

The Obligation of a Father in Fulfilling *Nafaqah Māḍiyah* and *Nafaqah Ḥaḍānah* for Children Post-Divorce in Relation to Relevant Legal Regulations

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Abstract

Nafaqah Māḍiyah and *Nafaqah Ḥaḍānah* are obligations of a father towards his children post-divorce, as regulated in the Compilation of Islamic Law (KHI) and Law Number 1 of 1974 on Marriage. This study aims to examine the legal consequences of a father's failure to fulfill these obligations based on the Bogor Religious Court Decision Number 1147/Pdt.G/2023/PA.Bgr. The research employs a normative juridical approach with a descriptive-analytical method, analyzing primary, secondary, and tertiary legal materials through library research. The findings indicate that the judicial panel provided legal protection by partially granting the plaintiff's claim, ordering past maintenance of Rp300,000,000 as compensation for the father's negligence since the divorce on November 14, 2017, and *Nafaqah Ḥaḍānah* of Rp7,000,000 per child per month with a 10% annual increase until the children reach 21 years of age. However, because the judge did not request additional evidence, such as the defendant's financial records, the amount of *Māḍiyah* alimony granted was far less than the plaintiff's claim of Rp854,924,200.

INTRODUCTION

Marriage is a regime in civil law that gives rise to complex legal events. Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on God Almighty, it is regulated in Law Number 1 of 1974 and its amendments in Law Number 16 of 2019 concerning Marriage (hereinafter referred to as the Marriage Law). Marriage is seen as a contract that has worship and social dimensions, which aims to form a *sakinah*, *mawaddah*, and *rahmah* family.¹ Marriage is considered valid and is carried out in accordance with the laws of each religion and belief, as previously explained. This provision is the legal basis for the enactment of Islamic Marriage Law in Indonesia as a special rule that applies to Indonesian citizens who are Muslims, apart from the general provisions stipulated in the Marriage Law. The majority of Muslims in Indonesia generally follow the teachings of the Syafi'i school of thought.²

One expression of happiness in a marriage is the presence of children as the rightful successors of a legal union. Children hold an important place in the family as they represent the bloodline and shared love of both parents. However, not all families can maintain harmony. When the relationship between husband and wife no longer functions according to their roles and responsibilities, various problems may arise, affecting the children as well. Even when the parents' relationship changes, children's rights to love, care, and having their needs met must still be upheld. Both father and mother remain responsible for providing proper care, education, and support for their children.³

Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (hereinafter referred to as KHI). Article 156 letter d states that all costs of *hadhanah* and child maintenance are the responsibility of the father according to his ability, at least until the child is an adult and able to take care of himself. Disputes arising regarding such maintenance that cannot be resolved between the former husband and wife, this has been further regulated in Article 156 letter e which states that the court can determine the amount of *hadhanah* maintenance that must be given to children who are not yet mature.

¹ Nabil Hukama Zulhaiba Arjani, et. al., "Pernikahan dalam Islam Membina Keluarga yang Sakinah Mawaddah dan Rahmah", *Ikhlās: Jurnal Ilmiah Pendidikan Islam*, Vol. 2, No. 1, 2025, hlm. 148.

² Hazar Kusmayanti, et. al., "Keabsahan Perkawinan Kuli Kawin di Desa Pamanukan Hilir Kabupaten Subang Dihubungkan dengan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Hukum Islam", *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, Vol. 7, No. 2, 2019, hlm. 1.

³ *Taherong*, "Problematika Kewarisan Akibat Perkawinan Tidak Tercatat Menurut Hukum Islam dan Perundang-undangan", *JURNAL AR-RISALAH*, Vol. 1, No. 2, 2021, hlm. 37.

According to Law No. 23 of 2002 and its amendments in Law No. 35 of 2014 on Child Protection (hereinafter referred to as the Child Protection Law) childcare is defined as the authority of parents to nurture, educate, maintain, protect, foster, and develop the potential of children in accordance with the child's religion, beliefs, abilities, and interests. In principle, parents' custody of children is not lost even if their marriage ends due to divorce.

Based on Article 41 letter a of the Marriage Law, both father and mother still bear the obligation to care for and educate their children by considering the best interests of the child. Disputes that arise regarding who will have the care of the child are resolved by the court. The rights of children as guaranteed in the article include the right to care and education from both parents. Despite a divorce, responsibility for children remains with both parties. Especially for fathers, the obligation to provide alimony still applies even though custody rights are in the hands of the mother. According to the Child Protection Law, childcare includes the responsibility of parents to nurture, protect, guide, educate, and support the development of children in accordance with their religious teachings, beliefs, interests, talents, and skills. Although parents are divorced, their relationship and responsibilities towards their children do not necessarily end.⁴

The negligence of either party in fulfilling their rights and obligations, whether husband or wife, can trigger a lawsuit to the court in accordance with Article 34 paragraph (3) of the Marriage Law, which is based on sharia and laws and regulations. The Religious Court is obliged to examine and hear the lawsuit, including cases of maintenance due to the husband's negligence, such as iddah maintenance, mut'ah, hadhanah, or madhiyah maintenance (past-due maintenance).⁵ The case in Decision Number 1147/Pdt.G/2023/PA.Bgr is the focus of this research, where the Plaintiff sued the Defendant for negligence in providing child maintenance after divorce in 2017, which includes maintenance and education costs. The focus of this research is on the relationship between children and their parents to ensure legal protection for children, after the parents' marriage ends due to divorce. Before conducting this final research project, the researcher carried out a review of other theses related to post-divorce maintenance. Two of them are: A case study entitled "Case Study of the Decision of the Salatiga District Court Number 102/Pdt.G/2021/PN.SLT Regarding the Filing of a Lawsuit Against the Biological Father for Failing to Provide Maintenance for the Child

⁴ Nyoto, et. al., "Pemenuhan Hak Anak Pasca Perceraian Orang Tua", *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi dan Pemikiran Hukum Islam*, Vol. 11, No. 2, 2020, hlm. 481.

⁵ Nazwa Fajria Poluan, et. al., "Pemenuhan Hak Hak Istri Akibat Putusnya Perkawinan", *PATTIMURA Law Study Review*, Vol. 1, No. 1, 2023, hlm. 72.

After Divorce, Reviewed from the Perspective of Islamic Law and the Marriage Law” written by Revaganesya Abdallah, Student ID Number 110110200192. A thesis entitled “Juridical Review of the Right to Maintenance for a Wife/Child from a Divorce Involving a Disobedient Wife Based on the Marriage Law and Islamic Law (Divorce of Indrayana Bidwy (Bopak) and Putri Mayangsari)” written by Sely Hadiany, Student ID Number 110110070257.

METHOD

The approach method used in this research is a normative juridical approach. Legal research with a normative juridical approach is carried out by examining library materials or secondary data as a reference for research by tracing regulations and literature related to the problem under study. The scope of library materials in this research is divided into three main categories. First, primary legal materials include laws and regulations governing nafaqah madhiyah and nafaqah hadhanah, such as statutory provisions applicable in Indonesia. Second, secondary legal materials include literature that explores the concept and implementation of nafaqah madhiyah and nafaqah hadhanah, including books, journals and scholarly articles that present in-depth analysis of judicial practice and related legal interpretations.

Third, tertiary legal materials consist of sources that provide additional guidance and explanation of primary and secondary legal materials, such as legal dictionaries, legal encyclopedias, and official guidelines from judicial institutions or related agencies. The author chose the case study of the Bogor Religious Court Decision Number 1147/Pdt.G/2023/PA.Bgr because it clearly represents a real legal issue in society concerning a father's obligation to provide nafaqah madhiyah and nafaqah hadhanah for his children after divorce. This case is particularly compelling as it highlights the disparity between legal provisions that mandate a father to support his children post-divorce and the reality in which such obligations are often neglected. Moreover, this case provides a concrete illustration of how judges assess and resolve child maintenance disputes based on the applicable legal framework, as well as the extent to which legal protection is afforded to children as the most vulnerable party in a divorce. The selection of this case is expected to contribute to the development of Islamic family law studies in Indonesia and serve as a reference to promote the enforcement of laws that prioritize the best interests of the child.

RESULT AND DISCUSSION

1. Determination of Madhiyah Maintenance and Hadhanah Maintenance by the Panel of Judges Based on Decision Number 1147/Pdt.G/2023 in Relation to Laws and Regulations

The provisions on maintenance in the Marriage Law on Marriage are regulated in Article 34 paragraph (1). This article states that the husband is obliged to protect his wife and fulfill all the needs of household life according to his ability. The Marriage Law does not stipulate the exact amount of nafkah that must be given, but only states that nafkah is adjusted to the husband's ability.

The dissolution of marriage is regulated in Article 38 of the Marriage Law which is caused by several things, including:

- a. Because of death;
- b. Due to divorce; or
- c. In a Court Decision.

Regarding madhiyah maintenance, the Marriage Law Article 41 letter c states that:

“The court may require the ex-husband to provide maintenance and/or determine an obligation for the ex-wife”.

The obligation that must be fulfilled by the man who must be fulfilled against his ex-wife is nafkah madhiyah, namely nafkah that has been neglected by her husband while still in marriage. This nafkah can only be obtained after there is a court decision after a lawsuit for madhiyah nafkah made by the ex-wife.⁶

Marriage is a means established by Allah Swt. to maintain the continuity of offspring. This principle is in line with Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads: “Every person has the right to form a family and continue their descendants through legal marriage.” Furthermore, Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia emphasizes:

“Every child has the right to survival, growth and development and the right to protection from violence and discrimination.”

Article 47 paragraph (1) of the Marriage Law states that “Children who have not reached 18 (eighteen) years of age or have never entered into marriage are under the authority of their parents as long as they are not deprived of their authority.” This provision is strengthened in KHI, specifically Article 98 paragraph (1), which states

⁶ Riyan Ramdani dan Firda Nisa Syafithri, “Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah, dan Mut’ah dalam Perkara Perceraian di Pengadilan Agama”, *ADLIYA: Jurnal Hukum dan Kemanusiaan*, Vol. 15, No. 1, 2021, hlm. 43.

that “Adulthood is 21 years old as long as the child is not physically or mentally disabled or has never entered into marriage.”

Divorce raises a variety of issues, ranging from the division of joint property to child custody disputes, including the obligation of maintenance for children. Post-divorce child maintenance is known as *hadhanah*. The rights and responsibilities of caring for children are a great mandate that must be carried out by both parents, both mothers and fathers, because children are entrusted by Allah SWT which must be guarded. Responsibilities that are not carried out properly will have legal consequences from Allah SWT.⁷

There are two types of legal protection, namely preventive and repressive legal protection. Preventive legal protection is provided by the government with the aim of preventing violations. This form of protection is contained in laws and regulations to prevent violations and provide restrictions on the implementation of obligations. Conversely, repressive legal protection aims to resolve disputes that have occurred and provide a deterrent effect to violators.⁸

Nafkah madhiyah and *nafkah hadhanah* are two fundamental issues in Indonesian family law, especially in the context of divorce. *Nafkah madhiyah* refers to the alimony that must be given to the ex-wife during the post-divorce *iddah* period, which aims to meet her needs in this transitional period, but in its development can also be sued for the fulfillment of children's *nafkah madhiyah*. Meanwhile, *nafkah hadhanah* relates to the costs of maintaining and caring for children who are the responsibility of the parents, emphasizing the importance of protecting the welfare of children after the termination of marriage.

Examining the obligation of a father to provide maintenance for a child after divorce in this case occurred as a legal result of the divorce that occurred between SMR (Mother/Plaintiff) and PYP (Father/Defendant) as stated in the Bogor Religious Court Decision Number 1147/Pdt.G/2023/PA.Bgr dated January 11, 2024. At the time of the divorce, the Plaintiff and Defendant had a child from the marriage, namely:

- a. MAP, a daughter born on March 24, 2011; and
- b. MAPP, a son born on January 25, 2023.

Both children are being cared for by the Plaintiff and the effect of the breakdown of the marriage on the status of the children and parents will not change in terms of

⁷ *Ibid.*

⁸ Zennia Almaida dan Moch. Najib Imanullah, “Perlindungan Hukum Preventif dan Represif Bagi Pengguna Uang Elektronik dalam Melakukan Transaksi Tol Nontunai”, *Privat Law*, Vol. 9, No. 1, 2021, hlm. 222.

maintaining and educating their children until the children marry, grow up, and can produce and look after themselves. It is appropriate for both parents to look after their children until the children can stand on their own. However, in reality the Defendant as a father did not carry out his obligation to provide maintenance to the child after the divorce so that the mother of the child objected and filed a lawsuit for post-divorce child maintenance against her former husband through the Religious Court as the guardian of the two children.

The scholars have agreed (ijma') that providing for children is an obligation that must be fulfilled by a father. This refers to the words of Allah SWT in QS At Thalaq verse 7, which states that a father still has an obligation to meet the needs of his ex-wife during the iddah period, in the form of housing (nafkah maskanah), daily maintenance (infaq), and wages (ujrah) for mothers who breastfeed their children. These three forms of fulfillment are the responsibility of the father or former husband. The obligation to provide for children, both in the form of living needs, and education costs, must still be fulfilled by the father, both when the household is still intact and after a divorce.⁹

Based on Decision Number 1147/Pdt.G/2023/PA.Bgr, the Plaintiff filed a lawsuit against the Defendant for negligence in fulfilling his obligation to provide for the livelihood and education of their two biological children since their divorce on November 14, 2017. The Plaintiff states that the Defendant has failed to provide maintenance covering the children's daily living expenses, as well as maintenance for educational purposes, thereby depriving the children of the opportunity to receive adequate education. The plaintiff is seeking past child support in the amount of Rp854,924,200 (eight hundred fifty-four million nine hundred twenty-four thousand two hundred rupiah) to cover the costs of education, tutoring, and living expenses for the children from November 2017 to August 2023, as well as monthly child support of Rp10,000,000 per child, excluding education and healthcare costs, with an annual increase of 10% until the children reach the age of 21. The Plaintiff states that since the dissolution of the marriage, all living and educational expenses for the children have been fully borne by the Plaintiff, who faces financial difficulties due to the lack of a steady job. As a result, the Plaintiff has been forced to rely on unstable sources of income to meet the children's needs, while the Defendant, as the biological father with a profession that generates substantial income,

⁹ Revaganesya Abdallah, et. al., "Pengajuan Gugatan terhadap Ayah Kandung atas Tidak Diberikannya Nafkah untuk Anak Pasca Perceraian Ditinjau Menurut Hukum Islam dan Undang-Undang Perkawinan (Studi Kasus Pputusan Pengadilan Negeri Salatiga Nomor 102/Pdt.G/2021/PN. SLT", *Jurnal Hukum dan Sosial Politik*, Vol. 2, No. 1, 2024, hlm. 378.

has failed to fulfill his maintenance obligations, thereby worsening the children's financial and educational conditions.

Next, the researcher will examine the provisions of the applicable laws and regulations. Based on the Plaintiff's claim in Decision No. 1147/Pdt.G/2023/PA.Bgr, the Defendant's failure to fulfill their obligation to provide child support for their two biological children, MAP and MAPP, since the divorce on November 14, 2017, constitutes a violation of the children's right to a decent life, particularly in terms of education. This is contrary to Article 9(1) of Law No. 23 of 2002, which states:

“Every child has the right to education and teaching in order to develop their personality and intelligence in accordance with their interests and talents.”

This provision is reinforced by Article 14 paragraph (2) letter b of the Child Protection Law, which states:

“In the event of separation as referred to in paragraph (1), the child shall retain the right to: (b) receive care, maintenance, education, and protection for their growth and development from both parents in accordance with their abilities, talents, and interests.”

In addition, the obligation of parents to fulfill the rights of children is regulated in Article 26 paragraph (1) letter d of the Child Protection Law, which reads: “Parents have the obligation and responsibility to: provide character education and instill moral values in children.” Children are regarded as a trust from Allah SWT to parents, who must educate them and fulfill their needs so that they can develop as inheritors of Islamic values, thus ensuring that children's rights are guaranteed and protected.¹⁰

The KHI also regulates the obligations of parents, particularly fathers, to provide for their children, as stated in Article 105(c), which reads: “the costs of maintenance shall be borne by the father.” The plaintiff claims that the defendant, as the biological father who is a specialist doctor, has not provided for the child's livelihood or education since the dissolution of the marriage, resulting in all the child's expenses being borne by the plaintiff, who faces financial constraints due to not having a steady job. As a result, the children are at risk of not receiving adequate education and maintenance, which clearly violates the aforementioned legal provisions.

Based on Decision Number 1147/Pdt.G/2023/PA.Bgr, the Defendant has failed to fulfill his obligations and responsibilities as the biological father of his two children, MAP and MAPP, particularly in providing financial support for their maintenance since the

¹⁰ Nunung Rodliyah, “Akibat Hukum Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan”, *Keadilan Progresif*, Vol. 5, No. 1, 2014.

divorce on November 14, 2017. This failure is contrary to Article 105(c) of the Indonesian Civil Code (KHI), which states that the costs of maintaining a child remain the responsibility of the father. According to the Maliki school of thought, the father's obligation to provide financial support for the child applies from birth until the child reaches adulthood, even if the mother has custody (hadhanah), with the full cost of financial support being the responsibility of the father.

This obligation is reinforced in Article 80 paragraph (4) of the KHI, which reads:

"In accordance with his income, the husband shall bear: a) Maintenance, clothing, and accommodation for the wife; b) Household expenses, care costs, and medical expenses for the wife and children; c) Education costs for the children."

Furthermore, Article 156 letter d of the KHI stipulates that:

"All costs of hadhanah and child support are the responsibility of the father according to his ability, at least until the child is old enough to take care of himself (21 years old)."

Decision Number 1147/Pdt.G/2023/PA.Bgr, the obligations of parents after the dissolution of marriage are regulated in Article 41 letter b of the Marriage Law, which reads:

"The father is responsible for all maintenance and education costs required by the child; if the father is in fact unable to fulfill this obligation, the Court may determine that the mother shall also bear these costs."

This provision confirms that the Defendant, as the biological father of MAP and MAPP, has full responsibility for financing the maintenance and education of his children after the divorce on November 14, 2017, unless he is proven to be unable to do so, in which case the court may impose part of the costs on the Plaintiff as the mother. The legal consequences of divorce regarding child support, as outlined in Article 41(b) of the Marriage Law, indicate that the father's financial obligations remain in effect even if custody or care of the children is assigned to another party, such as the mother, grandparents, or another designated party.¹¹

The plaintiff stated that the defendant had failed to fulfill his obligation to provide for the child's living expenses and education since the marriage ended, forcing the plaintiff to bear all of the child's expenses from an uncertain source of income, even though she had custody of the child. This constitutes a clear violation of the father's obligation to provide for the child's needs, as mandated by Article 41(b) of the Marriage Law, which

¹¹ Dian Ayu Safitri dan Muh. Jufri Ahmad, "Tanggung Jawab Orang Tua atas Nafkah Pasca Perceraian", *COURT REVIEW: Jurnal Penelitian Hukum*, Vol. 4, No. 1, 2024, hlm. 37.

emphasizes that the father's responsibility is not severed by the custody rights held by another party.

Madhiyah alimony is usually given to the ex-wife during the iddah period, not to the children. In practice, courts sometimes use it for past child support if the father is negligent, with adjustments based on financial ability.

Based on Supreme Court Jurisprudence Number 608/K/AG/2003, it is explained that child support is *lil intifa'* or "for benefit" and not *lit tamlik* or "for ownership," so that child support cannot be sued because the father's negligence does not result in a debt that can be claimed.¹² This view is based on the nature of children's inheritance, which is intended to provide direct benefits, not as a right of ownership. This differs from the statement in Supreme Court Circular Letter No. 2 of 2019 in the Religious Chamber's Legal Formulation letter a, which specifically states that:

"Past maintenance (*nafkah madhiyah*) for a child neglected by his father may be claimed by his mother or the person who actually cares for the child."

This constitutes a legal breakthrough that allows for alimony claims for children based on the best interests of the child. Based on the above information, alimony is not technically intended for children, as this term refers to alimony for the former wife during the iddah period in accordance with Article 149 letter b of the KHI. Substantively, past maintenance for children may be granted after divorce pursuant to Article 41(b) of the Marriage Law, Article 105(c) and 156(d) of the KHI, and SEMA No. 2 of 2019, which explicitly permits claims for past maintenance for children by the mother or the custodial party, taking into account the child's best interests.¹³

Based on Decision Number 1147/Pdt.G/2023/PA.Bgr, the panel of judges at the Bogor Religious Court issued a ruling granting part of the Plaintiff's claim against the Defendant regarding the obligation to provide child support for their two children after the divorce. The court ordered the Defendant to pay past child support in the amount of IDR 300,000,000, intended as compensation for the costs of maintaining and educating the children that the Plaintiff has borne since the divorce until August 2023, or in this case, past child support, although this amount is lower than the Plaintiff's claim of Rp854,924,200 (eight hundred fifty-four million nine hundred twenty-four thousand two hundred rupiah).

¹² Nuriel Amiriyyah, "Nafkah Madliyah Anak Pasca Perceraian: Studi Putusan Mahkamah Agung Republik Indonesia Nomor 608/K/AG/2003", *Jurisdictie: Jurnal Hukum dan Syariah*, Vol. 6, No. 1, 2015, hlm. 3.

¹³ Muhammad Syafqa Abda, et. al., "Nafkah Madiyah Anak dalam Perspektif Maslahat Mursalah Najmuddin At-Thufi", *Mitsaqan Ghalizan: Jurnal Hukum Keluarga dan Pemikiran Hukum Islam*, Vol. 2, No. 2, 2022, hlm. 8.

The judge ruled that the Defendant must provide child support of Rp7,000,000 per month for both children, excluding education and health costs, with a 10% increase each year until the children reach the age of 21 or become independent, to ensure their future needs are met. This ruling also orders the Defendant to pay the litigation costs in accordance with the law, while the Plaintiff's other claims were not granted, reflecting the judge's consideration of the Defendant's financial capacity and the children's needs based on principles of fairness and appropriateness.

The father is obligated and responsible for all maintenance and education costs required by the child after the termination of the marriage due to divorce.¹⁴ A father who has been working but whose income is insufficient or who is in special circumstances still has an obligation to provide for his children, but this obligation may be adjusted. This is in accordance with the judge's consideration in the Decision, which explains that at the time of the divorce, the Defendant was still a general practitioner, not a specialist, and only became a specialist three years after the lawsuit was filed. The judge also considered that during the period of specialized education, the Defendant faced financial pressure, including tuition fees borne by the Defendant's parents. The judge still deemed the Defendant negligent in providing maintenance since 2017, but the amount of past maintenance to be paid was reduced due to the Defendant's financial constraints during that period.

In addition, regarding child support, the judge explained that the amount of Rp10,000,000 per child per month was too high and set Rp7,000,000 per child per month with a 10% increase per year as a reasonable amount based on the Defendant's ability, considering that the Defendant has other obligations to his new family. The researcher assessed that the court had provided legal protection to the Plaintiff's children in this decision. The judge provided legal protection by recognizing the children's right to maintenance, which reflects compensation for the Defendant's negligence since the divorce. The determination of Rp300,000,000 demonstrates the judge's effort to enforce Article 41(b) of the Marriage Law and Article 105(c) of the KHI. The judge also ordered the payment of maintenance in the amount of Rp7,000,000 per child per month, with an annual increase of 10%, demonstrating a commitment to protect the children's right to a decent standard of living until they reach the age of 21 or are able to support themselves, in accordance with Article 14(2)(b) of the Child Protection Act and Article 156(d) of the KHI.

¹⁴ Elsa Aulia Dewi, "Tanggung Jawab Ayah terhadap Pemeliharaan Anak Setelah Suami Mengucapkan Ikrar Talak", *University of Bengkulu Law Journal*, Vol. 6, No. 2, 2021, hlm. 147.

2. The Application of Evidence in Child Support Lawsuits Based on Decision Number 1147/Pdt.G/2023 Reviewed from Civil Procedure Law

Civil procedural law covers five types of evidence, namely documents, witnesses, presumptions, confessions, and oaths. This study emphasizes the implementation of the court in the decisions examined, focusing on the use of documentary and witness evidence.

Judgment No. 1147/Pdt.G/2023/PA.Bgr presents the application of evidence in a child support lawsuit in accordance with the principles of civil procedure law applicable in the Religious Court, with a focus on the evidence submitted by the Plaintiff to prove the Defendant's negligence in providing child support since the divorce on November 14, 2017. Details of the evidence submitted by the plaintiff, which consisted of 17 written evidence and three witness statements. Likewise the defendant submitted 9 written evidence and two witness statements.

The evidence submitted by the Plaintiff, consisting of Evidence P.1 through Evidence P.17, has been verified against the originals, properly stamped, and complies with the provisions of Article 2(3) of Law No. 13 of 1985 as amended by Article 1(a) and (f) in conjunction with Article 2(1) of Government Regulation No. 24 of 2000 in conjunction with Articles 3 to 5 and Law No. 10 of 2020 on Stamp Duty, thereby constituting valid legal evidence and admissible as evidence in court. The written evidence has also been supported by the statements of three witnesses submitted by the Plaintiff, who essentially explain that:

- a. The Plaintiff is indeed the former wife of the Defendant;
- b. The Plaintiff and the Defendant have been blessed with two children, after which they divorced, and both children are under the custody and care of the Plaintiff;
- c. At the time the divorce decree between the Plaintiff and the Defendant was issued, no decision had been made regarding who would have custody of the two children;
- d. After the divorce, the Defendant still frequently visited the two children and often took them out for outings;
- e. The Defendant has never provided regular living expenses for the two children, but often gives them pocket money.

On the contrary, the Defendant has also provided written evidence, namely T.1-T.9, all of which have been verified against the originals, have been duly stamped, and comply with the provisions of Article 2(3) of Law No. 13 of 1985 as amended by Article 1(a) and (f) in conjunction with Article 2(1) of Government Regulation No. 24 of 2000 in conjunction with Articles 3 to 5 and Law No. 10 of 2020 on Stamp Duty, thereby

constituting valid legal evidence and admissible as evidence in court. Based on the written evidence and witnesses presented, the judge found that the Plaintiff was indeed the former spouse who had divorced, so the court ruled that the Plaintiff and Defendant had legal standing in the case.

The alimony demanded by the Plaintiff is in the form of past alimony and maintenance as mentioned above. The Defendant responded to the Plaintiff's claim by stating that:

- a. The Defendant denies that he has failed to provide financial support for the children;
- b. To date, the Defendant has always provided financial support in the form of material goods and affectionate attention directly, without going through the Plaintiff;
- c. The Defendant's affection and attention toward the children include fulfilling their other needs, providing mobile phone facilities, and a personal driver to pick them up and drop them off as needed;
- d. The Defendant has set up savings accounts for each child;
- e. he Defendant will continue to provide financial support to the children through savings accounts in the children's names or by giving money directly to the children, to facilitate supervision of the children, as has been the practice and as the Defendant has done so far.

To support his arguments, the Plaintiff has submitted written evidence in the form of a summary of formal and informal education expenses in the form of tutoring for the Plaintiff's two children with the Defendant, which is supported by the testimony of three witnesses submitted by the Plaintiff, who essentially stated that since the Plaintiff and the Defendant divorced, the Defendant has never provided financial support for their two children. On the other hand, the Defendant has also submitted evidence regarding the provision of child support to their children based on the testimony of two witnesses presented by the Defendant, who stated that, to their knowledge, the Defendant frequently provided child support to their two children, but did not know the exact amount.

The panel of judges emphasized that the maintenance that must be provided by the Defendant to his two children is based on Article 41(b) of Law No. 1 of 1974, which states that the father is responsible for all costs of maintenance and education necessary for the child. If the father is unable to fulfill this obligation, the Court may determine that the mother shall also bear these costs; and Article 105(c) of the KHI, which states that the costs of maintaining a child are borne by the father. In both of these provisions, the court

emphasized that child support refers to the costs incurred for the child, including daily living expenses, education costs, and healthcare costs, all of which are the responsibility of the father or biological father of the child.

The panel of judges in this case used Article 156(d), which stipulates that all child support and maintenance costs are the responsibility of the father according to his ability, as the basis for the "Defendant/Father's Ability," which was then used as an argument by the Defendant and requested to be considered by the panel of judges based on the Defendant's ability. The court then considered this in light of the written evidence and witness statements from both the Plaintiff and the Defendant, emphasizing that the Defendant had not provided data regarding his monthly income, which could serve as a basis for determining the "Financial Capacity of the Defendant."

Furthermore, the panel of judges considered the salary of the Plaintiff's second witness, who was a civil servant and practiced as a dentist in two hospitals, compared to the Defendant, who was not a civil servant but practiced as a neurologist in three hospitals. The panel of judges concluded that the Defendant had a higher income than a dentist practicing in two hospitals.

Based on these considerations, the court has determined that the defendant is liable and obligated to provide past child support for his two children in the amount of Rp300,000,000 (three hundred million rupiah) and monthly child support of Rp7,000,000 (seven million rupiah) excluding education and healthcare costs, with an annual increase of 10%. Although the court's decision provides legal protection for the children as explained in the previous subsection, the researcher assesses that the amount of maintenance to be paid is significantly reduced compared to the claim filed by the Plaintiff.

By examining the process of proving compliance with civil procedure law in Indonesia, several things can be seen in its application. With regard to the burden of proof as stipulated in Articles 163 and 164 of the HIR in conjunction with Article 1865 of the Civil Code, the Plaintiff bears the burden of proof for claims of past alimony and custody. The Plaintiff submitted 17 written pieces of evidence and 3 witnesses to prove the Defendant's negligence and the expenses incurred for the child, in accordance with the principle of "actori incumbit probatio" or "he who alleges must prove," while the Defendant was also given the opportunity to refute the claims by presenting 9 written pieces of evidence and 2 witnesses.

Additionally, the court was given equal opportunity to present evidence from both the Plaintiff and the Defendant, in accordance with the principle of *audiatur et altera pars* or "hear both sides."

Regarding the amount of alimony that the Defendant is required to pay, which has decreased significantly from Rp854,924,200 (eight hundred fifty-four million nine hundred twenty-four thousand two hundred rupiah) to Rp300,000,000 (three hundred million rupiah), the court did not provide a detailed explanation of its reasoning, which could lead to inconsistencies and a lack of transparency in the court's decision. The comparison made by the court also appears highly abstract, merely stating that the Defendant has a new family to support and is facing financial pressure, as explained in the previous subsection. There are no specific factual or numerical comparisons in the decision, which could result in legal defects.

The judge stated that there was no definite data on the defendant's income, only estimates based on his profession and witness statements. This contradicts the spirit of Article 156(d) of the KHI, which emphasizes that alimony must be in accordance with the father's ability and is explicitly explained in SEMA Number 3 of 2018, which requires judges to explore economic facts.

The judge did not use his authority as stipulated in Article 153 of the HIR to request additional evidence such as the Defendant's pay slips or financial reports from the hospital where the Defendant worked. This can be considered as not supporting the inquisitorial principle applied in the Religious Court, which explains that judges must actively seek material truth.

In addition, the Plaintiff also submitted evidence P.17, namely photographs of the Defendant's house and vehicle, to prove his financial capacity, but this was rejected because there was no indication of when the photographs were taken. The judge did not request alternative evidence, such as records of the Defendant's asset ownership, which could help assess financial capacity more accurately. This could potentially undermine the principle of fairness under Article 2 of Law No. 7 of 1989, which emphasizes that decisions must be fair and based on facts.

CONCLUSION

Based on Decision Number 1147/Pdt.G/2023/PA. Bgr, the court grants legal protection for past maintenance in the amount of IDR 300,000,000 as compensation for the Defendant's negligence since the divorce on November 14, 2017, and monthly maintenance of IDR 7,000,000 with an annual increase of 10% until the child reaches the age of 21, in accordance with Article 41(b) of the Marriage Law, Article 105(c) and Article 156(d) of the Islamic Family Law, and SEMA No. 2 of 2019, although the past maintenance is lower than the Plaintiff's claim (Rp854,924,200) due to consideration of the Defendant's financial capacity, However, the application of evidence in accordance with Articles 163

and 164 of the HIR in conjunction with Article 1865 of the Civil Code, with 17 pieces of written evidence and three witnesses from the Plaintiff and 9 pieces of written evidence and 2 witnesses from the Defendant, was hampered by the absence of data on the Defendant's income, and the judge did not exercise the authority under Article 153 of the HIR to request additional evidence, which could weaken the inquisitorial principle and fairness.

Based on the above conclusions, the court is advised to actively exercise its inquisitorial authority by requesting evidence such as the Defendant's financial statements, and the Religious Court should enhance the transparency of its decisions by detailing the reduction in maintenance to ensure justice and legal certainty in accordance with Article 156(d) of the KHI and SEMA No. 3 of 2018.

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