


A Fulfillment Of Private Rights Post-Divorce According To A Compilation Of Islamic Law

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Article Info	ABSTRACT
Keywords: Fulfillment of Children's Rights, Hadhanah, Post-Divorce	Fulfilling children's rights is an activity to guarantee the needs of life, protect and give children what they should get, namely the right to live, grow and develop, be cared for and cared for by their own parents. Therefore, every child has the right to have the same rights in front of their parents, there is no discrimination or discrimination. This paper discusses the fulfillment of hadhanah rights after divorce, which aims to find out how the provisions for children's rights are according to the compilation of Islamic law after divorce, how efforts are made to fulfill the hadhanah rights of minors after divorce according to the compilation of Islamic law and find out how the analysis of decision No. 2184/Pdt.G/2020/PA.Mdn. This type of thesis research uses normative legal research with a qualitative approach method, while the research method used is literature study.(library research)with data collection techniques using secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. That the author found in the trial several factors that caused custody of the child to fall to the biological father. The results of this research consist of several factors, namely that the child's mother left her child more than 1 year ago, the mother is currently living with another man and already has a child with that man, while the child's mother has not divorced from the child's father, and all this time the child has been in his father's care. So the panel of judges considers that it is in the interests of the child that the child's education and morals will be better maintained if he remains with his father. Here the author agrees with the judge's decision which states that custody of the child falls to the father. To strengthen the quality and capacity as well as the integrity of families with children, the government is obliged to provide services and training for parents and children.
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INTRODUCTION

Children are a gift and a gift from Allah SWT that is always a must We protect it because it has dignity, dignity and rights as human beings attached to it which must be upheld. From the

perspective of national and state life, children is the future of the nation and the next generation of the nation's ideals, so that every Children have the right to survive, grow and develop and participate have the right from acts of violence and discrimination as well as civil rights and freedoms.

The desire to have children for every married couple is The human instincts and nature of these children are a mandate from Allah SWT to the husband and wife. For parents, the child is expected to be able to do it raise the status and dignity of parents when they grow up and become children pious and pious people who always pray for him when he dies Starting from this thought, both the father and mother of the children both of them have a strong desire to be closer to their children can guide them directly and educate them so that in the future their children will have them adults can achieve what they dream of. Likewise children that, always wants to be protected and given love, by his parents until they can stand alone in navigating the ark of life in this world.

Nowadays, child custody is often a problem before or after divorce. In fact, it is not uncommon for ex-husbands and wives to occur fighting each other to get custody of their children, because children are their hope parents who are difficult to separate. Children are the parties who suffer losses as a result divorce of his parents. The child loses much-needed love completely from both parents, no child just wants to get love from his father or mother, aside from that, he doesn't have a living or education escape from the role of parents. In such conditions the problems that arise are: Who has more rights to their children, because each of them doesn't want it give in, so it needs to be resolved legally. Whatever path you take After finishing it, what is certain is that the child will no longer be able to enjoy life with the love of both parents simultaneously.

In Law of the Republic of Indonesia No.35 of 2014 concerning Child protection is regulated regarding children's rights which reads:

1. Article 7 Paragraph (1) and article 14 regulate the right to receive care. Article 7 Paragraph (1) reads: Every child has the right to knowing his parents, being raised and cared for by his parents Alone. Then Article 14 reads: that every child has the right to be raised by their own parents, except for reasons and/or valid legal rules show that separation is for the sake of The best interests of the child are the final consideration.
2. In the event of a "separation" as intended, namely separation Due to divorce or other situations and conditions, children still have rights meet directly and have regular personal contact with both her parents.
3. Article 26 Paragraph (1) reads: Parents are obliged and responsible Responsible for: Caring for, nurturing, educating and protecting children and develop children according to their abilities and talents and interests and prevent marriage at the age of children.

As well as providing character education and instilling moral values in children.

Article 26 Paragraph (2) reads: In the event that parents are not present, or not its existence is known, or for some reason it cannot be carry out their obligations and responsibilities,

obligations and the responsibility referred to in paragraph (1) can be transferred to family, which is carried out in accordance with the provisions of regulations legislation.

Provisions regarding child custody or hadhanah in the Legal Compilation Islam in Article 105 in the case of divorce, which states that:

1. Caring for children who are not mumayyiz or under the age of 12 (two twelve) years old is his mother's right.
2. The care of children who are mumayyiz is handed over to the child to choose between the father or mother as the right holder its maintenance.
3. The maintenance costs are borne by his father.

In Article 105 of the Compilation of Islamic Law, the right to custody is stated Underage children whose care still falls to the mother birth and maintenance costs until adulthood falls to father to support his child. In Law Number 1 1974 concerning marriage also regulates parental obligations to look after their children.³Then with an explanation This law makes it clearer the importance of children in the position of the family, individual, society and state because of children is an inseparable part of survival humans and the sustainability of a nation and state. So that later able to take responsibility for the sustainability of the nation and state, Every child needs to have the widest possible opportunities to

grow and develop optimally, both physically, mentally and social. For this reason, the state has regulated it through law about the rights of the child. Even though the parents are no longer in the same family relationship, they will but the issue of children's rights will remain a secondary obligation parents who may not be transferred to other than their parents.

However, there is understanding in society to carry out obligations parents, especially perpetrators of divorce, are very minimal with only It is limited to children's rights regarding living expenses only. Therefore it needs to be studied legal principles regarding the implementation of the fulfillment of children's rights in custody post-divorce children who have not been able to carry out child protection provisions. Relating in this thesis to case at the Medan Religious Court (PA), with Case Number 2184/Pdt.G/2020/PA.Mdn in the Plaintiff's case(Anonymism)And Defendant(Anonymism)where one of the decisions stipulates child care III(anonymity)are in foster care his father.

What the author wants to analyze is why a judge grants rights take care of the father, because it is very contrary to the Compilation of Islamic Law Article 105 clearly regulates the custody of children who are not yet mumayyiz given to mother. And what is the judge's reason for determining that the father has the right? taking care of the child.

Literature Review

Hadhanah According to Islamic Law

Child care or also called Child care and in Islam is called "Hadhanah". Hadhanah has an etymological meaning as well as terminology. Etymologically, hadhanah comes from the word hadhana- yahdhunu-hadhnan which means caring for children or hugging children. In Islamic jurisprudence, the term child care is known hadhanah. In the book Al-Mushthalahat Al-Fiqhiyyah,

hadhanah comes from the word "Hadhna" with Fathah the letter ha which is the mashdar of the word hadhana yahdhunu which means taking care of small children. "Hidhnun" with kasrah letter ha which means Al-janbu beside or on the side of someone

The caregiver makes the child always gather by his side. Meanwhile, according to the term, hadhanah is the maintenance of a child not yet able to stand alone, take care of himself, provide education worthy, and protect it from something that destroys it or that endanger it. Child care is essentially a fulfillment for 29 various aspects of children's primary and secondary needs. Child care covering various aspects such as education, health, peace, and all aspects related to their daily needs.

In Islamic teachings it is explained that as the head of the household The obligation to support falls on the shoulders of a husband, if the husband unable to carry out his obligations, then it does not rule out the possibility the responsibility can be transferred to the wife to help her husband. Therefore, the role of cooperation and mutual assistance between husband and wife in nurturing and nurturing children until they grow up is very important important. What is meant in principle is the responsibility of husband and wife towards his children.

In the context of jurisprudence, the term "Hadhanah" according to language means "putting something close to his ribs or on his lap, as if At that time, the mother would protect and care for her child, hence the term what is meant is: "education and care of children from birth to able to stand alone and take care of himself, which is done by relatives the child.

Hadhanah is meant to be more synonymous with nurturing and caring for children who are still mumayyiz, by caring for them physically and spiritual. Even children are able to be independent and responsible answer. In this case, fiqh scholars define: hadhanah, namely lay down the care of young children, both boys and girls women, or those who are older but not yet mumayyiz, provide something that makes it good, protects it from something that is hurt and damage him, educate his body, spirit and mind, so that able to stand up to face life and assume responsibility. Not only maintenance issues but also in terms of parenting parents do it with all their potential. In the context of jurisprudence, it is explained that for a child, education

The best thing for a child is if he is under the care of two people his parents, namely his father and mother with great love and affection for raise him, give him a good education, so that the child grows well and physical health, as well as moral nobility and intelligence his wit and subtlety of feeling. However, if both people his parents were forced to separate (divorce), so the remaining children were taken care of mumayyiz (not yet able to differentiate between good and bad, namely age under 12 years) is the mother's right. And when the child has mumayyiz, then he was invited to choose between going with his mother or father.

In fiqh literature, Islamic figures provide deep definitions Some terminology regarding the meaning of hadhanah, including:

- a. According to Sayyid Sabiq who defines hadhanah as doing care for young children, male or female women or those who have grown up, but have not yet tamyiz, without orders from it, providing something that makes it good, protect it from something that hurts and

damages it, educa physically, spiritually and intellectually so that they can stand on their own to face live and bear his responsibilities.

- b. According to Wahbah Az-Zuhaili, it means looking after children for people who has the right to maintain it. Or it could also be interpreted as caring for or looking after people who are unable to care for them his own needs because he is not mumayyiz like children, people mature but crazy. Maintenance here includes food, clothes, sleeping, cleaning, bathing, washing clothes and its kind.²⁴ So hadhanah is a form of power and leadership. However, in this case women are more worthy o occupy it because women can be softer, fuller affection, and patience in educating. If the child has reached certain age then the right of maintenance is delegated to men, because he is better able to look after and educate the child than the rest woman.

In the Compilation of Islamic Law in Article 1 letter g that maintenance or hadhanah is the activity of nurturing and nurturing educate children until they are adults or able to stand on their own.²⁵ In the Islamic Civil Law book in Indonesia, it is said that which includes education and everything that is needed both in form of carrying out or in the form of avoiding something that can be done ruin it.²⁶ The obligation to support young children is not the only thing applies to fathers and mothers who are still bound by marriage only, but also continues if a divorce has occurred. Caring for children also means a responsibility parents to supervise, provide appropriate services as well meet the continuous needs of a child The child reaches the legal age limit as an adult have been able to stand on their own. From the definitions above, it can be concluded that: What is meant by hadhanah is caring for or caring for a child who is still alive mumayyiz to become a human being who lives a perfect and responsible life answer. Caring for the child until the child is able to stand doing it yourself without the help of others is obligatory in Islam. Therefore caring for young children is mandatory because of neglect children is the same as leaving them in danger.

Conditions for Hadhanah

Carrying out hadhanah duties is not an easy task because not only caring for children by meeting their physical needs but the child's education or morals are the responsibility of the implemente hadhanah itself. Because not just anyone can get it carry out hadhanah. For one *hadhinah* (caregiver) who handles it and carrying out the interests of the young children in their care, namely existence adequacy and skills that require certain conditions. If even one of these certain conditions is not met then the ability will fail organize *hadhanah*-his. The conditions are as follows

1. Be sensible. So, for people who are unreasonable and crazy, it can't be take care of himself. Therefore, he should not be entrusted with the task taking care of other people because of other people because of people who have nothing Of course you can't give anything to other people.

2. Already an adult (baligh). Even if it's a small childmumayyiz,he remains needs someone else to take care of his affairs and look after him. Therefore, he should not handle other people's affairs.
3. Able to educate. Therefore, people who are blind or short-sighted, have infectious diseases, or a disease that weakens his body should not be a caregiver to look after the interests of young children. Also not elderly, that is even he himself needs to be taken care of, not someone who ignores him household matters to the detriment of the small children in their care, or not people who live with people who are contagious or together people who like to get angry with children. Even if it's a child's relative small himself, so as a result of his anger he couldn't consider the interests of the child perfectly and create bad atmosphere.
4. Trustworthy and virtuous. Cheating people are not trustworthy to children and themselves cannot be trusted to be able to fulfill their obligations properly. What's more, later the child can imitate or behave like him the behavior of this cheating person.

METHOD

Provisions for Children According to the Compilation of Islamic Law Children based on the Compilation of Islamic Law Article 98 paragraph (1) which reads:

*"The age limit for a child who is able to stand alone or be an adult is 21 years as long as the child has no physical or physical defects mentally ill, or have never been married."*In Article 99

Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law is mentioned that the legitimate child is:

- a. children born from a legal marriage;
- b. The result of husband and wife's actions outside the womb and born by the wife the.34Then with the explanation of these provisions, then it becomes clearer the importance of children in their position family, individual, society and country because children are part which is inseparable from human survival and sustainability of the nation and state, so that every child can receive the widest opportunity to grow and develop optimally, both physically, mentally and socially. For that reason.

The state has regulated through provisions regarding children and rights child. Then if you look at these provisions, the author agrees with the child's provisions because of the importance of love and parent's education for children before the child grows up In the future, the child will be able to stand alone and be responsible responsible for the survival of humans, nations and countries.

Provisions for Children According to Positive Law

Definition of Children According to Law in Indonesia In positive law there is pluralism regarding the meaning of children, This is as a result of each statutory regulation that regulates it The separate understanding of children is as follows:

- a. Children based on the Constitution of the Republic of Indonesia 1945 is contained in Article 34 which reads: The poor and neglected children are looked after by the state.
- b. Children based on Marriage Law Number 1 of 1974 stated in Article 47 Paragraph (1) which reads: Children are those who have not reached the age of 18 years (eighteen years) or have never been married is under authority parents as long as they are not deprived of their authority.
- c. Children based on Civil Law Article 330 of the Constitution Civil Law says: Immature people are those who have not reached the age of consent even 21 (twenty one) years old and have not previously been married.
- d. Children according to Law Number 3 of 1997 Article 1 paragraph (2) Regarding Children's Court, which reads: A child is a person in the case of a naughty child who has reached the age of majority 8 (eight) years but never married.
- e. Children based on Law Number 35 of 2014 Article 1 States that : A child is someone who is not yet 18 (eighteen) years old including unborn children 35

Therefore, it is very reasonable for the panel of judges to determine The child is in the father's care based on mutual agreement between the husband and wife. Fathers also have the opportunity to care for children, even though to a greater degree than the mother. Article 156 letter (a) KHI Mentions that children who are still mumayyiz have the right to receive it hadhanah from his mother, unless the mother has died, then his position was replaced by women in a straight line upwards from father, sister of the child concerned, female relatives blood relatives along the maternal line, and women who are blood relatives according to father's side line.

As for the Child Protection Law Number 35 of the year 2014 Article 14 states that "every child has the right to be cared for by someone his own parents, unless there is a valid reason and/or legal regulation shows that separation is in the best interests of the child and is the final consideration." Then in that separation referred to in article 14 does not eliminate the child's relationship with her parents.³

RESULT ANALYSIS

Case Position

That there was a divorce case and child custody dispute between Nyoya (Plaintiff), 42 years old, Muslim, Occupation Teacher (Teaching), Education Strata I, residence on Jalan(anonymism) Medan Deli District, City Medan, North Sumatra Province. In this case, it gives authority to SAUT MARTUA PURBA, SH, MH, and Ubat Riandi Pasaribu, SH. MH has an office at Saut Martua Purba East Helvetia, Medan Helvetia District, Medan City. Based on a special power of attorney dated 17 September 2020, as Plaintiff; Against Mr (defendant), 42 years old, Muslim, works as a private employee, High School Education, residence on Jalan (anonymous), Medan Deli District, Medan City, as Defendant.

That the Plaintiff with his lawsuit letter dated September 22 2020 which registered at the Registrar's Office of the Medan Religious Court on September 22 2020 with case register Number 2184/Pdt.G/2020/PA.Mdn.

Before a divorce occurs, both parties are the Plaintiff and the Defendant had a wedding on February 11, 1999 which was carried out according to the law and in accordance with the guidance of the Islamic religion, where marriage. This has been registered at the KUA office, Juhar District, Karo Regency as recorded in Marriage Deed No. 27/03 / V / 99 dated February 11 1999. That, initially during the life of the Plaintiff and Defendant's household lasting, during the period of marriage the Plaintiff and the Defendant were blessed 3 (three) children named:

1. Child I, a girl born on December 31 1999;
2. Child II, a girl born on September 13 2001;
3. Child III, a girl born on June 13 2009

That, the happiness that the Plaintiff felt after getting married with the Defendant only lasted until 2013, because in In 2014 the Defendant liked to gamble, often pawning items at home Defendant, the Defendant often left the Plaintiff and the children during ran away for a month because many people came to collect debts and the Defendant went to home, and after a month, the Defendant returned home, and after that the Plaintiff and the Defendant always fights because the Defendant repeats his habits the gambling. The Defendant also had a rough nature and wanted to play physically with the Plaintiff such as strangling the Plaintiff's neck every time they quarreled and hitting the Plaintiff with a pillow, the Defendant has also been dismissed from work since 9 (nine) last year, and the Defendant worked odd jobs, so the Plaintiff had to work for cover the livelihood of the Plaintiff and children, the Defendant does not support the Plaintiff and children. Finally, in August 2019, the Plaintiff left. Defendant because he could not stand the Defendant's behavior since this incident The Plaintiff and Defendant have shared beds where the Plaintiff temporarily lives at the family home, while the Defendant and children still live at home, above Each of the Plaintiff's and Defendant's families experienced this incident reconcile the household problems of the Plaintiff and Defendant, them advised the Defendant, but the Defendant did not change. In a marriage bond between the Plaintiff and the Defendant as has been described is already difficult to maintain to form a household that is sakinah, mawaddah and warrohmah as is the aim and purpose of a marriage so it is better to end it because of divorce. Based on these matters, the Plaintiff's lawsuit for filed a divorce suit against the Defendant on the basis of ongoing quarrels continuously and it is impossible to live in harmony within a marriage bond fulfill the elements of article 19 letter (f) Government Regulation no. 9 of 1975 Jo article 116 letters (f) and (h) Compilation of Islamic Law (KHI) so that it is based on law to declare that the divorce suit is granted. Because the child is still under age and refers to article 105 of the Compilation of Islamic Law (KHI) which says children who are not yet 12 years old are the rights of the mother and after the child When he is 12 years old, he is given the freedom to be raised by his mother or father.

That, based on the reasons/arguments above, the Plaintiff request the Chairman of the Medan Religious Court c/q the Honorable Panel of Judges to determine the trial date, summon the parties, examine and adjudicate this case and handed down a decision which reads as follows:

1. Grant the Plaintiff's lawsuit in its entirety;
2. Imposing one ba'in sughra divorce from the Defendant against the Plaintiff;
3. Determine the custody of the child (not yet an adult) named: CHILD III, A woman born on June 13 2009, placed in foster care and maintenance of the PLAINTIFF's choice;=
4. Charge court fees in accordance with applicable regulations. And/ or If the Medan Religious Court has a different opinion, please make a decision which is as fair as possible.

That regarding the Plaintiff's lawsuit, the Defendant has submitted an answer orally in the trial on October 13 2020, which in essence said that Between the Plaintiff and the Defendant it is true that there has been a dispute and its cause because the Plaintiff left home with another man and now the Plaintiff lived with this man and the Plaintiff even had children with this man, the Defendant played world cup soccer betting in 2014, but only that one time and never gambled again, and the Defendant left left the Plaintiff and children to Batam to work on advice Plaintiff and after the Defendant went to work the Plaintiff went with another man and

The Defendant was not rude to the Plaintiff. Then the Defendant did tried to look for the Plaintiff since leaving and only then met the Plaintiff while at trial. Then the Defendant received news that the Plaintiff had married to another man and has one child aged 11 month. That the family has tried to reconcile the Plaintiff and Defendant, The Plaintiff's family always defends the Plaintiff. The defendant strongly objects if. The Plaintiff took care of the Defendant's and Plaintiff's children because the Plaintiff had left the kids for a year and a half and the kids lived with the Defendant.

In The Main Of The Case:

- a. Granted the lawsuit submitted by the Plaintiff in its entirety
- b. Imposing one bain sugra divorce from the Defendant against the Plaintiff
- c. Determining Custody of Children (not yet adults) named CHILDREN female born on June 13 2009 determined to be in foster care and maintenance of the Plaintiff

That regarding the Plaintiff's replica, the Defendant has submitted verbally duplicated at the hearing on 20 October 2020, in essence The Defendant objected to the plaintiff's child custody being assigned, because so far the children live in the Defendant's care, grow quite well and are healthy, while the Plaintiff left with other people, leaving the children behind for a year and a half and didn't care about the children until recently. Then the Defendant is also responsible for maintenance costs, children's health and education and the Defendant works as an outsourcer/daily worker freelance at PT Green Sumatra, with an income of Rp. 4,000,000.00 (four million rupiah) and apart from that the Defendant is also a member of the Medan City KPU. Then The defendant submitted to the decision of the Panel of Judges.

Legal Considerations

Considering, that what is the posita of the Plaintiff's lawsuit is that the child Plaintiff and Defendant named CHILD III, determined to be under the care (hadhanah) The plaintiff is that the child is still under the age of mumayyiz and a child is currently in the Defendant's care. Considering that the Plaintiff's claim is rejected, the Defendant refuses and stated that the Defendant objected to the child being under the Plaintiff's care because. Since separating from home, Aquo's children have lived with the Defendant and attended school near the house Defendant, Plaintiff has left the Plaintiff and Defendant's children without noticed, the Plaintiff is now living with another man even have children with this other man.

Considering, that regarding the Defendant's counterargument, the Plaintiff did not deny it, the Plaintiff only stated that the mother (incasu Plaintiff) have more rights to care for children who have not yet reached the age of 12 years as regulated in article 105 of the Compilation of Islamic Law, therefore the Panel of Judge considers that the Plaintiff's attitude does not refute the Defendant's argument regarding the conditions The present Plaintiff is an acknowledgment of the truth of the Defendant's argument. Considering, that regarding the Defendant's argument that the Plaintiff has abandoned the child more than a year ago and the Plaintiff's condition already living with another man and even having children with him the other man even though the Plaintiff has not divorced the Defendant, no was denied by the Plaintiff and was even confirmed by the Plaintiff's witnesses. Considering the condition of children who are currently in school and attending school The child is close to the Defendant's house and the child's older siblings live together The Defendant was also not denied by the Plaintiff. Considering, that because the Plaintiff does not deny the arguments .

CONCLUSION

From the results of the discussion in this thesis, there are several things that can be achieved The author concludes in the thesis Fulfillment of Hadhanah Rights Post-Divorce According to the Compilation of Islamic Law (Study Decision No.2184/Pdt.G/2020/PA.Mdn), that is : 1. Hadhanah or maintenance of children in existing marriage laws Indonesia basically does not determine who is better have the right to obtain child maintenance rights. It's back to the interests of the child based on court decisions. Anybody Those who hold the gift must be able to guarantee the child's needs well education, economics and everything that children need. 2. If a mother is declared disabled, it means she is unfit to fulfill her needsNHis obligation is to often neglect his children for the sake of the children both mentally and physically, the right to care is more in their handsfather. In principle, there are things contained in the Convention on the Rights of the Child One of which is :

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