

**JURIDICAL REVIEW OF THE IMPLEMENTATION OF RELIGIOUS COURT
DECISIONS REGARDING FATHER'S RESPONSIBILITY FOR CHILD CARE COSTS
(HADHANAH) AFTER DIVORCE "**

A. Rahim, Andi Sugianti, Rismawati

Unismuh Makassar

arahim.unismuh@gmail.com

Abstract

Marriage is a natural requirement of life whose purpose is, among other things, to obtain offspring, in order to carry on a kind life. The feeling of wanting to live together should be prepared carefully, because to create a harmonious, prosperous and happy household is not an easy thing. Therefore, it is highly recommended to be more careful in choosing a mate, namely by taking into account all the factors that support the preservation of a reciprocal husband and wife relationship so that in this togetherness can get peace in the household. method used in this research is to use a normative juridical approach. The juridical approach that uses secondary data sources is used to analyze various laws and regulations such as Law Number 1 of 1974, Government Regulation Number 9 of 1975, Compilation of Islamic Law, decisions of the Bantaeng Religious Court, Bantaeng Regency Number 107 / Pdt.G / 2014, Number 261 / Pdt.G / 2014 and Number 40 / Pdt.G / 2015 relating to childcare costs, fiqh books and Islamic law, as well as articles that have correlation and are relevant to the issues. The result showed that Consideration of Religious Court judge Bantaeng, Bantaeng in deciding a case divorce relating to child maintenance costs based on considerations. legal (a) The relevant Islamic law and regulations governing the cost of caring for children. (b) considerations Other, are the non-legal considerations or social economic conditions of the parties. (c) The amount of childcare costs depends very much on the condition income of the father's real. So, there is no uniformity regarding the amount costs of child care in the case of *hadhanah*

Keyword : Juridical Review, Hadhanah, religious Court, child care cost

INTRODUCTION

In a household or marriage, various important problems will arise, including problems related to husband and wife, problems with the relationship between parents and children, and regarding assets, so that mutual understanding is required in all matters. If a husband and wife can submit themselves, and are responsible according to their respective functions and duties, then the possibility of disputes and quarrels in the husband and wife's household life will be very small.

The purpose of marriage according to Article 1 of Law Number 1 of 1974 is to form a happy and eternal family (household) based on the One Godhead. However, not every marriage will achieve

a good goal. The eternity and the desired happiness sometimes does not last long in the sense that the marriage does not lead to happiness and does not rule out the possibility of divorce even though all the prospective husband and wife have been careful in making their choices.

Divorce is a legal action that is justified by religion in an emergency, as the Prophet SAW said that the halal act that Allah hates the most is talaq.

In general regarding the break up of a marriage relationship, Law Number I of 1974 concerning Marriage divides the causes of the break-up of a marriage into 3 (three) groups, namely as stated in Article 38 namely as follows 1) due to the death of a party.) divorce; 3) and court decisions.

When a marriage is married, no one expects to experience a divorce, especially if in that marriage a child has been blessed. Even so, there are times when there are certain causes which result in a marriage that can no longer be continued so that a divorce must occur between husband and wife.

To make a divorce, one of the husband or wife submits an application or lawsuit for divorce to the court. In this case the intended Courts are the Religious Courts for Muslims and the District Courts for religions other than Islam. Of course this is related to legal domicile, so based on Article 20 of Government Regulation no. 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, that:

- (1) A divorce suit is filed by the husband or wife or their attorney to the Court whose jurisdiction includes the residence of the defendant.
- (2) In the case where the residence of the defendant is unclear or unknown or does not have a permanent residence, the divorce suit is submitted to the Court at the residence of the plaintiff.
- (3) In the event that the defendant resides abroad, the divorce suit is filed at the Court at the residence of the plaintiff. The Chief Justice submitted the request to the defendant through the local Representative of the Republic of Indonesia.

The Panel of Judges of the Court which has the authority to grant the application or suit for divorce after being examined it turns out that there are sufficient reasons to grant the divorce suit filed. Hearing that the husband and wife are divorced, it results in three things, the first is the breaking of the husband and wife ties, the second must be the distribution of the marital assets including joint assets, and thirdly the child care must be handed over to one person and the father or mother. In relation to these three consequences of divorce, when applying for divorce, the parties can apply for a decision regarding the distribution of assets and child care together with the divorce application, or after the divorce pledge has been pronounced (Article 66 paragraph (5) of Law Number 7 of 1989 concerning Religious Court). Regarding this request, the Panel of Judges will open a trial to examine whether the petition deserves to be granted or not.

For applications relating to the cost of caring for the child that is borne by the father, the Panel of Judges will grant. the petition is either partially or completely, in accordance with the prevailing laws and regulations and the value of justice that develops in society.

The fact that happens in our society is that not a few households are destroyed as a result and the crisis that hit them. A household that is undergoing divorce. it is certain that it will cause several adverse consequences for all parties without exception. In this case, of course, there will be legal consequences for the child, namely the child must choose to follow the father or follow the mother.

This is an equally burdensome choice, because a child needs both parents. As a result, it is the children who suffer the most.

Naturally (instinctively) a father and mother have a physical and spiritual bond with their children that has been mandated by Allah SWT to them. For the child, the hopes and desires of the parents are stored, where the child who is educated, guided and directed will be a pious child, able to uplift the dignity of his parents in the world and the hereafter. However, a child who is naughty due to and wrong upbringing and guidance will be able to lower the degree, dignity and dignity of his parents. So that leaving and thinking about this, the father and mother have a strong desire to be closer and be able to guide their children directly. In the event of a divorce suit, both the father and mother are both fighting to maintain their children.

However, because the consequences of divorce are like that, the child still has to choose to join one of the parents. In a court hearing that handles divorce, for children who are not yet 12 years old (not yet mumayy'z), the Judge can decide to go with his mother. This is based on the consideration that children of that age still really need their mother's love. This does not mean that a father is unable to provide the love his child needs, but that a father can be busy working so that he has less time to care for his child.

Regarding the system of father's responsibility for the cost of caring for the child, it cannot be separated from the legislative policies set forth in the Marriage Law and the Islamic Law Company. The two regulations have included several provisions regarding the obligations of parents (especially fathers) towards their children. Article 45 of Law Number 1 Year 1974 states that parents are obliged to care for and educate their children as well as possible until the child is married or can stand alone, and this obligation will continue to apply even if the marriage of the two parents breaks up. Furthermore, Article 46 of this Marriage Law adds that children are obliged to respect their parents and obey their wishes well, and when they are adults children are obliged to look after their parents and their families according to their abilities if they need assistance.

As a result of the breakdown of a marriage due to divorce, Article 41 of the Marriage Law Number 1 of 1974 concerning Marriage states, both the mother and the father are still obliged to care for and educate their children, solely on the basis of the child's interests, if there is a dispute regarding the control of the child, the Court makes a decision.

Not different from Law Number 1 of 1974, Article 104 paragraph (1) Compilation of Islamic Law states clearly that,

"all child breastfeeding costs are accountable to the father, if the father has passed away, the cost of breastfeeding is borne by the person who is obliged to provide a living. to his father or guardian. "

It is further explained in article 105 of the Compilation of Islamic Law, in the event of a divorce that,

"the maintenance of children who are not mumayyis or not yet 12 years old is the right of the mother, while those who are mumayyis are left to the child to choose between his father or mother as the holder of the right to care for him at a cost. maintenance borne by his father. "

As stated in Islamic law, it is the father who is responsible for the care and education of the child, while the mother is only helpful, where the mother is only obliged to breastfeed and care for her. The father is responsible for all maintenance and education costs that are required by the child and if in fact the father cannot fulfill this obligation, the Court can determine that the mother is also responsible for the costs.

Children are the next generation, so that their growth must be considered so that they can grow and develop healthily both physically and spiritually. Conditions that are very dangerous for the continuity of education and the life of a child can occur if one or even both parents do not care about their children, even though they are fully aware that the child is a mandate and Allah SWT will be held accountable in the future.

A mother and father have the same rights to care for and educate their children. Legal protection in the corridor of human rights is a universal right, without any boundaries and applies to anyone (there is no consideration of differences in religion, race, ethnicity or others which are often used as a scourge to distinguish a person's human rights from another). Denial of this right means denying human dignity.

Basically *hadhanah* against a child who is not yet *mumayyiz* is the right of the mother in accordance with Article 105 paragraph (1) Compilation of Islamic Law, unless it is proven that the mother has apostatized and embraced a religion other than Islam, then the mother's right to care for the child is annulled, this is in accordance with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number: 210 / K / AG! 1996, which contains a legal abstraction that religion is a requirement to determine whether a mother's right to care and care for her has been canceled. (*Hadhanah*) towards her child who is not yet *mumayyiz*. So that the child care is assigned to the father's side with the consideration of maintaining the child's faith.

The consideration of the faith as the feasibility of raising children is a consideration and a *syar'i* point of view that puts forward one of the objectives of Islamic law, namely maintaining the integrity of the Islamic religion supported by several hadiths of the Prophet. However, on the other hand, it needs to be observed from a normative juridical point of view that the consideration of the Supreme Court has deviated from at least two legal provisions:

1. Article 105 Compilation of Islamic Law which determines the care of minors (under the age of 12 years) is in the care of their mother, without ever alludes to his mother's religious problems. As a comparison, Article 116 letter h states that divorce due to apostasy can be carried out if it turns out that apostasy will cause division in the household.
2. The provisions and laws of human rights as stated in Law Number 39 of 1999 concerning Human Rights, Article 51 paragraph (2), where after the break-up of a marriage, a woman has the same rights and responsibilities as her ex-husband for all matters relating to with their children, with the best interests of the child in mind.

Therefore and this background of thought, the impossibility of a divorced wife and her husband and then returning to her previous religion to take care of her child, is a fundamental violation for a mother to take care of the child she is carrying herself. This is even more so when the child is in dire need of mother's care (at the age of five).

In the implementation of child care or education it is solely done for the benefit of the child concerned. What is taken into consideration is that the responsibility of parents towards the child will not be stopped by divorce, either a divorcee or a divorce. The father as the head of the household or as the parent is still responsible for all financing needs related to the care (care) and education of the child even though the maintenance is in the hands of someone else.

For parents who are given the right to care for children, they must look after the child as well as possible. Child care does not only include providing physical income, but also includes spiritual sustenance such as formal education and informal education. In this case, whoever carries out child care, according to Article 41 of Law Number 1 of 1974 the father is still obliged to provide for the maintenance and support of the child until the child is 21 years old.

Regarding the care of children, the Compilation of Islamic Law provides arrangements as contained in CHAPTER XIV Article 98, namely:

- (1) The age limit for children who are able to stand alone or mature is 21 years, as long as the child is not physically or mentally disabled or has never been married.
- (2) The parents represent the child regarding all legal actions inside and outside the court.
- (3) The Religious Court may appoint one of the closest relatives who is capable of fulfilling this obligation if both parents are unable.

The neglect of the *hadhanah* which is a serious prolematics in Indonesia. According to data from the Child Protection Commission (KPAI) 2011, the impact of this divorce, hundreds of thousands of children became victims of being separated from one of their parents (www.kpai.go.id, 20 December 2011. Accessed 5 March 2015). Thousands of child violations, one of which dominates the problem of child care after divorce (Erlinda, M.Pd, Commissioner of KPAI, *Efforts to Improve Children from the Dangers of Violence, Abuse and Exploitation*, 17 January 2014).

According to the researcher, the results of the pre-research show that this divorce also occurred in the administrative area of the Bantaeng Regency Religious Court. There are so many parents, especially fathers, who, after divorcing, neglect their obligations and responsibilities, both regarding child care obligations, even though the person concerned actually has an established status with good economic conditions. It is different if this happens to a person with an economic level that can be said to be in the normal category, who for economic reasons cannot carry out the contents of the court decision to finance the maintenance and education of his child.

METHOD**Research Locations**

This research was conducted in the area of the Religious Courts, especially the Bantaeng Religious Courts, Bantaeng Regency with the consideration that in Bantaeng there are many divorce cases where the responsibility for child care (*Hadhanah*) is not carried out by the father.

Types and Sources of Data The

authors in this study use data sources, namely:

1. primary legal materials

The Comparison of the form of Law Number 1 of 1974 concerning Marriage, Law Number 3 of 2006 concerning Amendments to Law Number 7 1989 concerning the Religious Courts, Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974, Compilation of Islamic Law, and other Legislation.

2. Secondary legal materials, namely materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, namely in the form of dictionaries, literature books, archives in the Religious Courts in the form of decisions and interviews with information (several judges at the Bantaeng Religious Court , Bantaeng Regency).

Approach Method The

method used in this research is to use a normative juridical approach. The juridical approach that uses secondary data sources is used to analyze various laws and regulations such as Law Number 1 of 1974, Government Regulation Number 9 of 1975, Compilation of Islamic Law, decisions of the Bantaeng Religious Court, Bantaeng Regency Number 107 / Pdt.G / 2014, Number 261 / Pdt.G / 2014 and Number 40 / Pdt.G / 2015 relating to childcare costs, fiqh books and Islamic law, as well as articles that have correlation and are relevant to the issues I will examine.

Data Collection and Analysis Techniques

In this research, secondary data will be examined. Thus there are two main activities carried out in carrying out research, namely library *research*, which is obtained through literature, by reviewing, analyzing and processing literature, legislation, articles or writings related to the problems to be studied. .

The next stage is data processing, namely the analysis carried out by qualitative methods, namely the decomposition of the results of literature research (secondary data) so that it can be seen that legal remedies that can be taken by a mother if the decision obliging the father is not fulfilled to pay for the maintenance of the child after the divorce and the steps of the Religious Court in implementing a ruling that obliges the father to pay for childcare after the divorce.

RESULTS AND DISCUSSION**Judges' considerations in deciding divorce cases and their relation to child care costs (*hadhanah*).*****Legal arguments for judges in deciding divorce cases and their relation to child care costs (*hadhanah*).***

Judges in deciding Islamic civil cases include deciding the matter of child care due to a divorce decision, apart from being bound by the arguments of Islamic law sources, especially the Al-Quran and Hadith, as well as the applicable positive law. Moreover, the relation to the future of the child after the divorce of his parents is very important for determining the future of the child. Islam puts this position in a very vital or fundamental position. The relationship between parents and children in this case is a mandatory relationship that cannot be broken or obstructed by any circumstances, either due to divorce or one of them passing away, does not cause a loss of obligations towards their children in accordance with QS Al-Baqarah verse: 233:

Meaning: "Mothers let the children nurse for two full years, namely perfecting the breastfeeding and the father's obligation to feed and clothe the mothers in a literal way. "

The verse is understood that a father is obliged to provide for his wife and children, while in the care of a child after a divorce between a husband and wife, it seems that priority falls on the mother who has the most right to take care of him.

This is based on the hadith narrated by At-tirmidhi:

It means: "From Ibn Syuaib from his father, from his grandfather, Abdullah bin Umar, and actually a woman said: O Messenger of Allah, in fact my son is my stomach is his pocket, my lap is his seat, and my milk is where he drank, then after hearing the complaint, then the Prophet Muhammad SAW said: "You have the right to look after the child as long as you have not married another."

This hadith is the argument that a mother has more rights than her father, if her father wants to separate her from her mother, actually the content is above a warning in the understanding that the stipulation of a law remains in the sense of a healthy conscience. The companions of Abu Bakr and Umar decided on the same case based on this hadith, also assuming that the mother died during the period of caring for her child and in accordance with the majority of the scholars.

Meanwhile, the decision when the child is able to choose the right one for him is in accordance with the hadith of the Prophet narrated by Abu Hurairah:

It means: "From Abu Hurairah said: In fact a woman said: O Messenger of Allah, actually my husband was going to take my child, even though he had benefited him. For me, I can get drinking water for me from Abu Inabah's well. After her husband came, the Prophet SAW said to the child: O this child is your mother and this is your father, hold the hand which of the two you like, then the child holds the hand the mother and the woman go with their child.

According to Al-hadwaiyah and Hanafiyyah scholars, there is no need to be told to choose their words: the mother is more important to the child so that she is able to meet her own needs so the father has more rights over it. This opinion is in accordance with the opinion of Imam Malik.

After the legal basis is realized, of course the caregiver becomes a factor for the competence and appropriateness of caring for his child, so there must be certain conditions, namely:

- 1) Have good sense, because a crazy person may not handle and administer *hadhanah*.
- 2) Freedom, because a slave has less power over the child and the interests of the child are more devoted to the master;
- 3) Being Muslim, because this issue is for the sake of religion which he believes in or issues of guardianship which Allah does not allow for infidels;
- 4) Trust;
- 5) Not married to another man for her mother.
- 6) Living with their children, if one of them leaves, then the father has more rights because he is to keep his lineage.
- 7) Adults, because even small children are *mumayyiz* but they need someone else to take care of themselves.
- 8) Able to educate, if the disease is serious or the behavior is disgraceful then it will endanger the life of the child and it is in his hands.

The majority of scholars agree that the requirements of *hadhanah* such as reason, trustworthiness, maturity, being able to educate to avoid reprehensible things are part of the *hadhanah*. As a matter of religion for Imam Shafi'i, people other than Islam are not allowed. Whereas for other schools of thought it is not a requirement, it's just that for Imam Shafi'i apostasy renders custody of the right. Furthermore, school 4 is of the opinion that, if the mother of the child is divorced by her husband, then she remarries a man, then her custody of the child is lost, but her custody of the mother remains because it is proof of her affection for her child. Meanwhile, Imam Syafi'i, Hanafi, Maliki and Hambali, if the mother of the child divorces again from her second husband, the prohibition on the child's custody will be revoked again. And that right was returned because of the dissolution of the marriage with the second man. As for Imam Maliki: this right cannot be returned with the divorce.

The above requirements are not an absolute part because the best thing for the child is the main factor for *hadhanah* such as the mention in the Islamic Law Compilation (KHI) Article 109: Religious courts can revoke the guardianship of a person or legal entity and transfer it to another party at the request of a relative if the guardian is drunk, gambler, extravagant, crazy, neglect or abuse his / her rights and authority as trustee for the benefit of the person under his / her guardianship.

Hadhanah is a necessity or necessity for the benefit of the child itself, so that even though both of their parents have a bond or are divorced, the child can still get the attention of their two children.

a) *Hadhanah* during the marriage

Law no. 1 of 1974 articles 45, 46, 47 as follows:

Article 45:

1. Both parents are obliged to educate and care for their children as well as possible.

2. The obligations of the parents as meant in paragraph 1 of this article are valid until the child is married or is independent, and continues even if the marriage between the parents breaks up.

Article 46:

1. Children are obliged to respect their parents and obey their wishes well.
2. When the child is an adult, he is obliged to care for according to his ability, parents and family in a straight line up, if they need help.

Article 47:

1. Children who have not reached the age of 18 years and have never been married are under the control of their parents, as long as they are not deprived of their power.
2. Parents represent the child regarding legal actions inside and outside the court.

In the case of paragraph 1 of article 47, it states that the power of one or both parents is removed from the parent at the request of the other parent, the child's family is in a straight line upward and an adult sibling or an authorized official with a court decision even though it is revoked, they are still obliged.

However, parents still have an obligation for the cost of caring for the child (paragraph 2) related to child care as well, parents also have responsibilities related to material things.

Article 106 of the KHI states that parents are obliged to care for and develop the assets of their children who are not yet mature or under guardianship and the parents are responsible for losses caused by mistakes and negligence of obligations.

Coupled with KHI articles 98 and 99 concerning child care:

Article 98:

1. Age limit for children who are able to stand alone or adults is 21 years, as long as they are not physically or mentally disabled.
2. Parents represent their children regarding all actions.
3. The Religious Court may appoint the closest capable relatives if the parents are not well off.

Article 99:

A legitimate child is:

1. A child born in or as a result of a legal marriage,
2. The result of a lawful husband and wife act outside the womb and born by the wife.

b) *Hadhanah* during the Divorce

Period Divorce is not an obstacle for children to obtain custody of themselves and their parents, as stipulated in Law Number 1 of 1974 Article 41 due to the breakdown of a marriage due to divorce, are:

1. Either the mother or father is still obliged to maintain, to educate their children, solely on the basis of the child's interests. If there is a dispute regarding the care of children, the court gives a decision,
2. You are responsible for all the costs of education and maintenance, if in fact the father cannot fulfill this obligation, the court may determine that the mother shares the costs.

3. The court can oblige the ex-husband to provide living expenses and determine an obligation for the ex-wife.

In the context of the object of this study, researchers who took 3 samples of judges at the Bantaeng Religious Court, Bantaeng District, the descriptions are as follows:

DECISION Number 107 / Pdt.G / 2014 / PA Batg., The divorce case between Hairuddin, S.Sos. , bin H. Syarifuddin as the convention Petitioner / Defendant of the Reconvention Against Erny Abdullah, A.Ma., binti Abdullah Reconvention, as the Convention Respondent /Defendant.

In the verdict, it stated, among other things: To sentence the Defendant to bear maintenance costs for the two children of the Plaintiff and the Defendant named Deddy Fauzi, and Darmawansyah, until the children were adults or aged 21 years and submitted to the Plaintiff every month at least Rp.800,000. - (eight hundred thousand rupiah) with an additional 10% annually and adjusted to the needs of the children and the value of money in the future;

Consideration of the Panel of Judges:

Considering, that based on Article 149 letter (d) Compilation of Islamic Law, the husband is obliged to provide *hadhanah* fees for his children who have not reached the age of 21 years, so taking into account the goodwill of the Defendant by stating his willingness to pay for the child's support of Rp. . 500,000.- (five hundred thousand rupiah) per month, the panel of judges with due observance to the interests of the child and the suitability and ability of the Defendant as a Civil Servant who has already borne and will continue to bear the living costs of the first child of the Plaintiff and Defendant who goes to college, then The panel of judges, determined the amount of child support for the Plaintiff and Defendant named Deddy Fauzi, and Darmawansyah, which the Defendant had to bear and submitted to the Plaintiff each month at a minimum of IDR 800,000 (eight hundred thousand rupiah) until the child was an adult (age 21 years) with an additional 10% every year and adjusted to the needs of the children and the value for money in the future;

DECISION Number 40 / Pdt.G / 2015 / PA Batg. Muh. Fuad Afdhal Tasrik bin Muh. Tasrik, as a Convention Applicant / Reconvention Defendant; against Wulan Sisi Putri Novianti, as the Convention Respondent / Reconvention Plaintiff;

In the verdict, it stated, among other things: To punish the Reconvention Defendant to pay the Child Livelihood Reconvention Plaintiff named Fita binti Muh. Fuad Afdhal Tasrik, age 1 (one) year 6 (six) months, in the amount of Rp. 250,000, - (two hundred and fifty thousand rupiah) every month, until the child is an adult (aged 21 years) or can stand alone;

Consideration of the Panel of Judges

Considering, that from the answer process between the Plaintiff and Defendant, the main problem in this counterclaim lawsuit is the amount of living that is appropriate to be given to the children of the Plaintiff and Defendant, whether the Defendant is still burdened to provide support for the child as the consequences of divorce ?;

Considering, that because the Plaintiff demands that the Defendant be required to support his child named Fita, aged 1 (one) year 6 (six) months until the child is an adult, while the Defendant feels objectionable and does not accept the demand for payment of an amount beyond his means, therefore The Panel of Judges will consider the subsequent reconciliation lawsuit;

Considering, that at the trial, the Plaintiff argued that the Defendant sold fish during his college holidays so that it was worth bearing a living, in court the Defendant admitted that he currently did not have a permanent job, and the Defendant also acknowledged that while still living with the Defendant he had never provided a living to the Plaintiff because All the daily needs of the Plaintiff and Defendant and the needs of the children are borne by the Defendant's parents. Likewise, the Defendant at the trial stated that he was only able to provide child support in the amount of Rp. 150,000, - (one hundred and fifty thousand rupiah) every month until the child is an adult;

Considering, that the biological father is the party determined by law to be the person in charge of supporting the child, who cannot be erased because of a divorce. These legal norms are expressly stated in the following provisions:

- *Article 45 paragraph (1) and (2) Law Number 1 Year 1974: (1) Both parents are obliged to maintain and educate their children as well as possible. (2) The obligations of the parents as meant in paragraph (1) of this article shall be valid until the child is married or can be independent, which obligation shall continue to apply even if the marriage between the two parents breaks up.*
- *Article 156 letter d Compilation of Islamic Law: "The consequences of breaking a marriage due to divorce are: d. All hadhanah costs and child support are borne by the father according to his ability, at least until the child is an adult and can take care of himself (21 years).*

Considering, whereas based on the principles aforementioned legal, it should be concluded that the Defendant is obliged to for provide his child named Fita, aged 1 (one) year 6 (six) months, until the child is an adult, that is, at least 21 years old or already married. The divorce between the Plaintiff and the Defendant is not a factor that can invalidate the Defendant's obligations. Thus, the claim Plaintiff's can be granted, with the nominal burden assigned to the Defendant adjusted according to the Defendant's capacity level, which the Panel of Judges deems to be actually able and potential to work and earn income; Considering, whereas what is meant by actual ability in this case is the ability of the Defendant according to his real circumstances, although the Defendant is still a student when time during holidays The college Defendant could sell fish. Because of that, the Defendant could actually be assessed as a person who was able to earn; Considering, whereas what is meant by the Panel of Judges is a potential ability, namely the ability of the Defendant according to its potential level to work, earn and acquire assets . The potential is assessed according to physical condition, age, level of education and others which according to customary influence a person's chances of being able to work and earn income; Considering, that the Defendant is clearly 21 years old, with high school education and not proven to have permanent physical disabilities. Thus, the Defendant is classified as potentially capable because it is still of a productive age, sufficiently

educated, and is not physically impeded from working and earning. So the Panel of Judges was of the opinion that punishing the Defendant to provide support for a child named Fita binti Muh. Fuad Afdhal Tasrik in the amount of Rp. 250,000 (two hundred and fifty thousand rupiah) per month is an expense that is still within the limits of fairness and propriety; Considering, whereas based on the facts revealed in the trial, it was clear that the children of the Plaintiff and Defendant were currently under the care of the Plaintiff as their biological mother and were still *mumayyiz* (immature), the Panel of Judges considered that the child still needed supervision, guarding and education from both parents, so that the Plaintiff and Defendant should use their role as parents and not limit each other's rights to receive affection from the Plaintiff or Defendant, being about the implementation of his affairs is from the parents who take care of him;

DECISION Number 261 / Pdt.G / 2014 / PA Batg.

The divorce case between: Bullah bin Tamma, as the Petitioner against Nurlaelah binti Dg. Manakku, as the Respondent. In the verdict, it was, among other things stated: To punish the Defendant to bear the costs of maintaining the child of the Plaintiff and Defendant named Rahmi binti Bullah, aged 8 years until the child was an adult or 21 years old and submitted to the Plaintiff every month a minimum of IDR 200,000 (two hundred thousand rupiah) excluding the cost of education children's and children's health costs with an additional 10% annually and adjusted to the needs of the child and the value of money in the future;

Consideration of the Panel of Judges:

Considering that in the law suit Plaintiff's, the Plaintiff demanded the Defendant for the maintenance and costs education of the Plaintiff and the Defendant's children until the child was an adult with a nominal value of Rp. 500,000 charged to the Defendant (five hundred thousand per month); Considering, that on the demand for child support of the Plaintiff and Defendant named Rahmi binti Bullah aged 8 years, the Plaintiff and Defendant have agreed on a nominal amount for the demand child support in the amount of Rp.200,000 (two hundred thousand rupiah) per month;

Considering, that based on Article 149 letter (d) Compilation of Islamic Law, the husband is obliged to provide *hadhanah* fees for his children who have not reached the age of 21 years, so by taking into account the interests of the child and the agreement of the Plaintiff and Defendant regarding the amount nominal of child support, and according to appropriateness. as well as the ability of the Defendant to only work as a farmer, the Panel determines the child support that must be borne by the Defendant and submitted to the Plaintiff each month at a minimum of IDR 200,000 (two hundred thousand rupiah) excluding education and medical expenses until the child is an adult (age 21 years) with an additional 10% each year and adjusted to the needs of the child and the value for money in the future;

Based on the contents of the 3 decisions mentioned above, especially those related to decisions regarding *hadhanah* due to divorce and the grounds or legal arguments used by it, the researcher knows that in principle the panel of judges has used the right argument in making decisions regarding *hadhanah*. Apart from referring to the *syar'i* argument as the researcher pointed out earlier, this includes the applicable positive law.

The condition of the parties that are the basis for legal considerations in decisions incases divorce and their relation to the issue of child care costs (*hadhanah*)

Child custody as something that is very essential in Islam. Ahmad, Abu Daud, and Al-Hakim have reported from Abdullah bin 'Amr: *That a woman said, "O Allah's Apostle, in fact my child, it is my stomach that has conceived her, and my breasts have become her drink and it is my life that protects her. But his father has divorced me and wants to divorce my son too from my side. " So the Prophet said. : "You are more entitled to the child, while not married (with someone else)."*

Likewise, when Umar bin Khattab divorced Umm Ashim and intended to take Ashim bin Umar from the of care his ex-wife. The two of them also complained about this problem to Abu Bakr as the emirul of the believers at that time. Abu Bakr said: *"The content, lap and upbringing of Umm Asim is better for Asim than for you (Umar) until Asim grows up and can make choices for himself."*

Father and mother are the parents of their children. Even though the father and mother are divorced, the child is still entitled to love and affection from both of them. Fathers are still obliged to provide for their children. Children have the right to become heirs because they are part of the lineage of their father and mother. Girls also have to be married off by their father, not by their stepfather.

What is the fate of the widowed mother? A mother who is widowed as a result of her husband's divorce has the right to earn a living from her husband until her ends (three menstrual periods) as well as wages iddah period in childcare both during the iddah period and after that until the child reaches the *tamyiz* (rational) phase and performs takhyir which allows her toto choose participate mom or dad.

If the child has not reached the phase *tamyiz* (sensible), then the mother is still obliged to care for the child. If the mother is unable to care for her child (for example because of: kafir / apostasy, insane, and reasons other syar'I that do not allow her to care for and educate the child), then the it mother's mother (grandmother of the child) can care for to the next lineage. If all those who are classified as from their mothers and their descendants are unable to care for them, then it is the duty of the father to take care of or find qualified caregivers to care for and educate their children.

The chosen caregiver can be the mother father's(the child's grandmother) to the next lineage. It could also be other women who are qualified in caring for children. The requirements for a babysitter are baligh and sensible, able to educate, trustworthy and virtuous, Islamic, and not husband.

Divorce is bitter. However, it is better if divorce is chosen than household life becomes worse so that it can cause various immoralities. The duty of the father and mother next is to instill love and affection for their family members so that the children resulting from the marriage do not incline to disobedience. Both to mother, father, and both. This is because the father and mother are the parents of the child.

Therefore, the panel of judges is required to consider the circumstances of the parties in deciding the *hadhanah* issue. In the 3 decisions that are the object of this research, the researcher knows that in terms of the conditions of the parties which are the basis for legal considerations decision in their divorce cases and their relation to the issue of childcare costs (*hadhanah*), it is illustrated in the description of the 3 decisions below: Based on the author's interview with Mr. Rahmat (Deputy Chairperson of the Bantaeng Religious Court) that if a child care dispute (*hadhanah*) occurs, the judge's consideration is whether or not a father able to provide maintenance costs for his child. If it turns out that in reality the father is unable to fulfill these obligations as stipulated in Article 41 letter (b) of Law Number 1 of 1974, the Court may determine that the mother can part in this take obligation;

Whereas further, according to Rahmat, the legal basis for judges at the Bantaeng Religious Court in deciding cases regarding the cost of caring for children due to the divorce of their parents, namely:

- The legal basis for Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child protection;
- Law Number 23 Year 2004 concerning Domestic Violence;
- Presidential Instruction of the Republic of Indonesia Number 1 of 1991, Article 149 letter (d) Compilation of Islamic Law; "Husbands are required to provide fees *hadhanah* for their children who have not reached the age of 21 years"
- Law Number 1 Year 1974 Article 41 letters (a and b); a) Either mother or father is still obliged to care for and educate their children, solely on the basis of the child's interests, if there is a dispute over the control of children the court gives its decision; b) The father is responsible for all the costs of is responsible for the maintaining and educating the child, if in fact the father not can fulfill this obligation, the court may determine that the mother costs;
- Law Number 1 Year 1974 Article 45 paragraph 1 "Both parents are obliged to care for and educate their children as well as possible; (interview dated 14 May 2015)

CONCLUSION

Consideration of Religious Court judge Bantaeng, Bantaeng in deciding a case divorce relating to child maintenance costs based on considerations. legal (a) The relevant Islamic law and regulations governing the cost of caring for children. (b) considerations Other, are the non-legal considerations or social economic conditions of the parties. (c) The amount of childcare costs depends very much on the condition income of the father's real. So, there is no uniformity regarding the amount costs of child care in the case of *hadhanah*.

The steps of the Bantaeng Religious Court, Bantaeng Regency in implementing the decision at the Bantaeng Religious Court, Bantaeng Regency regarding the cost of caring for children due to divorce are to ensure the optimal implementation of the verdict is running. This step is also very much determined by the capacity of the courts in this context, especially the financial support available.

Barriers to implementing the decision of the Bantaeng Religious Court, Bantaeng Regency regarding the cost of caring for children due to divorce that cannot be fulfilled by the party given the responsibility are obstacles to the level of legal knowledge, especially Islamic religious law, economy, culture and internal and external conditions of the child. Of these many obstacles, the economic constraints of the parents of children obstacles are the most influencing.

Suggestions

Support for the supervision of the implementation of divorce decisions which contain *hadhanah* should be increased. There needs to be a more systematic regulation so that the implementation of *hadhanah* can be as optimal as possible.

REFERENCES

- Ahrurn, Hoerudin. 1999. Pengadilan Agama (Bahasan tentang Pengertian, Pengajuan Perkara dan Kewenangan Pengadilan Agama Setelah Berlakunya UU No. 7 Tahun 1989 tentang Peradilan Agama), Citra Aditya Bakti, Bandung.
- All Afandi. 1990. Hukum Perkawinan Indonesia. Mandar Maju, Bandung.
- Bisri, Cik Hasan. 2000. Peradilan Agama di Indonesia. PT Raja Grafindo, Jakarta.

- Budiono, Abdul Rachmad. 2003. *Peradilan Agama dan Hukum Islam di Indonesia*, Bayumedia, Malang.
- Djai's Mochammad dan Koosmargono, RMJ. 2008. *Membaca dan Mengerti HIR*, Semarang, Badari Penerbit Universitas Diponegoro
- Halim, Abdul. 2000. *Peradilan Agama Dalam Politik Hukum di Indonesia, dan Otortor Konseivatif Menuju Konfigurasi Demokratis-Responsif*, PT Raja Grafindo, Jakarta.
- Hamid, Zuhri. 1978. *Pokok-pokok Hukum Perkawinan Islam dan Undang-Undang Perkawinan di Indonesia*. Bina Cipta. Yogyakarta.
- Harahap, M. Yahya. 1988. *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, PT. Gramedia, Jakarta.
- Hasan, KN. Sofyan. 1994. *Dasar-dasar Memahami Hukum Islam di Indonesia*, Usaha Nasional, Surabaya.
- Ko Tjay Sing dkk. 2002. *Fikh Islam*. Citra Karsa Mandiri. Yogyakarta.
- Ny Soemlyati. 1995, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta.
- Mulyadi SH, MS, 2008. *Hukum Perkawinan Indonesia*, Badan Penerbit Universitas Diponegoro, Semarang.
- M. Yahya, 1999. *Hukum Perkawinan Islam*, Bumi Aksara, Jakarta.
- _____. 2000. *Hukum Perkawinan Hukum Kewarisan, Hukum Acara Peradilan Agama dan Zakat Menurut Hukum Islam*. Sinar Grafika, Jakarta.
- Rasjidi, Lili. 1991. *Hukum Perkawinan dan Perceraian di Malaysia dan di Indonesia*. PT. Remaja Rosdakarya. Bandung.
- Sing, Ko Tjay. 1981. *Hukum Perdata Jilid I Hukum Keluarga (Diktat Lengkap)*, Fakultas Hukum Universitas Diponegoro, Semarang.
- Soekanto, Soerjono, *Pengantar Penelitian Hukum*. UI-Press, Jakarta.
- Soekanto, Soerjono, dan Sri Mamuji. 1985. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT, Radja Grafindo Persada, Jakarta.
- Soemijati, 1986. *Hukum Perkawinan Islam dan Undang-Undang Perkawinan*. Liberty. Yogyakarta.
- Subekti, R. dan Tjitrosudibio, R. 1990. *KUHPerdata*, Pradnya, Jakarta. Sudarsono, 1994. *Hukum Perkawinan Nasional*, Jakarta Rineka Cipta.
- Susilo, Budi. 2008. *Prosedur Gugatan Cerai*, Pustaka Yustisia, Yogyakarta.
- Sutaritio, Retnowulan dan Oeripkartawinata, Iskandar. 1990, *Hukum Acara Perdata dalam Teori dan Praktek*, CV. Mandar Madju, Bandung.
- Wibowo Reksopradoto. 1985. *Seluk Beluk dan Asas-asas Hukum Perdata Alumni*, Bandung.
- Wiryono Prodjodikoro. 1991. *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta.
- B. Peraturan Perundang-undangan
- Indonesia, Undang-Undang Republik Indonesia tentang Perkawinan, No. 1 Tahun 1974.
- Subekti, R, dan R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wet boek) dengan Tambahan Undang-Undang Pokok Agraria dan Undang-Undang Perkawinan*, Jakarta: PT. Pradnya Paramita, 1992.

Peraturan Pemerintah Republik Indonesia Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

Petunjuk-petunjuk Mahkamah Agung Mengenai Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 dan Peraturan Pemerintah Nomor 9 Tahun 1975 Nomor M.A./Pemb./0807/1 975.