KHI which regulate the obligations of parents towards children.

Article 77 KHI states:

- a. Husband and wife bear a noble obligation to uphold a family that is sakinah, mawadah, warahmah which is the basis of the social structure. The husband and wife must love each other, respect, be loyal and provide physical and spiritual assistance to one another.
- b. Husband and wife bear the obligation to care for and care for their children, both regarding their physical, spiritual and intellectual growth and religious education.

- c. Husband and wife must maintain their honor. d. If the husband and wife neglect their respective obligations, they can file a lawsuit in court.

Regarding the obligations of parents after the breakup of marriage. KHI in its articles uses the term Child Care contained in chapter XVI Articles 98 to 106, but explicitly the articles that regulate the obligation to care for children in the event of a divorce are only found in Article 105 and Article 106. Article 98 KHI emphasizes:

- a. The age limit for a child who is able to stand alone or as an adult is 21 years old, as long as the child is not physically or mentally disabled or has never been married.
- b. Parents represent the child regarding all legal actions inside and outside the Court.
- c. The Religious Courts can appoint one of the closest relatives who is able to fulfill this obligation if both parents are unable.

While Article 105 KHI in the event of a divorce, states:

- a. The maintenance of children who are not yet mumayyiz or who are not yet 12 years old is the right of the mother.
- b. The maintenance of mumayyiz children is left up to the child to choose, among other things, his father or mother as the holder of his maintenance rights.
- c. Maintenance costs borne by his father. In this case, whoever the child follows the father as the ex-husband is still obliged to provide a living for the child for living expenses and education until the child is an adult or the child is married.

Regarding assets owned by children, parents are obliged to care for and develop these assets, this is regulated in article 106 KHI which states:

- a. Parents are obliged to care for and develop the assets of their children who are immature or are still under control and are not allowed to transfer or pawn it except for a very urgent need if the interests and welfare of the child require it or something that cannot be avoided anymore.
- b. Parents are responsible for losses incurred due to errors or negligence of the obligations in paragraph (1).

The Children who are not yet mumayyiz are still cared for by their mothers while financing articles contained in the KHI regarding hadanah emphasize that material and non-material parenting obligations to children cannot be separated from one another, moreover the KHI divides tasks that must be carried out by parents even though they are separated remains the responsibility and obligation of their fathers.

KHI also stipulates that a child who is not yet mumayyiz or not yet 12 years old is the right of the mother to look after him, whereas if the child is already mumayyiz he can choose between his father or mother to act as caretaker. As an example of a case that occurred at the BauBau Religious Court, the Petitioner was a husband who filed for divorce against his wife, with Case Number: 0298/Pdt.G/2019/PA.Bb. that on November 21 2015, there was a marriage between the Petitioner and the Respondent at the Office of Religious Affairs in Betoambari District, Bau-Bau Regency, Southeast Sulawesi Province with a quote from Marriage Certificate No.144/KUA.24.6.2/PW.01/07/2009. November 21 2015. From this marriage, a child who is 3 years old has been blessed and this child is now under the care of the Respondent.

The reason for filing the lawsuit was that the households of the Petitioner and the Respondent were originally running in harmony and well as befits a husband and wife but since June 2016, the households of the Petitioner and the Respondent have started to be disharmonious because at that time the Respondent asked for permission to return to his parents' house, but at that time the Petitioner suggested to the Respondent to get permission from the Petitioner's parents first, but the Respondent refused, in the end the Petitioner and the Respondent argued continuously. Whereas in August 2016, the Petitioner and the Respondent were again in disagreement and quarreled because at that time the Petitioner invited the Respondent to live independently, in this case living in a rented house but the Respondent refused and chose to still want to live with the Respondent's parents and finally the Petitioner and the Respondent argued again mouth. Whereas in the above incident the Respondent left his residence together with residing at the Respondent's parents' house in the Lipu sub-district, Betoambari District, Bau-Bau City, Southeast Sulawesi Province. Meanwhile, the Petitioner still lives at the home of the Petitioner's parents in the Waborobo sub-district, Betoambari District, Bau-Bau City, Southeast Sulawesi Province, which has been running for approximately 2 years and 8 months. Whereas during the argument between the Petitioner and the Respondent, the Petitioner and the Respondent had been advised by the

Respondent's family but to no avail. Whereas the explanation above shows that the household condition of the Petitioner and the Respondent has truly broken apart and is difficult to repair. On the appointed day of the hearing, the Petitioner and the Respondent attended the trial, then the Respondent filed a Reconvension Lawsuit, so his party was called the Counterclaim Plaintiff, filed a Lawsuit against the Convention Petitioner hereinafter referred to as the Reconvension Defendant or her husband emphatically stated that he refused or did not accept all of the Plaintiff's reasons. except for what he expressly or tacitly admits to the legal correctness of the Respondent's answer. Whereas the problem above is not true, it is true that the Petitioner never invited the Respondent to live independently in a rented house, the Petitioner only invited to live at the home of the Petitioner's parents where the house had been inherited to the Petitioner where there were still many of the Petitioner's relatives living.

Based on the background description above, this is the basis for the author to conduct research with the title "Legal Analysis of Judge Considerations in Settlement of Divorce Divorce Decision Cases (Study of PA BauBau Decision Number 0298/pdt/2019/PA.Bb)"

2. Method Research

The type of research that is used in this research is normative legal research and is analyzed qualitatively by studying and combining materials from books and laws and regulations. The collection of data and information was carried out at the Bau-Bau Religious Court. The second stage used in this study consists of: Primary, secondary and tertiary legal instruments. Depending on the nature of research and research materials, all available information will be carefully analyzed, with the help of which the collected data is sorted by category and explained in the search for answers to research questions. By using the reduction method, conclusions are drawn from the prepared data and research results (Marwan & Jimmy, 2009).

3. Results and Discussion

3.1. Result

a. Considerations of Judges in Deciding Divorce Decisions

Regarding Decision Number 0298/Pdt.G/2019 Bb Both parties have been officially declared divorced, in the consideration of the judge to grant the divorce, namely because since June 2016 the two parties have often argued (argued) because the Respondent at that time asked for permission to went home to the parents of the respondent, but at that time the applicant suggested to the respondent to get permission from the parents of the applicant but the respondent refused. was rented, but the Respondent refused and chose to still want to live with the Respondent's parents. In the end, the Petitioner and the Respondent often argued continuously. During the time that the Petitioner and the Respondent often argued (fighting) they had been advised by the Respondent's family but to no avail. The above description gives us an idea of how difficult it is to maintain a household that is no longer harmonious.

From the divorce decision it was also decided on the living expenses of the child who lives with his mother as the custody holder where the minor child is still in the care of his mother named Amirudin. Costs to be borne by the child's father from a court decision of 250,000 (two hundred and fifty thousand rupiah) per October 2019 until the child is 21 years old and married. The judge determines the nominal based on the decision and ability of the child's father. In accordance with Article 66 paragraph (5) of Law Number 7 of 1989 concerning the Religious Courts (A. M. Harahap, 2020)it also states that: "Application for child control, child maintenance, wife maintenance and husband and wife joint assets can be submitted together with a divorce application for talak or after a pledge divorce is said."

In the decision, the authors carefully stated that the claim for a living for the child was contained in a counterclaim or counterclaim made by the wife who demanded that the husband provide maintenance costs for his child. The judge in determining his decision was also based on witness statements, namely witnesses from the applicant for the convention or in this case the father who explained that the child's father worked as an Honorary at the Central Buton Agricultural Service and had income or income.

b. Legal Basis for Consideration of Judges in Settlement of Divorce Decisions.

Based on the results of the discussion, it can be concluded that according to the divorce decision data, the authors found that the judge's consideration in deciding the nominal amount or amount was based on: First,

the propriety and ability of the child's father. Based on article 156 letter f of the Compilation of Islamic Law which states that: "The court can also see the father's ability to determine the amount of money for the maintenance and education of children who do not follow him." This means that the judge's consideration in deciding the amount of the nominal rupiah figure as a burden that must be carried by the father to provide a living for his child is based on the decency and ability of the father. Second, the evidence before the trial.

c. Judge's Butki Tool in Settlement of Divorce Decisions.

According to the provisions of Article 164 HIR/Article 284 RBg there are five types of evidence, namely:

- 1) Written evidence or letters or deeds in civil procedural law are the main cause Civil procedural law emphasizes formal proof.
- 2) Witness evidence is a person who gives information/witness before the court about what they know, see, hear or experience themselves, which with that testimony will make a case clear. Witnesses presented before the judge aim to corroborate the events postulated before the trial. The number of witnesses presented can be at least two adults and legally capable, the testimony of one witness before the trial cannot be trusted as long as it is not supported by other evidence, in accordance with the provisions of Article 1905 of the Civil Code which states "the statement of a witness alone without other means of proof, in the court cannot be trusted. The quality of witness testimony must be carefully considered. The quality referred to relates to how the witness knows about events, the origin of his knowledge, the source of his testimony must be clear and correct so that his statement can be accepted by the judge to determine an incident. Witness statements are not justified in originating from their allegations or thoughts or opinions, in accordance with the provisions of Article 1907 of the Civil Code .
- 3) Prejudice, evidence that is recognized in law is "suspect" which in Article 1915 of the Civil Code is given the meaning that presumption is a conclusion by law or by a judge drawn from an event that is publicly known to an event that is not publicly known. There are two presumptions, namely the presumption that is based on the law and the presumption that is not based on the law. In various literatures, the provisions of the article above are interpreted to mean that there are two types of presumption, namely statutory presumption and judge presumption. The judge's presumption is the conclusion drawn by the judge from an event that is publicly known to an event that is not publicly known, such as the facts revealed at the trial which is used as the basis for the judge to draw up legal considerations in his decision, from that fact the judge will lay down the law and make a decision. Meanwhile, the presumption of the law has been referred to in Article 1916 of the Civil Code which explains that the presumption of the law is a presumption based on a special provision for the law, connected with certain actions or certain events.
- 4) Confession is a unilateral statement from one of the parties in a case, in which he acknowledges what was said by the opposing party. Some of the confessions were made before a judge and some were not before a judge or outside the courtroom. Confession before a judge in a trial has perfect evidentiary power, either expressed alone or through a proxy. This is as stated in the provisions of Article 1925 of the Civil Code which states "Confession given before a judge is perfect evidence against the person who gave it, either alone or through someone who is specifically authorized for that purpose.
- 5) An oath as a means of evidence is a statement or statement that is strengthened in the name of God with the aim that the person who swears in giving that statement or statement, fears God's wrath if he lies, and fears God's wrath or punishment is considered as a motivating force for those who vowed to tell the truth.

Regarding this matter, the burden of subsistence imposed by the court on one of the parents, in this case the father of the child, is by assessing through the evidence that occurred during the trial process, the evidence is in the form of an acknowledgment (Triwulan Tutik, 2008).

According to Idris Haseng, the way to solve the problem of parents who do not carry out their obligations to their children after a divorce is that what both parents have to maintain is the awareness to maintain and not reduce in the slightest the rights that should be given to children. The direct consequence for children who are victims of divorce is that they no longer live with their parents, where the child will automatically live with one of the child's parents. As a result, it is very prone to neglect of the obligations that must be carried out by parents towards children to provide what should be given, in order to support the child's normal growth and development.

In the decision data that the author gets, namely decision No. 0298 / Pdt.G / 2019 / PA Bb where in the divorce decision accompanied by the decision on the burden of maintenance, the father of the child who is burdened with financing to provide a living for his child who lives or is under the care of his mother. According to Drs. Idris Haseng, There will be three discussions regarding problem solving if parents do not carry out their obligations to children after a divorce, namely:

1. The father of the child does not carry out his obligations.
2. The mother of the child also does not carry out her obligations as the holder of child custody or who lives with her child.
3. By way of forgiveness.

As a result of negligence by parents in carrying out their obligations as parents towards children after a divorce, according to Idris Haseng, the following things can be pursued:

First, the Execution Application. Given that the court's decision has binding force, the court's decision also has executorial power, namely the power with which the court's decision can be requested to execute by means of the State if the party has been declared by the court to fulfill an obligation that must be carried out and if the party who is supposed to carry out If this obligation is not carried out voluntarily in accordance with a court decision or intentionally neglects not to carry out a decision, a request can be requested to execute the decision by force, namely by the applicant submitting an application for execution to the relevant Religious Court. Furthermore, the Head of the Religious Court will issue a stipulation of *aanmaning*, which contains an order to the bailiff to summon the respondent for execution to attend the *aanmaning* trial, during the session the Chairperson of the Religious Court will issue a warning so that within eight (8) days after the warning the respondent for execution carries out the decision, if within eight (8) days after the warning, the execution applicant reports that the execution respondent has not carried out the contents of the decision, the Head of the Religious Court will issue an execution order against the ex-husband's assets to be given the cost of supporting the child

Second, revocation of custody. Based on Article 49 paragraph (1) of Number 1 of 1974 in conjunction with 16 of 2019 Concerning marriage that:

"One or both parents can have their power over one or more children revoked for a certain time at the request of the other parents, the child's family in a straight line and adult siblings or an authorized official with a court decision in matters: He was very neglectful of his duties towards his children. He behaved very badly.

However, if the parents' power is revoked, they are still obliged to carry out the maintenance of their children, this is in accordance with Article 49 paragraph (2) of Law Number 1 of 1974 in conjunction with 16 of 2019 concerning Marriage which states: "Even though parents are revoked authority, they are still obliged to provide maintenance to the child.

Third, by way of forgiveness. These parties executed it in a family way, in which the method was carried out based on a cultural and cultural approach to solving the case, so that the parties did not report it again to the relevant court.

From the results of the interviews the researcher obtained with the parents that the responsibilities of parents towards children are as follows:

1. Maintain and raise it. This responsibility is a natural urge to carry out, because children need to eat, drink and care, so that they can live sustainably. This responsibility still has to be held by the parents. As according to article 1 letter g KHI is: Child rearing, namely the activities of caring for, nurturing and educating children until they are adults or able to stand on their own.
2. Educate him with various knowledge and skills that are useful for his life, so that when he grows up, he is able to stand alone and help others. Likewise with this responsibility, parents must not cover their children by forbidding them to get to know the development of science in today's digital era. Even though knowing its development can hone the development of thinking and creativity. That way, parents are still responsible for educating their children according to various knowledge and skills in today's digital era, but they also have to pay attention and filter which ones are needed for the child's development.

As regulated in article 26 of Law No. 35 of 2014 concerning Child Protection (UU Perlindungan Anak, 2014) which states that:

1. Parents are obligated and responsible for: nurturing, educating and protecting children, growing children according to their abilities, talents and interests, and preventing marriage at an early age.
2. In the event that parents are not present, or their whereabouts are unknown or due to some reason, they cannot carry out their obligations and responsibilities, then the obligations and responsibilities as referred to in paragraph (1) can be transferred to the family, which is carried out in accordance with the provisions of the law. applicable law.
3. Making children happy for the afterlife by giving them religious education in accordance with Allah's provisions as the ultimate goal of Muslim life. Awareness of the responsibility of educating and nurturing children on an ongoing basis needs to be developed for every parent, they also need to be provided with modern educational theories in accordance with the times. This responsibility is the most important aspect in educating children in the digital era, that children are allowed to follow current developments in science and technology, but parents are obliged to provide religious education in accordance with religious provisions. What is the meaning of being great and qualified in various technological sciences when religious knowledge is simply forgotten. As stipulated in Law Number 23 of 2002 Jo 35 of 2014 Concerning Child Protection article 4 states that: "Every child has the right to be able to live, grow, develop and participate fairly in accordance with human dignity and rights and to receive protection from violence and discrimination".

Paying attention to and overseeing the assets given to children. This responsibility requires parents to always keep an eye on the things that their children want to buy, because not all the children's wants are their needs. In addition, parents are also responsible for the assets given to children. In accordance with Article 66 paragraph (5) of Law Number 7 of 1989 concerning the Religious Courts it also states that: "Application for child control, child maintenance, wife maintenance and husband and wife joint assets can be submitted together with a divorce application for talak or after a pledge divorce is said."

3.2. Discussion

The study focused on Decision Number 0298/Pdt.G/2019 Bb, examining judges' considerations in divorce cases. The judge's decision to grant the divorce was influenced by continuous arguments between the parties, indicating an irreparable breakdown in their relationship. Additionally, the judge carefully determined the child's living expenses under the custody of the mother, considering the father's income and ability to provide support, in line with Article 156 letter f of the Compilation of Islamic Law. The decision-making process involved thorough analysis of evidence, including witness testimonies, ensuring fairness. The study emphasized the significance of judges' considerations in divorce cases, prioritizing the child's best interests. Further research on similar cases and comparative analyses from different jurisdictions would contribute to a more balanced and effective legal framework for family law.

4. Conclusion

Judge's Considerations in Settlement of Divorce Decision Cases (Study of the Decision of PA BauBau Number 0298/pdt/2019/PA.Bb the authors conclude that the judge's considerations in the divorce decision are very appropriate considering the parents' income based on the evidence brought in front trials, and the relationship between the two parties (parents) is not harmonious and it is difficult to return to living in harmony together.

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