

IMPLEMENTATION OF JUDGES' DECISIONS ON CHILDREN AFTER MARRIAGE DIVISION IN THE PURUSA SYSTEM

A A. Mas Adi Trinaya Dewi
Faculty of Law, Dwijendra University
e-mail : agungmasadi@gmail.com

ABSTRACT

Dissolution of a marriage or divorce will result in not only changing the rights and obligations of the husband and wife, but also the rights and obligations of the children. The formulation of the problem raised in this study is how is the implementation of the judge's decision on children after the breakup of a marriage due to divorce in the purusa system and what are the obstacles encountered in implementing the judge's decision on children after the breakup of a marriage in the purusa system. This type of research is empirical legal research that focuses on people's behavior and requires primary data as primary data and secondary data or legal materials in the form of existing laws and regulations. In this research, it is contained in the provisions of Law Number 1 of 1974 concerning Marriage and Law Number 23 of 2002 concerning Child Protection Obligations and responsibilities of family and parents are regulated in Article 26 paragraph (1) and (2) of Law Number 23 2002 concerning Child Protection. This study uses existing laws, takes articles and books as well as case examples. The conclusion of this study is the decision of the Honorable Judges, that divorce does not break the relationship between the child and both parents, that for the sake of the child, both parents must still play their maximum role according to their abilities regardless of who has custody of the child in question. The purusa issue may be taken into consideration in the decision by obliging the mother to always bring the child to the middle of the father's family when there is a traditional ceremony related to the purusa. Of course, both parties must learn to be heartened still for the sake of the child and understand what is happening. He can choose for himself who to entrust his future with, whether to the father or mother.

Keywords: *Divorce, Purusa System*

1. INTRODUCTION

The Law of the Republic of Indonesia Number 1 of 1974 concerning marriage or laws and regulations do not clearly stipulate, joint custody is only based on an agreement between the plaintiff and the defendant, whether expressed orally or in writing. In order to avoid conflicts in the future, it is best if the agreement is made in an authentic deed.

Hindus have a life goal called Catur Purusa Artha, namely Dharma, Artha, Kama and Moksha. This cannot be realized all at once but gradually. The stages for realizing the four goals in life are called Catur Asrama. At the Brahmachari hostel stage, the goal of life is prioritized to get the Dharma. Grhasta Asrama prioritizes realizing artha and kama. Whereas in the Wanaprasta Dormitory and Sanyasa Dormitory, the goal of life is prioritized to achieve moksha.

Marriage or Wiwaha is an effort to realize the life goal of Grhasta Asrama. The main task of the Grhasta Asrama according to Agastya Parwa's ejection is to create a life called "Yatha Sakti Kayika Dharma " which means carrying out the Dharma with one's own abilities. So a Grhasta must really be able to independently realize the Dharma in this life. This independence and professionalism must really be prepared by a Hindu who wants to pursue marriage.

Balinese people generally adhere to a patrilineal marriage system, which takes the form of an ordinary marriage or nyentana. In an ordinary marriage, the girl leaves

her house and is invited to the groom's family home. Whereas in a nyentana marriage, the bridegroom whose status changes to a woman (predana) joins the family of the bride who has been confirmed as a man (purusa). The main purpose of nyentana marriage is to make sure that the wife (as daughter) obtains a position as sentana purusa (male) or continuation of the lineage within her family.

Girls in the purusa system are usually sentanas with a weak or unstable status and cannot stand upright in their original home. In addition to the forms of marriage above, in Bali there is also a form of marriage in gelahang, namely marriage between a man and a woman who are both purusa (male) status.

The family system in the purusa system, having male offspring in the family is very important. It is the position of the son who functions as the continuation of the lineage. Boys as continuation of this lineage are called sentana. The importance of the values of sons in a family is in accordance with Hindu religious teachings which are often said to animate the life of the Balinese people, including in the implementation of their customary law. In the view of the Balinese people, sons do have important values in carrying out life in the real world, both in family life and social. In boys hang hope as the next generation; maintain, and provide a living if their parents are no longer able to carry out religious ceremonies (such as: cremation, and others). As well as always serving the ancestors who live in sanggah or merajan, and replacing the position of the father in the community if the child is married (becoming krama banjar or krama desa).

The position of sons as mentioned above is different from that of daughters, both deha (girls) and old deha (old virgins, women who do not marry until they are old). Expectations or responsibilities are not hung on girls as are the responsibilities of boys as described above, because girls, according to their nature, will one day marry. The principle in purusa marriage is that with that marriage a daughter will follow her husband and legally break her relationship with her biological parents and relatives from her family of origin.

If the purusa family system does not have sons, it will create a condition called ceput or butt, a condition where a family (dynasty) does not have a continuation of lineage. To work around this or avoid the advantage is by way of steady and sentana paperasan (adopted child) which must be in accordance with the applicable procedures.

Regarding the status of children after divorce in the purusa system, the decision of the Denpasar District Court Number: 527/Pdt.G/2012/PN. Dps stated that:

1. Declare that the Defendant who has been duly summoned to appear before the court is not present.
2. Granted the plaintiff's claim entirely with verstek.
3. The status of the child is under the care (custodial rights) of his biological father as the successor of the lineage (marga) of the plaintiff, punishing the defendant to pay the costs incurred in this case.

Based on the background of the problems mentioned above, the problems that arise can be raised, namely: 1) How is the implementation of the judge's decision regarding children after the marriage dissolution in the purusa system? And 2) what are the obstacles faced in applying the judge's decision to children after the marriage dissolution in the purusa system?

This scientific work uses empirical legal research methods by: 1) experience and observation of cases in the field, 2) Judge's decisions and Interviewing in court after a judge's decision on children after a marriage dissolution in the purusa system, and 3) literature and regulations regarding Balinese customary law.

The type of research that the authors apply is empirical legal research that focuses on people's behavior and requires primary data as primary data and secondary data or legal materials in the form of existing laws and regulations. The nature of research in writing scientific papers is descriptive in the form of cases and statutory approaches including the Balinese customary law system and explanatory in the aspect of empirical research, namely wanting to know the influence or impact of a variable and existing legal aspects.

The data collection techniques used in this study are as follows: 1) through an interview process with sources who have experience and knowledge about divorce cases and the Balinese traditional marriage system, especially the purusa system, 2) through a process of direct observation in court, 3) Literature Study. The author collects data to answer the problems that have been formulated by analyzing library materials related to the problems studied, both sourced from primary, secondary and tertiary legal materials.

2. RESEARCH METODOLOGY

Based on the purpose of marriage, it is to form a happy and eternal family (household) as described above, but it is not uncommon for the marriage mahligai to be in accordance with what is expected, that is, the parties agree to always live together in search of happiness. or welfare both materially and spiritually together with their offspring until the end of their lives, but often such desires run aground in the middle of the road due to various things.

3. RESULTS AND DISCUSSION

Through Law Number 1 of 1974 concerning marriage regarding the dissolution of a marriage contained in Chapter VIII article 38 which consists of three types, namely:

- a. Because of death;
- b. Due to divorce;
- c. On the decision of the Court.

Furthermore, regarding the dissolution of this marriage in the Civil Code, we can see in book I Title X article 199 where it is stated in a limitative manner that this marriage is terminated because:

- a. Because of death ;
- b. Due to the absence of a husband and wife for ten years and followed by a new marriage after that by the wife or husband in accordance with the provisions in the fifth part of Chapter 18 (eighteen);
- c. Because the judge's decision after the separation of tables and beds (divorce hanging) and the registration of the divorce in the civil registration register in accordance with the provisions;
- d. Because divorce is in accordance with the provisions.

After we know a number of things regarding the dissolution of marriage both according to Law Number 1 of 1974 concerning marriage and according to the Civil Code, finally the author only limits it to the subject of discussion as follows:

- a. Marriages that break up because of death;
Regarding death, that is, with the death of one of the parties (husband or wife) all marital ties will automatically end, therefore marriages that break up due to death do not need to be explained further because the problem is clear.
- b. Marriages that break up because of a judge's decision after a table or bed is separated;

For married couples who cannot live together due to various reasons, but according to the beliefs of both parties, they still have objections to a divorce, then by law there are possibilities to ask for a table and bed separation, because the separation institution this table and bed is a way of solving in overcoming the oddities that occur in household life. Even though this table and bed separation can be requested with the consent of both parties (husband and wife), to request a table and bed separation must also be accompanied by valid reasons as stated in Article 233 of the Civil Code which reads as follows:

"In the event that there are events that can be used as reasons to demand a divorce from marriage, the husband and wife have the right to demand a

separation of the table and the bed. Claims for such separation may also be advanced based on acts that exceed the limits, abuse and gross humiliation, committed by one party against the other party.

From the wording of the article it turns out that even though the two parties (husband and wife) live separately does not mean that the two parties are separated from marital ties or in other words that the marriage here has not been broken up (dissolved), but with separate tables and beds. It only has the consequence that the husband and wife are released from their obligation to live together (in the sense of living in the same house). For this reason, both parties are always given the opportunity to make peace again or to live together again.

However, if it turns out that the two parties cannot reconcile within a period of more than five years, then both parties can each request the judge to decide the separation of the table and bed followed by dissolution of marriage (marriage dissolution). , or we can see more details about this problem from the provisions contained in article 200 of the Civil Code which reads as follows:

"If a husband and wife have separated table and bed, either for one of the reasons mentioned in article 233, or at the request of their own disappointment, and the separation has gone on for a full five years with no peace between the two parties, then each of them is freely appeal to the other party before the court and demand that the marriage be dissolved".

Then, if the judge grants the demands of both parties or in other words the judge decides that the separation of the table and the bed will result in the dissolution of the marriage, then within the stipulated time period it must be registered with the civil registration officer at the place where the marriage took place (name registration must be done within six months). month after the date of the judge's decision). And if the registration within the time specified by this Law is neglected, then the decision to dissolve the marriage loses its power, which means that according to the law the marriage relationship is still going on. Therefore, the method of dissolving a marriage after a table and bed separation occurs in Indonesia is rarely used on the grounds that the procedure is too convoluted and takes too much time.

c. Marriages that break up due to divorce.

In contrast to the dissolution of marriage after there has been a separation of the table and bed where there cannot be such basic disputes there may even be a will in it from both the husband and the wife's side to end the marriage. So in marriages that break up because of divorce, basically it is prohibited with the agreement of both parties (article 208), but the divorce is always preceded by quarrels or fundamental disagreements in the sense that there is no match between the two parties.

As what the author has explained earlier, although the purpose of marriage is to form a happy and eternal family (household), it is not uncommon in practice that a marriage is forced to fail which is not caused by the death of one of the parties, but due to the failure of both parties in building their household, whether due to the lack of harmony due to the lack of mutual understanding or differences in understanding between the two and it could be due to economic difficulties and illness suffered by one of the parties resulting in the inability of that party to carry out its obligations.

If in a marriage there are such conditions, then of course there will be cracks in the husband and wife's marriage. If the rifts are so bad that in any way there is not a single good left, then the only recourse they can take is divorce.

Divorce is the dissolution of a marriage when the parties are still alive based on justifiable reasons and determined by a judge's decision. So with this divorce their marriage broke up and between them there is no longer a husband and wife relationship, the logical result is that they are freed from

all their obligations as husband and wife. Furthermore, for a divorce each party cannot simply come to court and ask that the marriage is dissolved but there must be certain reasons listed in a limitative manner in the law, meaning that only on the basis of reasons as determined by the parties can request a divorce.

The problem of handling divorce must be directed at efforts to maintain as far as possible the needs of marriage and sacred values from a marriage must be upheld, so even though a request for divorce is not prohibited by law, in essence a divorce cannot be done easily or arbitrarily. For this reason, there must be sufficiently strong reasons so that in any case it is no longer possible for the marriage to continue.

The reasons for divorce according to the Civil Code are contained in article 209 which is stated as follows:

- a. Adultery (overspel);
- b. Leaving the residence together on purpose;
- c. Punishment with imprisonment for five years or with a more severe sentence, pronounced after marriage;
- d. Seriously injuring or maltreating, committed by the husband against the wife or vice versa by the wife against her husband in such a way as to endanger the life of the injured or abused party, or resulting in serious injuries.

This divorce issue is as regulated in the Civil Code (as mentioned above), with the enactment of the Marriage Law Number 1 of 1974 concerning marriage which was promulgated on January 2, 1974 and came into force effectively on October 1, 1975, all the provisions regarding marriage and divorce as regulated in the Civil Code are no longer valid, or we can see the details in the provisions of Article 66 of Law Number 1 Year 1974 which reads as follows:

"For marriage and everything related to marriage based on this Law, with the coming into effect of this Law the provisions regulated in the Civil Code (Burgelijk Wetboek), the Indonesian Christian Marriage Ordonatie (Huwelijks ordonatie christen Indonesiaers: 1933 No. 74). mixed marriage regulations (Regeling op de gemeng de huwelijken S 1898 No.158), and other regulations governing marriage insofar as they have been regulated in this Law, are declared no longer valid."

Based on the sound of Article 66 as mentioned above, we can conclude that the provisions regarding divorce marriages regulated in the Civil Code do not mean that they are not valid in their entirety, but what does not apply is only regarding anything that has been regulated by Law Number 1 of 1974 regarding the marriage.

A. Implementation of Judge's Decisions Against Children Due to Divorce

Among the problems that need to be resolved as a result of the end of a marriage, especially those that become the implications of a judge's decision on a child as a result of divorce, both because the husband and wife divorced when both are still alive and their whereabouts are known, or because one of the husband and wife is not known, is the problem child and his position and subsequent care.

Children's issues include provisions regarding who has the authority and responsibility and responsibility for child custody, breastfeeding and maintenance, financing his life, education, managing his assets and so on. Settlement of child problems due to the end of marriage based on divorce between husband and wife in circumstances where both are still alive often becomes polemic regarding the status and existence of child custody.

Solving child problems can be distinguished between children who are still small, still breastfeeding and needing special protection from their mothers, still breastfeeding and needing special protection from their mothers, still depending on their mother's life, and children who have reached their teenage years who only need living expenses and supervision as necessary.

When a marriage ends due to the death of one of the husbands or wives, then one of the husbands or wives who is still alive is obliged to continue caring for and supervising their children who have been left behind by the father or mother, this is the obligation of parents who are no longer can be denied again.

According to the Civil Code, when a divorce occurs, the power of parents over children who are born and then regarding guardianship is regulated in articles 220 and 239 of the Civil Code. But parents who are not guardians must still provide visits for care and education.

The problem with the judge's decision on divorce and its implementation for children, after the judge has passed a decision in the case of divorce, must summon the ex-husband and wife and all blood relatives of their immature children to hear about the appointment of a guardian. The judge then determines for each child which of the two people must be the guardian, the judge can only determine one of the parents and who has the right to be the guardian of the children and it is decided by the judge. In this case it may happen that some children are handed over to the guardianship of the father and others to the mother, in such case a third person is also appointed as the supervising guardian.

The determination of this guardian only takes effect after the divorce decision has absolute power, namely it is recorded in the civil registry register. Prior to that, the determination does not need to be notified, and also appeals cannot be executed. Parties who are not appointed as trustees, if at the time of the meeting to appoint the trustees, are not present, they may fight. This must be done within 30 days after the appointment of guardian is notified to him.

Usually, in making decisions about who has the right to take care of their children, it is seen who is more or less capable of being made a guardian. The husband or wife can apply for a change in the judge's decision so that the decision is reviewed. In addition to the guardian being appointed a supervising guardian, in Indonesia the government appoints an inheritance hall as the supervising guardian. Even though these children are under third party guardianship, the parents still have the right to visit the child, because according to the author's observations, of course, an old person cannot simply separated. Even if she is guilty, how does a mother feel to be separated from her own flesh and blood even though she is in everyday life.

Different views from the Civil Code in resolving child problems due to the end of this marriage, the Indonesian Marriage Law Number 1 of 1974 concerning marriage, where in the Marriage Law there is no guardianship status for the child's position, the father and mother are still obliged to take care of the future. in front of the children in the implementation of management carried out by one of the parties, this is proven by the existence of article 41 of Law Number 1 of 1974 concerning marriage which states that as a result of the breakup of a marriage due to divorce are as follows:

- a. Both the mother and the father are still obliged to look after and educate their children, solely based on the interests of the child, if there is a dispute regarding the control of the children, the court has the authority to make a decision.
- b. The father is responsible for all the maintenance and education costs needed for the child, if the father is in fact unable to fulfill these obligations, the competent court may determine that the mother must share the costs.

Based on the wording of article 41 above, it turns out that the period of education and maintenance of children as a result of the divorce is the obligation of both the child's parents, namely the father and mother of the child. And this parental obligation remains valid even if parental powers are revoked. This obligation also applies until the child marries and can stand alone.

B. Obstacles Faced in Implementing Judge's Decisions Against Children After Dissolution of Marriage in the Purusa System

Article 2 of Law Number 23 of 2002 concerning Child Protection states that what is meant by the principle of the best interests of the child is that in all actions involving

children carried out by the government, society, legislative bodies, and judicial bodies, it is in the best interests of the Children must be the main consideration, ideally, the principle of best interests for children in post-divorce child care places the position of the child as a party that must be protected.

Protection is carried out through making rules that are responsive to the interests of children, implementing policies that are oriented towards meeting children's needs and implementing efforts to improve children's welfare. In the context of childcare, even though both parents are divorced, the child's needs must be met so that they can grow and develop optimally both physically and psychologically. Children can still relate to both parents without feeling pressured or hindered by anyone. Decisions regarding the determination of the child's power of attorney are made with an orientation towards the interests of the child, not solely the interests of one of the parents.

The principle of best interest for the child reminds all child protection providers that considerations in making decisions concern the future of the child, not the size of an adult, moreover centered on the interests of adults. What according to the size of adults is good, is not necessarily good according to the size of the child's interests. Perhaps, the intention of adults is to provide assistance and help, but what actually happens is the destruction of the child's future.

This perception often occurs in post-divorce childcare. Fighting over child custody is a problem that often occurs in divorce, even after a decision regarding custody has been made. This is because divorce often still leaves problems. Divorce only terminates the legal relationship between husband and wife and changes the status of each to ex-husband and ex-wife but does not reduce the conflict between them. Custody struggles are a new variant of violence against children.

The parental conflict which then led to the struggle for custody clearly greatly affected the psychological condition of the child. This psychological shock causes the child to not be able to grow and develop properly and normally, so that it has a negative impact on children who are burdened by their parents' divorce.

The obstacles faced in implementing the judge's decision on children after the breakup of a marriage due to divorce in the purusa system are as follows:

- a. A husband or a man is purusa
Husbands or men usually get the largest portion of child rights in the purusa system in Bali, except in the form of nyerod or nyeburin marriages or marriages in gelahang. And when a child needs a mother's love, especially when the child is under 5 (five) years old, the child does not get milk and affection from his biological mother because child custody in the Balinese customary purusa system has been obtained by a husband or man.
- b. Judge's decision that a wife obtains custody of the child
When the wife gets custody based on a court decision, but the reality is in the purusa system in an area that is thick with customs that a husband or male party has more rights to care for the child, then there will be a tug of interest which will burden the child. child as a victim.
- c. Intervention of husband and wife families
Although not required in court, family agreements often place custody of the father. The granting of custody for the father also sometimes pays less attention to the ability of the father when compared to the mother. Especially if the determination of custody is only through a family agreement. For example, the father does not work while the mother works or the father behaves badly, but parenting is still given to the father on the basis that the child is in his father's family tree.

Based on the above constraints, a policy is needed to make decisions in the interest of the child's future which must also be taken into account by both parents and both parents' families. Although seen from the rule of law, article 41 letter a of the Marriage Law which states that as a result of the breakup of a marriage, either the mother or the father is still obliged to look after and educate their children,

solely based on the interests of the child and when there is a dispute regarding the control of the children, it must be based on court decision.

In accordance with legal provisions in Indonesia, the principle of the best interest for children is contained in Law Number 23 of 2002 concerning Child Protection. In the Elucidation of Article 2 of Law Number 23 of 2002 concerning Child Protection it is stated that what is meant by the principle of the best interests of the child is that in all actions involving children carried out by the government, society, legislative bodies, and judicial bodies, the interests that are The best for the child must be the main consideration. Ideally, the principle of best interests for the child in post-divorce childcare places the position of the child as a party that must be protected. Post-divorce childcare in Bali carried out by this father cannot be separated from the influence of the patrilineal culture adopted by Balinese people by placing children in the lineage of the father. The purusha lineage (male) positions the existence of children as heirs in the family.

4. CONCLUSION

Based on the discussion that has been described in the previous chapters, it can be concluded as follows:

1. The implementation of the judge's decision on children after the dissolution of marriage in the purusha system has not been carried out optimally because the judge's decision on divorce will affect the child. The best interests of the child in the context of the child's physical and psychological development are often faced with Balinese customary law which places the child as the successor of the child in his father's family environment.
2. Obstacles faced in implementing the judge's decision on children after the dissolution of marriage in the purusa system is the problem of Purusa (Balinese customary law system regarding the importance of sentana, especially men as heirs in a Balinese Hindu family) often becomes the reason or handle for child custody even though the judge has made a different decision in accordance with the considerations of Law Number 1 of 1974 concerning marriage regarding child custody. Post-divorce childcare in Bali carried out by this father cannot be separated from the influence of the patrilineal culture adopted by Balinese people by placing children in the father's lineage. The purusa lineage (male) positions the existence of children as heirs in the family

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