

## LEGAL PROTECTION AGAINST CHILD CUSTODY ABANDONMENT DUE TO DIVORCE

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### Abstract

**Introduction to the Problem:** The urgency in this research is that many problems arise due to the divorce of parents of children under the age of custody will be given to the mother but mostly after the divorce the father does not provide for his child after the issuance of the divorce. seen from the many cases the government must make a policy for divorced parents the child still gets the nafkah and attention of both parents.

**Purpose/Study Objectives:** The purpose of this research is to see the protection that can be given to the neglect of child custody from divorce. many problems arise in society, one of the parents neglects their children and results in neglected children and does not provide for children for their lives. this is the responsibility of parents in caring for their children.

**Design/Methodology/Approach:** The type of research used in this writing is normative law. The approach used is the statutory approach model and conceptual approach.

**Findings:** In practice what the author encounters is that many parents after the issuance of a divorce the child will become a victim and underage children will especially be given custody of their mother and their father does not provide for the child, sometimes the mother also goes to look for a living to make a living and leaves the child to the mother's parents and here the parents, namely the father, do not exercise their right to provide for the child until they can be independent.

**Paper Type:** Research Article

**Keywords:** Child; Child Custody; Child Neglect.

Note: The total of word accounts in the abstract should not be more than 300 words



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### Introduction

A household consisting of a father, mother and their children is the smallest unit of a society. Marriage is something sacred and cannot be played with. For humans, marriage is a means of developing offspring so that it makes them different from other creatures. Based on a legal point of view, marriage is an agreement. In Indonesia itself, the law of marriage is stated in Law No. 16 of 2019 Amendments to Law No. 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law regarding marriage and is a legal basis for all Indonesian citizens regardless of the religion and beliefs of each party. Marriage should be based on various pillars of a strong, healthy, harmonious household, and have diverse abilities with various problems and challenges that exist. However, if the opposite is true, the conditions cannot be sustained and there can be major conflicts that are not desired. Very many couples after having children then separate, considering that there is no compatibility for the couple so that the household falls apart and ends in divorce. (Ismiati 2018)

Divorce is the last alternative that can be chosen to resolve marital disputes. Therefore, both Islamic law and legislation provide ways according to the background of the conflict. (Rijaya 2021) With the breakup of a marriage based on a judicial decision that already has permanent legal force, there will be concomitant legal consequences, one of which is related to the custody of children born from marriage. Children as part of the young country as one of the human resources need potential and successors to the ideals of the nation's struggle with special characteristics and characteristics that require guidance and protection in order to guarantee complete physical, mental, social growth and development, have harmony, have development. Psychologically, divorce certainly has an impact on children even though these children become adults. Children who are still under the general public are declared unable to express opinions such as who to live with after their parents divorce. This is where the court determines who has the right to maintain with consideration of various factors that are in line with existing conditions. Either party may feel that they have the right to care for the children. Based on the relationship that parents have with their young children, there are rights and obligations. The maintenance of children is basically the responsibility of both parents both economically, education, and various things that are closely related to basic needs. (A. Agus 2018)

Children born from marriage continue to be legal children as stipulated in the Marriage Law. (I 2020) The party who gets the biggest loss from the event of divorce carried out by parents is the child. The child will lose the love that is needed as a whole from the parents not one of them, there is no child who wants to get affection from the father or mother alone, besides that, maintenance and education will experience interference. (M. Agus 2018) Childcare itself, which is an act that must be carried out by both parents considering that without childcare which can result in children will be neglected and waste their lives. If a child who is still young and not yet mumayyiz does not get good care and education, it will have a bad impact in the future and can even make existence threatened.

In reality, many parties are unable to adjust, have arbitrary behavior without regard for the development of their children and have an indifferent attitude and even potentially abandon their own children. Therefore, the closest community has the right to protect children who are treated unfairly by their parents. Law No. 39/1999 on human rights has outlined children's rights, obligations and responsibilities of parents, families, communities, government and the state to protect children. However, it is considered that there is still a need for a law that specifically contains rules relating to child protection as a juridical basis for the implementation of these obligations and responsibilities. Therefore, the establishment of child legislation should be based on the consideration that child protection should be provided in various aspects as a national development activity specifically related to the progress of the nation and state.

The problem of child protection is a fairly complex matter that encourages the emergence of various forms of further problems that cannot always be resolved individually but can be resolved together and whose resolution is still a shared responsibility. Child protection has legal consequences that are closely related to written or unwritten law. Based on Law No. 35 of 2014 concerning Child Protection Article 1 paragraph (2). Child protection is something that is so needed by neglected children with such poor conditions which can be extended in terms of social welfare. The pattern of life that children have is generally slum and clustered in various poverty and various high places such as under bridges, river banks, garbage disposal sites or even those who sleep in garbage carts together with their children and wives. In this condition, neglected children are not only children who are abandoned after divorce but children who are deliberately abandoned.

Child neglect is the attitude and actions of parents who do not pay attention to the process of growing and developing children where children are isolated, alienated, and do not receive proper education and health. The impact of children becoming victims of neglect such as, disruption of mental health, behavior, physical health, economic and social. In addition, the attitude and health condition of the wife as a mother often affects the attitude and health of her children. As a result, children experience physical loss and psychological loss. Physical losses suffered by neglected children are in the form of lack of nutritional intake in children.(M. Agus 2018) Furthermore, the psychological harm suffered by children is that children become uncontrollably naughty and other behavioral disorders.

In some previous research results on themes similar to the author, the first is journal research by Cyntia Yudha Kristanti, Nurul Hudi with the title "Legal Aspects of Revocation of Child Custody in the Crime of Child Abandonment" the focus of this research is on revocation of child custody from parents.(Yudha Kristanti, C., & Hudi 2018) The second is by Heppy Hyma Puspytasari, the Word entitled "Legal Protection in the Payment of Child Support as a Result of Divorce" in this study focuses on the

discussion of child support payments after divorce.(Hyma Puspytasari 2021) And then by Muktiali Jarbi with the title "Parental Responsibility for Children's Education" the focus of this research is on the responsibilities of parents towards their children in the world of education. (Jarbi 2021) These three studies are different from the focus of the research that the author will study, namely related to "Legal Protection of Abandoned Child Custody as a Result of Divorce". Based on the description described above, the author takes the title "Protection Against Abandonment of Child Custody Rights Due to Divorce.

Based on the background description above, the following problem formulations can be drawn:

1. What are the legal consequences for parents who neglect children due to divorce?
2. What is the form of legal protection for child victims of divorce?

### **Methodology**

The type of legal research used by this author is normative legal research. Normative research method according to Soerjono Soekanto is a legal research methodology based on library research, which includes research on legal principles, legal systematics, vertical and horizontal synchronization levels, legal comparisons, and legal history.(Soerjono Soekanto 2015)

The approach used in this research is the statute approach, namely by examining all laws and regulations related to the legal issues studied. Later the result of the review is an opinion to solve the issue under study and. Conceptual Approach is an approach that departs from the views and doctrines that develop in legal science, in order to find ideas that give birth to relevant legal notions, concepts and expectations, as a basis for building a legal argument in solving the problem at hand. (Marzuki 2016) That is the answer to the material in the form of legal content argumentation in this study. The sources of legal material for this research are primary data, secondary data, and tertiary data. Primary data is obtained from legal materials that have authority, which means they are binding. Primary legal materials include laws and regulations and judges' decisions. (Marzuki 2016)

Secondary data, is material obtained through literature in the form of official documents / facts, legislation, reading books on law, as well as experts, and research results in the form of reports, journals, theses and theses. Tertiary legal materials are legal materials that provide meaningful guidance or explanation of primary and secondary materials, such as legal dictionaries, encyclopedias, and others. The technique of collecting legal materials in normative legal research is carried out by literature study of legal materials, both primary legal materials, secondary legal

materials, as well as tertiary legal materials and or non-legal materials. The search for legal materials can be done by reading, seeing, listening, or through the internet media.

## **Results and Discussion**

### **A. Legal consequences for parents who neglect their children due to divorce.**

The legal consequences that can be given to parents who neglect children can be in the form of social sanctions, among others:

- 1) Moral Sanctions, namely parents who get ostracized in the community. This happens because parents who neglect their children and do not provide protection for their children, in this era, technological developments are increasingly sophisticated so that people can easily get information quickly and instantly both verbally and in writing, namely through communication media and social media such as (Facebook, Twiter, Instagram, etc.), and also through online mass media such as (Detik.com, Kompas Tv, etc.).
- 2) Parents who are set aside by custom, this can occur based on the customs of parents in their respective regions, usually this social sanction applies when there is a traditional event and parents who have neglected their children get sanctions in the form of parents who are discarded throughout the custom, meaning that in the traditional event the parents are not included in the custom.
- 3) Parents will be shunned by the extended family, parents who neglect their children will be shunned by the extended family, for example at family events involving the extended family they will be set aside, not even considered by the extended family, which becomes a domino and sustainable effect.
- 4) Written Sanctions, in the form of a statement made and signed in front of the police, which if in the future the parents do the same thing, they will get further sanctions.
- 5) Sanctions Revocation of child custody, which is a process taken by the police caused by parents who make the same treatment of children.

Conditions for Revocation of parental authority over children:

- a. The request must be made by another parent, from the immediate family or from the state.
- b. Revocation may occur for certain reasons:(Suparni 2000)
  1. Abuse of power by parents
  2. Parents who severely neglect their obligation to provide education and care for the child.
  3. Bad behavior (depending on the judge who determines the limits of bad behavior).
  4. Sentenced for committing a crime with the child:
  5. Sentenced for a crime against the origin of the child, abandonment of a person in need of help, persecution, and life.
  - 6.Sentenced by a legal body for more than 2 (two) years.

As a result of the revocation of parental authority, namely the revocation of the rights of one of the parents, the authority of the parent does not end, but for the sake of fulfilling the rights of the child is replaced by the guardian parent. For example, if the father's parental rights are revoked, the mother will replace the father's responsibility to meet the needs of the child, provided that the father is in 1 (one) house with the mother. Although the power of the father is revoked, the father still has the responsibility to provide maintenance to his children. The maintenance must be given once a week, or once a month, or once every three months at a rate determined by the court. Parental authority over a child can be restored by requesting a return of authority through the Religious Court. Revocation of parental authority over a child may result in the loss of the right to enjoyment and the proceeds of parental authority over the child.

Indonesia itself has two legal products that can ensnare parents who do not provide for their children with severe sanctions. The first law, Law No. 35 of 2014, which is an amendment to Law 23 of 2002, prohibits every person from conducting treatment that results in child neglect, resulting in the child experiencing a condition of illness, or suffering both matrilly, mentally, physically, mentally and socially, as stated in Article 76 letters a and b.(Suparni 2000) a person who commits such acts can be subject to severe witnesses, namely imprisonment for a maximum of 5 years and a maximum fine of Rp.100,000,000.00 (one hundred million rupiah), as stated in Law No. 35 of 2014.

The second law is Law No. 23/2004 on Domestic Violence which has a related relationship to the fulfillment and rights of children. Article 5 of Law No. 23/2004 states that "every person is prohibited from committing domestic violence against a person within the scope of his/her household". (Citra Umbra 2010) The definition of violence against children itself has a broad meaning, the actions of someone who neglects the obligation of child support can also be categorized as a "form of violence" against children, because it can cause the child to become neglected, resulting in threats to both physical and mental health, and can also interfere with the growth and development and welfare of the child. Such actions can result in a criminal sanction of imprisonment for a maximum of 3 years or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah), for any person who neglects a child within the family.(Citra Umbra 2010)

## **B. Forms of Legal Protection for Children Victims of Divorce**

Child protection for society and the nation is a measure of the civilization of a particular national society. So that in order to develop human beings as a whole, we are obliged to strive for child protection as much as we can for the benefit of the country and the nation. Child protection activities are legal actions that have legal consequences. Therefore, there is a need for legal guarantees for child protection activities.

Protection whether it is requested or unsolicited, maintenance of children is a right that children have. The purpose of providing protection is so that children feel protected, so that children feel comfortable, if they feel safe then they will be free to explore or exploit the environment. Child protection can be interpreted as an effort to provide conditions in which each child can exercise or obtain their rights and obligations. The protection is a form of justice owned by society, providing protection to humans. Thus, child protection is sought in several areas of life. (M. Agus 2018)

Legal certainty really needs to be pursued for the continuity of child protection activities and the prevention of fraud that has a negative impact, which is not desired in carrying out child protection child protection consists of various important and urgent problems, has diversity and variation in the level of tradition and various values that apply in society. There are various problems in society that require protection for children, especially children under age.

Child protection is also explained in Article 1 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely all activities to ensure and protect children so that all rights in the life of the child are protected and protected from violence and discrimination.

Children have different meanings for different people. A child is a connector of offspring, an investment in the future and a hope to be relied upon when old age begins. It is stated as easy to increase the rank of life so that it can be done to control the social status of parents. Children are the ones who hold the privileges that parents have, when parents are alive, children are the ones who calm and when parents are gone children are the successors.

The definition of a child is also explained in Article 1 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which can be concluded that a person can be said to be a child if he is under 18 years of age, or has not reached the age of 18 (eighteen) years including children in the womb. Meanwhile, in Article 45 of the Criminal Code, a person can be considered a child if they are under the age of 16 (sixteen) years.

When born, children have obligations and rights that should be fulfilled, including survival, growth and development, protection, and participation. While the rights of children consist of civil rights and freedoms, the right to receive care, and alternative care, care and use of leisure time, health and also basic welfare, the right to education, culture and use of leisure time. A child who has been born has human rights, obligations and should be fulfilled as a child so that the survival and growth and development of children is protected.

A neglected child is a child aged 5-18 (five to eighteen) years old who spends most of his/her time earning a living or wandering on the streets or in public places.

Child neglect is part of a form of violence against children, as it falls under social abuse. Social child abuse includes child neglect and child exploitation. Child neglect is the attitude and behavior of parents who do not give proper attention to the child's growth and development process. For example, children are ostracized, alienated by the family, or not given proper food, education and health.

Based on Law Number 35 of 2014 Amendment to Law Number 23 of 2002 concerning Child Protection listed in Article 1 paragraph (6) explained "that neglected children are children whose needs are not met properly, both physically, mentally, spiritually, and socially" According to Law Number 4 of 1979 number 7 explains that neglected children are children who for some reason their parents neglect their obligations so that the child's needs cannot be met properly both spiritually, physically and socially.(Hakiki I 2018)

A child is declared neglected, not just the absence of one parent or both parents, but neglect can also be declared when various children's rights to undergo reasonable growth and development to get adequate health services have not been fulfilled due to negligence, parents who do not understand, parents who cannot afford and the gap. A child who is not expected to be born is very vulnerable to neglect and even mistreatment. At a more extreme level, child neglect can take the form of dumping children in the woods, ditches, garbage cans and so on.

Generally, this form of child neglect is carried out by allowing children to have poor nutrition, malnutrition, and not getting adequate health care, having wounds or diseases that are deliberately ignored and not getting treatment, forcing children to become beggars or buskers, street children, factory workers, domestic servants and so on. There are also factors that make children neglected, namely the busyness of parents with their jobs, broken homes, lack of economic conditions, lack of awareness from parents and so on.

With child neglect, the impact varies quite a bit, including requiring proper handling before the child imitates the actions of the parents. There are many people who neglect their own children who also experienced the same thing as a child. So that the appropriate treatment will be obtained, it will establish a chain of violence and neglect of children in the future.(V 2018)

## **Conclusion**

Based on the description above, the authors draw the following conclusions:

1. Parents who ignore and neglect their children's custody rights after divorce will get legal consequences both in civil and criminal matters. The civil consequences are:



- a. A person gets a court challenge to reimburse the cost of child maintenance that is not given to the child, as stated in Article 34 paragraph 3 of Marriage Law Number 16 of 2019 Amendment to Law Number 1 of 1974, in positive law the right to child maintenance remains valid for a period that has passed, Because the obligation to fulfill the obligation to support their children from the age of 0 (zero) years to the age of approximately 21 years (twenty-one years), as long as within this age period, child support that has not been paid in the past can still be demanded, provided that a father does have sufficient property and he is reluctant to give it, but if a father is poor, sick or difficult to find work, the mother also bears the cost of the burden of support to her child.
- b. Person can be deprived of the right to custody of their children because they neglect their obligations to provide child maintenance, as stated in Article 49 paragraph (2) of the Marriage Law and Law No. 4/2004 on Child Welfare.
- c. For civil servants who do not want to carry out the provisions on salary distribution in the event of divorce, with sanctions among high discipline penalties.

The criminal consequences are that in Indonesia itself there are two legal products that can ensnare parents who do not provide for or need children with severe sanctions, namely Article 76 letters a and b of Law Number 35 of 2014 which is an amendment to Law 23 of 2002 concerning Child Protection with a criminal sanction of 5 years with Rp.100,000,000.00 (one hundred million rupiah) and Article 5 of Law Number 23 of 2004 concerning Domestic Violence with a criminal sanction of 3 years or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah).

2. Child protection is explained in Article 1 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely all activities to ensure and protect children so that all rights in the life of the child are protected and protected from violence and discrimination, therefore parents must give their custody to their children properly and not abandon them. Legal protection for children victims of divorce is clearly regulated in Article 1 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and also in the second law, Law Number 23 of 2004 concerning Domestic Violence, so that children victims of divorce clearly have legal protection if their parents do not provide custody and also neglect them.

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