

ANALYSIS OF DECISIONS RELATED TO CHILD CUSTODY DUE TO PARENTAL DIVORCE (DECISION STUDY NUMBER: 75/PDT.G/2021/PN SMR)

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ARTICLE INFO		ABSTRACT
Received:	10-04-2022	The main purpose of a marriage is to form a family that gets along well and peacefully. However, marriage can also be broken if the husband or wife decides. Furthermore, the determination of child rights can be done based on an agreement that has been agreed upon by the husband or wife or determination through the consideration of a judge. From the results of this analysis, the determination of child custody is regulated in several provisions of Law No. 1 of 1974 on Marriage, and Law No. 35 of 2014 on Child Protection. If in custody of the child there is a dispute then the court will decide with the consideration of the judges in the best interests of the child's growth and development.
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INTRODUCTION

The ideal purpose of marriage is the welfare of the husband and wife and the birth and education of children, in accordance with Article 1 of the Indonesian Law Number 1 of 1974 concerning Marriage (Prihatinah, 2013). No one in the world wants his marriage as a married couple with the aim of suffering, all of whom aspire to a prosperous and happy life. However, in reality not all married couples end up living a happy and prosperous life. The deteriorating state of marriage, the occurrence of domestic violence, not providing materially or other things that make the incommitment between husband and wife, so that it cannot be continued, the marriage relationship is better decided than continued (Syuhud, 2014). This is although marriage is a very strong agreement that binds birth and mind between husband and wife, but the marriage bond can also be broken for one reason or another, because indeed both parties have the right to break the agreement (Syaifuddin, 2013).

There is also the result of a marriage break-up, it is certainly not a simple result, the result is the fate and future of the child of the marriage (PRATIWI, 2014). Because after all, parents have an important role to grow children's children and ensure the life of children after divorce. Parental responsibility for children includes the economy, education, everything about basic needs and also parents become a shelter for their children. So that in this case the child becomes a victim of the break-up of the marriage by his parents.

Based on the court's decision, there will be legal consequences that follow it, one of which is regarding the right to care for the child from the marriage and the power of parents who turn into guardianship, the determination of guardians by the judge is done after hearing from the father and the mother who is closely related to the child. Not a few between ex-husbands and ex-wives become fighting each other for custody of their children. Because, both the father and mother feel entitled to each other's rights.

Based on Article 41 of Law No. 1 of 1974 concerning Marriage, mentioned about the things that should be done by the wife and the party after the breakup of divorce is (Rodliyah, 2014) :

1. Whether the mother or father is still obliged to maintain and educate her children, solely based on the interests of the child, if there is a dispute regarding the mastery of the children, the Court gives a decision.
 - a. The father is responsible for all maintenance and education costs required of the child, when the father in reality cannot provide such obligations the court can determine that he bears the costs.
 - b. The court may require the ex-husband to provide the cost of the murder and/or determine a liability for the ex-wife.

The obligation to care for and care for children remains a shared obligation, not only an obligation of the husband or wife. The break-up of a marriage due to divorce is not an obstacle for a child to obtain parenting rights over himself from both parents, although parental divorce is a thing that is feared and hated by a child, because when the break-up of marriage occurs the child will be a victim. Parents who want to divorce should think about how to help overcome the trauma in children due to the suffering caused by divorce of their parents. After all, parents are the most responsible for the rights of the child, but there are also some other couples such duties become disconnected.

The breakdown of the marriage or divorce can solve the problems that exist in the husband and wife relationship, but it does not apply to a child who still wants the harmony of his parents in a common roof. After the divorce of the parents, of course, there is then the right to determine custody of the child, either to the father or to the mother who has been determined by the judge (Bakry, Sam, & Usman, 2021).

Responsibility for the child is an obligation for the benefit of the child, even though both parents have a bond or are divorced, but the child is still entitled to the attention of both parents, because the obligation of prang tua is to deliver their children by educating, equipping them with knowledge, both religious and general sciences, for their provisions when they are adults (Rofiq, 2017).

In fact, the child under the age of twelve years, the caregiver or guardianship is handed over to the mother, while for children over twelve years old the guardianship can be left to the choice of the child himself, whether the child will go to his father or choose to follow to his mother. This is clearly stated in Article 105 of the Compilation of Islamic Law. And as for other explanations whose legal basis refers to Jurisprudence.

Supreme Court Decision No. 126 K / PDT / 2001 "in the event of divorce, the child who is still under the care of him should be handed over to the closest person and familiar with the child, namely the mother."

Basically, the child has not been able to protect himself from various kinds of actions that cause mental, physical, and social losses in various areas of his life, considering the situation he is experiencing. Therefore, children need to get protection so as not to experience these disadvantages. (Gultom, 2014).

Although it has been explained in the Law on Marriage that parents remain fully responsible for their children despite their divorce. However, in reality the Marriage Act is not enough to guarantee the fulfillment of the rights owned by the child. The rights referred to in the child are rights related to the cost of maintenance, education, shelter and other supporting facilities such as examples of vacations and playing with children.

METHODS

Legal research is a scientific activity based on certain methods, systematics, and thoughts that aim to study one or more specific legal symptoms with symptoms analyzing them (Dimiyati & Wardiono, 2004). The method of approach used in this study is the Normative Doctrinal Approach Method, where the author when researching works to find the correct answers by proving the truth sought or that refers to legal documents, legal norms written in the kitabb of the underlying law.

The type of research used in this study is Deskriptif, because in the method of normative doctrinal approach requires detailed analysis. In its implementation, this method is subjective where the research process is more demonstrated and tends to focus more on theory (Sari et al., 2021).

The method of data analysis used in this study is Deductive, where when conducting research think from general to special things and use logic to draw conclusions.

RESULTS AND DISCUSSION

A. Understanding Divorce Based on Laws and Regulations

Divorce is contained in Article 38 of Law No. 1 of 1974 concerning Marriage, which reads "Marriage may be broken because of: death, divorce and by court decision". It is in other words that divorce is the disconnection of family relationships because one or both couples bother to leave so that they stop carrying out their obligations as husband and wife.

According to civil law divorce yaitu elimination of marriage based on the decision of the Judge or the demands of one of the parties either by the husband or wife in the marriage (Subekti & Tjitrosudibio, 2016).

Based on the provisions of Article 19 of Government Regulation No. 9 of 1975 divorce can occur for the following reasons :

1. One of the parties commits adultery or becomes a drunkard, a gambler, and so on.
2. One of the parties gets a prison sentence of 5 (five) years or a tougher law after the marriage takes place.
3. One party commits atrocities or severe persecution that endangers the other party.
4. One of the parties gets a disability or illness with the result of not being able to carry out his obligations as a husband / wife.
5. Between husband and wife there are constant disputes and quarrels and there is no hope of living well again in the household.

In the provisions of legislation that divorce can be divided into 2 (two) types, namely :

1. Talaq Divorce (Application)

Based on Article 117 KHI "Talaq is the pledge of the husband before the religious court which is one of the reasons for the break-up of the marriage."

As for the way of talaq according to Article 129 KHI "A husband who will drop talaq to his wife submits an application both verbally and in writing to the Religious Court which occupies the wife's residence accompanied by a reason and requests that a hearing be held for that purpose."

2. Divorce Sugat

Understanding of a divorce lawsuit is a divorce caused by a claim from one of the parties (wife) to the court, and the divorce occurs with a court decision.

As for Article 20 paragraph (1) of Government Regulation No. 9 of 1975 which reads "Divorce lawsuit filed by husband or wife or his attorney to the Court whose jurisdiction includes the defendant's residence."

B. Impacts and Consequences of Parental Divorce on Minors

Children are individuals who are still clean and sensitive to stimuli that come from the environment. According to Poerwadarminta a child is a person born into a marriage between a man and a woman (Poerwadarminta, 2007). According to Law No. 23 of 2002 article 1 referred to a child is someone who is not yet 18 (eighteen) years old including children who are still in the womb.

The child was the main victim who was hardest hit when his father and mother decided to divorce (Indarwanto & Supratman, 2017). A thing that children fear when their parents divorce is fear that they will not get complete affection again who do not live in one house. Some children also experience a decrease in achievement in school activities, children will prefer to be alone and choose not to tell what happened in their days to anyone, experience a decrease in confidence, feel not the same as other friends when the child's friends have a harmonious whole family. The

state of household conditions that are not intact often makes children experience depression, lack of mental health, it can be justified because they are still immature, do not fully understand what happened to their parents so that the child's ego is still very high to expect his parents to be on the same roof, but in reality the child does not really understand what happened to his parents' problems, What we can see is some cases around us of divorce due to domestic violence, infidelity and other things that can already be said to be unhealthy if the husband and wife relationship is to continue, therefore some people choose to divorce or separate.

A whole and harmonious family is a world first for children, so the time of divorce of the child's parents generally blames parents for the pain arising from divorce. But there are also children who blame themselves for their parents' divorce, blaming themselves as part of the cause of their parents' divorce.

In family relationships, children first know the meaning of love, the meaning of life, sympathy, getting guidance and education and creating a feeling of security in his life. It can be said that the family plays a very important role to form a personality and growth and development of children. But in reality, not all family relationships can go well. There are many problems faced by family members, one of which is parental divorce. Parental divorce also causes children to lose the parenting role of male parents and female parents, so that it makes some children incubate the inhibition of child development or children tend to do or behave less well. Divorce has a huge impact on the development of immature children.

In realizing a fir family or harmonious family is not an easy thing to do by parents. It is undeniable that various disputes and other problems that arise between husband and wife that result in quarrels that lead to divorce (Al Yakin, 2016). So in this case, the author is very happy to see a family that can maintain its household until it ages together until death separates, because what we know to maintain a harmonious domestic relationship is not an easy thing, many difficult things that they have to go through.

Divorced married couples try their best in various ways so as not to cause negative impacts on children on the divorce (Sari et al., 2021). However, it cannot be denied, no matter how hard the parents try to give the best for the child for their divorce, the child will still feel sadness over the divorce of his parents.

C. Analysis of Decisions Related to Child Custody Due to Divorce Based on Case Decision Number 75/Pdt.G/2021/Pn Smr

1. Case Position

Based on the results of research I conducted in samarinda District Court there is a divorce lawsuit case that occurred in 2021, namely case Number : 75/Pdt.G/2021/Pn Smr. The characteristics of the parties are the parties in the case are:

- a. Alat Manulu, S.H., age 30 years, Christianity, Advocate/Lawyer's Work, residing in Jalan Makmur RT.18 New Hope Village, referred to as Plaintiff;
- b. Ginta Limbong, 32 years old, Christian, loan shark private job, live in Jalan Makmur RT.18 New Hope Village, which is referred to as Defendant.

2. Sitting Things

That the Plaintiff with a lawsuit letter dated May 3, 2021 received and registered at the Samarinda District Court Clerkship on May 3, 2021 in register number 75/Pdt.G/2021/PN Smr have filed the following lawsuit:

- a. That the Plaintiff with the Defendant, has held a marriage in front of the leader of protestant Christianity HKBP (Huria Kristen Batak Protestant) in Limbong Village, Sianjur Mulamula District, Samosir Regency, North Sumatra on December 22, 2018 so that, thus, both are husband and wife based on the provisions of the law;
- b. That further marriage between the Plaintiff and the Defendant has been registered in the Samarinda City Civil Registry office with a quotation of the marriage certificate owned by the two with marriage certificate number 6272-KW-24042020-0001 dated April 24, 2020;

- c. That thus based on the above, the marriage between the Plaintiff and the Defendant is legally valid as article 2 of Law No. 1 of 1974 concerning marriage;
- d. That thus based on the above, the marriage between the Plaintiff and the Defendant is legally valid as article 2 of Law No. 1 of 1974 concerning marriage;
- e. That during the marriage between Plaintiff and Defendant has obtained two children / descendants 1. FRANSISKA CAROLINE LIMBONG, a woman born in Samarinda on August 14, 2019, 2. MORENO BENEDICT LIMBONG, male born in Samarinda on March 10, 2021;
- f. That originally since the marriage of the Plaintiff and the Defendant until August 2019 is still getting along well, and prospering healthy and in a harmonious atmosphere;
- g. That, however, beyond plaintiff's expectations, apparently the domestic life of Plaintiff and Defendant, as decomposed above did not last long and experienced shock, namely starting in August 2019 after the first child of Plaintiff and Defendant was born where there were often disputes and disputes that continued to begin with the actions of defendants who often went home late at night until 02.00 WITA in the morning, and often yelled and scolded, cursed and threatened to divorce plaintiff, which resulted in the peace of the plaintiff's soul is currently forced to leave the house;
- h. That now the Plaintiff lives on Jalan Wahid Hasyim II, Block L6 Kayu Manis Housing, Sempaja, North Samarinda District. While the Defendant is currently in the Kunjang River Police State Detention House, Jalan Jakarta, Loa Bakung Village, Kunjang River District, Samarinda City, East Kalimantan. Which should be suspected due to domestic violence against the Plaintiff, on the plaintiff's report in the Police written report dated April 17, 2021 and the receipt of the Police report Number: TBL/30/IV/2021/SEKTA SUNGAI KUNJANG dated April 19, 2021 which the Plaintiff proves will be tried.;
- i. That during the Marriage of the Plaintiff with the Defendant, the Defendant only ever gave money to the Plaintiff Rp. 300,000 and Rp. 500,000 for household needs, the Plaintiff issued more household needs because of the Defendant's income, the Plaintiff did not know and did not know;
- j. That the dispute and quarrel included because the Defendant often played gambling, drinking wine, often went home late at night until the early hours of the morning at 02.00 WITA, that on August 16, 2020 there was an argument starting from the mobile phone not given borrowed by the Plaintiff to the Defendant, to make the lottery, because the Plaintiff did not give a mobile phone then the Defendant issued a curse that was not pleasant to hear, and also kicked Plaintiff. Furthermore, on August 17, 2020 there was another dispute between the Plaintiff and the Defendant, which was caused by the Defendant's annoyance, because he could not bear to hear his son's cry so that the Defendant hit the Plaintiff's face until it was battered, kicked and drove the Plaintiff out of the house pregnant with the second child;
- k. That as a result of the defendant's stabbing resulted in bruising to the face at the time, and the Plaintiff left the house after the incident and asked for protection to the plaintiff's family, Mr. Bernande Manalu, S.H. and Mrs. Prima Yulian Rialuy, S.H, plaintiff's family and advised the Plaintiff not to report to the Police. A few hours later the Plaintiff went to see the Defendant's family to tell the incident that occurred, at that time the Plaintiff also temporarily stayed for 2 (two) weeks at the family home because he was still traumatized by the events that occurred on August 17, 2020 as representing defendant's parents from Paguyuban Limbong came to the family home of Bernande Manalu's father as the older brother of Plaintiff's parents, namely 1. Anton Limbong, 2. Harmoko Limbong, 3. David Limbong. Where the Plaintiff temporarily lives to resolve, the conflict between the Plaintiff and the Defendant, but because the Defendant is not present, then Mr. Bernande Manalu, called the Defendant's biological mother to remind the Defendant, so as not to repeat the Defendant's actions to the Plaintiff;

- l. That after two weeks since the incident, came again the family from Paguyuban Limbong, namely Sihol Limbong's father, as the Chairman of the Limbong Mulana Samarinda Paguyuban, along with Anton Limbong's father, and Davit Limbong's father with the Defendant to reconcile the problems that occurred between the Plaintiff and the Defendant. That defendant promised not to repeat his actions and forgive each other in front of the Plaintiff's parents and representatives of the Limbong Paguyuban group, Plaintiff and Defendant returned together to the rented house on Jalan Manunggal Gg 20 Asan Usin RT 82, Loa Bakung Village;
- m. That after the Plaintiff and the defendant get together one house, after the events of August 16-17, 2020, instead of any change instead of becoming more and more so and always said to divorce the Plaintiff, and there were more quarrels and witnessed by the Defendant's family. In the evening the defendant punched Plaintiff and Plaintiff ran out to report to the Kunjang River Police, but the defendant immediately locked the fence.;
- n. That familiarly between the plaintiff's parents, in Aekraja North Sumatra, and the defendant's parents in Limbong Village, Sianjur Mulamula District, Samosir Regency, has been discussed but can no longer be resolved. And also in Samarinda from the Limbong clan which is cultivated, namely Sihol Limbong's father and Theresia Tarihoran's father have come to see Bernande Manalu's father in Samarinda on Saturday, April 24, 2021 at Jalan Wahid Hasyim II Kayu Cinnamon Housing, Block L6 where the Plaintiff currently lives. However, the Plaintiff no longer wants to be united with the Defendant because the Defendant always says with the Plaintiff every fight will be divorced, therefore the determination of the Plaintiff is unanimous to divorce.;
- o. That however, defendant always conducts physical violence against the Plaintiff and the Defendant cannot be responsible for his own household, and also to his children who always try to separate the child of the Plaintiff and the Defendant, named FRANSISKA CAROLINE LIMBONG to be sent to Sumatra, entrusted to his mother Defendant because the Defendant can no longer afford the nanny on the thing that pays the nanny is the Plaintiff himself, while the defendant's mother is old it is no longer possible to take care of the baby's child;
- p. That defendant never submits his income every month to the Plaintiff to be able to be stored or managed, which should be a man Defendant must be responsible to his household to provide for it. However, it is the Plaintiff who provides more for the shopping and needs of his children;
- q. That the actions of the Defendant that have been done against the Plaintiff cause the Plaintiff to feel uncomfortable anymore living in one house with the Defendant. That thus the marriage relationship of Defendant and Plaintiff continues to quarrel and cannot be reconciled again because between the parents of Plaintiff and Defendant in North Sumatra as well as between the Limbong clan and the Manalu clan in Samarinda has never reconciled it and talked about, but can no longer be responded to by plaintiff.;
- r. That the Plaintiff has tried to maintain a harmonious and peaceful household as before, but the Defendant does not want to understand thus Plaintiff and Defendant cannot maintain the marriage. So there is no other way but the Plaintiff submits this lawsuit to the Samarinda District Court to be able to cancel the marriage certificate number 6272-KW-24042020-0001 dated April 24, 2020, and decide the plaintiff's marriage to the Defendant as a husband and wife according to the law;
- s. That based on the above descriptions between the Plaintiff and the Defendant, there is no longer mutual love, love and harmony that is the purpose of a marriage, as in article 1 of Law No. 1 of 1974 concerning Marriage which is aimed at forming a happy and eternal family, itself cannot be realized.;
- t. That therefore the Plaintiff's household with the Defendant is currently broken, and messy and there is no longer any hope of being united between the Plaintiff and the

- Defendant cannot get along well anymore as a husband and wife and quite basic and legal reasons declare the marriage broke divorce with all its legal consequences;
- u. That based on the above descriptions in accordance with Law No. 1 of 1974 article 39 paragraph 2 is enough to file for divorce to the Samarinda District Court, so that the position between the Plaintiff and the Defendant is no longer related as a husband and wife.;
 - v. That due to the break-up of the marriage between the Plaintiff and the Defendant due to the divorce, the Plaintiff pleaded with the Chairman of the Samarinda District Court, presumably the children of plaintiff and defendant named 1. CAROLINE LIMBONG and 2. MORENO BENEDICT LIMBONG is declared to remain under the maintenance of the Plaintiff and the Defendant is responsible for all costs of maintaining the livelihood of the children until adulthood.;

D. Legal Balance Related to Child Custody Based on Case Decision Number: 75/Pdt.G/2021/Pn Smr

Considering that based on the evidence of P-1 in the form of photocopy of Marriage Blessing Certificate Number: 14/03.3/07.08.01/AN/2018 between Ginta Limbong and Manalu Device, on December 22, 2018, signed by Pdt. Josua Hutagalung, S.Th, P-2 in the form of photocopy of Marriage Certificate Quotation 6272-KW-24042020-0001 dated April 24, 2020, between Ginta Limbong and Manalu Device signed by Samarinda City Civil Registry Officer H. Abdullah, S.H., M.Psi, connected with the testimony of Witness Karoline Jenni Farida Rajagukguk and Witness Prima Yulian Riuly obtained the fact that it is true that plaintiff and defendant are legal husband and wife who have held a marriage in front of the leaders of Protestant Christianity HKBP (Huria Kristen Batak Protestant) in Limbong Village, Sianjur Mulamula District, Samosir Regency, North Sumatra on December 22, 2018 who has been registered at the Samarinda City Civil Registry office with a certificate quote marriage number 6272-KW-24042020-0001 dated April 24, 2020;

Considering that based on P-3 evidence in the form of a Birth Certificate citation in the name of FRANSISKA CAROLINE LIMBONG, born on August 14, 2019, Number: 6472-LT-23122019-0039, dated December 23, 2019 and The Child Endorsement Marginal Note on the Register and Citation of Birth Certificate Number: 6472-PGSH-07072020-0001 dated July 7, 2020, P-4 in the form of a Birth Certificate citation in the name of MORENO BENEDICT LIMBONG, born March 10, 2021, Number 6472-LU-13042021-0006, dated April 13, 2021, P-5 in the form of a photocopy of the Family card in the name of The Head of the Family Ginta Limbong Number: 6472100308160013 april 13, 2021, signed by the Civil Registration Officer of Samarinda City, H. Abdullah, S.H., M.Psi, connected with the testimony of Witness Karoline Jenni Farida Rajagukguk and Witness Prima Yulian Riuly obtained the fact that it is true that the Plaintiff and the Defendant have two children, namely :

1. FRANSISKA CAROLINE LIMBONG, Woman born in Samarinda on August 14, 2019;
2. MORENO BENEDICT LIMBONG, male born in Samarinda on March 10, 2021 which until now in the care and care of Plaintiff;

Considering that it will next be considered petitum Plaintiff's lawsuit as follows : Considering that as the legal facts revealed in the trial have been real and clear that it is true that Plaintiff and Defendant often have frequent disputes and quarrels that continue since 2019 until the peak of disputes and quarrels in 2020, which resulted in Plaintiff experiencing bruises and swelling in the legs so that Plaintiff reported the Defendant's actions to the Kunjang River Police, Related to the provisions of Article 19 PP No. 9 of 1975 letter f, namely between husband and wife there are continuous disputes and quarrels and there is no hope of living well again in the household, the Panel of Judges argues that the marriage between the Plaintiff and the Defendant registered in the Samarinda City Civil Registry office with the quotation of marriage certificate number 6272-KW-24042020-0001 dated April 24, 2020, is not fit to be maintained and therefore the marriage must be declared broken due to divorce with all its legal consequences, thus the plaintiff's lawsuit at point 2 must be declared granted;

Considering that the status and position of the two children of plaintiff and defendant, namely: FRANSISKA CAROLINE LIMBONG, the woman born in Samarinda on August 14, 2019, MORENO BENEDICT LIMBONG, a man born in Samarinda on March 10, 2021, because the children are underage and are currently still in the care and maintenance of the Plaintiff, it is very based on the law of the Judge stating that the two children named FRANSISKA CAROLINE LIMBONG, women born in Samarinda on August 14, 2019 and MORENO BENEDICT LIMBONG, men born in Samarinda on March 10, 2021, remain in the maintenance and care of Plaintiffs, thus petitum 3 deserves to be granted;

Considering, that because the period and formality of the summons according to the law has been duly heeded and the lawsuit is not against the law and reasoned, then the Defendant who has been called appropriately but does not come to face the trial and does not have others face as his representative, must be declared absent and the lawsuit granted with *verstek* entirely ;

Considering that because plaintiff's lawsuit was granted and defendant was on the losing side, defendant was sentenced to pay the cost of this case. Taking into account Article 19 letter f of Government Regulation No. 9 of 1975 concerning The Implementation Regulation of Law No. 1 of 1974 concerning The Principles of Marriage, Article 149 RBg and other regulations concerned.

1. Judge's Ruling

As for the decision of the Panel of Judges on the study of Decision Number 75 / Pdt.G / 2021 / Pn Smr, namely as follows :

- a. Declaring Terguga to have been properly called but not present;
- b. Granting Plaintiff's lawsuit for the entirety with *Verstek*;
- c. Declaring marriage between Plaintiff and Defendant registered with Samarinda City Civil Records Office with marriage certificate quotation number 6272-KW-24042020-0001 dated April 24, 2020, breaking up due to divorce with all legal consequences;
- d. Stated that FRANSISKA's child CAROLINE LIMBONG, a woman born in Samarinda on August 14, 2019, and MORENO BENEDICT LIMBONG, a male born in Samarinda on March 10, 2021, remain in the care and maintenance of Plaintiff;
- e. Punishing Defendants to finance the needs of plaintiffs and defendants, namely FRANSISKA CAROLINE LIMBONG and MORENO BENEDICT LIMBONG until adulthood;
- f. Ordering the Registrar of the Samarinda District Court or the appointed Official to send a copy of this ruling to the Office of the Population office and civil registry of Samarinda City, so that this break is recorded to the list intended for it;
- g. Punish the Defendant to pay a case fee of Rp 645,000.00 (six hundred forty-five thousand rupiah).

E. Analysis of Judge's Consideration Decision Regarding Child Custody Due to Parental Divorce Based on Case Decision Number : 75/Pdt.G/2021/Pn Smr

Based on the position of the case related to the divorce lawsuit between Alat Manulu, S.H. and Ginta Limbong, there are things that need to be discussed, namely related to custody of children or minors whose rights fall to their biological mothers. But in the ruling of this case who is entitled to have the right to the biological child, and the biological child is still a minor, and what causes custody of the child falls to the biological mother. What is the judge's consideration in deciding these rights.

According to Undang Law No. 23 of 2002 concerning Child Protection, a child is someone who is not yet 18 (eighteen) years old including children who enter the womb ([Nomor 23, 2002](#)). We understand that children's bawha is a trust and gift from God Almighty, as a reaper of the family even for the nusa nation and state. Therefore, the child is a figure who has deserved to get more serious attention from all aspects of life. In general, children are individuals who are still immature related to individuals physically, mentally, and socially.

Many cases related to child custody, namely fighting each other for custody of children. Child custody is a child's right to protection and maintenance. Although in the end the child's right

becomes the obligation of one of the fathers or mothers to take care of the child, the child must still get the right to be protected, loved completely and nurtured by both parents.

As for what we often hear in the life of the community, that custody of the child will fall to the mother jia child is not yet 17 years old. The right to care for an immature child due to the divorce of both parents is prioritized to the mother, and if the child has entered adulthood, the child can choose to whom between the father or mother. That the Court is in another position, which is about protecting the child. Consideration of child custody is very comprehensive, if the child is very comfortable and safe together with his father for reasons that have been years with his biological father, then there are legal facts that also show the child already feels protected by his father then when there is a case of possible custody of the child can be obtained by his father. Not all divorce cases if you have a minor, custody of the child goes to the mother. Basically the judge decides custody of the child to whom the child feels most secure and feels protected. Because, child custody is also the responsibility of both parents, both when the parents are still living harmoniously in the marriage bond and when they have experienced divorce.

If we look at case number 75 /Pdt.G/2021/Pn Smr, which is stated in his ruling that the husband is not eligible for custody of the child because of abusive and temperamental behavior and attitudes, often quarrels with his wife and often threatens his wife, then if the child is determined under custody of his husband, the child will get an act of physical violence by his father, This can affect the development of a child's soul. Children urgently need others, especially their biological parents to help develop the child's abilities, because the child is born with all his ignorance so that without the help of an adult child is unlikely to be able to achieve like his peers in general.

Based on this, children in their growth and development period must need maintenance, affection, a sense of security protected and a place for their development, children also have their own feelings, thoughts, desires that all require a loving adult to pay attention to the child's development period, because development in a child is the basis for the next development period. But in this case, the author agreed with the decision of the Panel of Judges which stated that for the right of the child to fall to the Plaintiff as his mother, not to the Defendant.

In the decision of case number 75/Pdt.G/2021/Pn Smr, there is harmonization, systematization, consistency, and strong synchronization related to law No. 1 of 1974 concerning Marriage, Law No. 23 of 2002 concerning Child Protection, especially with regard to parental power over children after divorce.

Based on the following norms, it can be concluded, that after the occurrence of divorce between parents, it is still mandatory for the parents to stay together to provide the best for the child until the child grows up. In the legal context of the interests of children, then according to Law No. 23 of 2002 concerning Child Protection, it can be the main reference point for judges to decide a case;

If the State considers that the guarantee of the interests of the child is threatened due to the divorce of his parents, basically the State has the authority to take a policy to protect the interests of the child.

CONCLUSION

Based on the results of the above discussion, it can be withdrawn to conclude that the divorce law since the decision by the panel of judges is legally lukewarm and the wife has officially divorced, with all existing legal consequences. In childcare, in this case the husband and wife are still obliged to provide protection and maintain and educate their children, for the benefit of the child. As stipulated in the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, which explains that both people know that they are obliged to educate their children until the child is an adult or can stand alone, even though the parents are divorced.

Children experience a condition where they cannot accept the divorce of both parents. Divorce has an impact on child development, divorce affects the child's psychological which can make them

lose the love of both parents so that it is not uncommon to make the child's growth and development period hampered. Parents who choose to divorce will give the influence of the child's psychological pad, including children will feel less attention, protection and a sense of security and comfort. Feeling the affection of the father and mother also felt less due to not gathering in the same house.

Custody of case decision number 75/Pdt.G/2021/Pn Smr, fully custody of the child falls to the Plaintiff, in providing a sense of protection and nurturing into adulthood. However, regarding the financing of the child's life, all kinds of costs including education costs are the responsibility of the Defendant as the father of the children. The custody period ends when the children can already be asked and answered to whom they want to be together, either staying with the Plaintiff as the Mother or together with the Defendant as the Father.

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