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Legal arrangements on post divorce child custodial

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Abstract. One of the most important events in human life is marriage. Humans as social beings cannot live alone, therefore to fulfill their biological needs or want to obtain offspring, humans must legally marry according to the laws in force in Indonesia. Regarding marriage in the state of Indonesia as regulated in the applicable laws and regulations. Based on Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 article 2 it is said that "Marriage is legal if it is carried out according to the laws of each religion." Disputes over child custody is one of the consequences of the breakup of marriage or divorce between husband and wife. When the divorce leaves a child, according to Burgerlijk Wetboek, children who are not yet adults who are not under parental control must be submitted under guardianship. Based on the research that has been done in Bedalawak Village, in this study the author uses a normative juridical research method. Children are a mandate and gift from God Almighty which in the child is inherent in the dignity and worth as a whole human being. Children are buds, potentials, and the younger generation who will succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. Families, parents, government, and society must participate in the care or protection of children. Marriage is a bond that binds two human beings because humans are actually created in pairs. Humans are social creatures, where humans were created by God who cannot live alone and always need the help of others. All families always crave a harmonious family and there is no word of divorce after marriage. One of the noble deeds and should not be damaged and divided by trivial things is marriage.

Keywords. Marriage, Child Custody, guardianship, Family

Introduction

One of the most important events in human life is marriage.[1] Humans as social beings cannot live alone, therefore to fulfill their biological needs or want to obtain offspring, humans must legally marry according to the laws in force in Indonesia. Humans are actually created by God with the aim of being in pairs. Human life certainly cannot be separated from between a man and a woman, a brief description of marriage.[2] Regarding marriage in the state of Indonesia as regulated in the applicable laws and regulations. Based on Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 article 2 it is said that "Marriage is legal if it is carried out according to the laws of each religion." Having children is one of the desires of

every married couple. The most undesirable event of a marriage, the thing that is very vulnerable to occur in a marital relationship is divorce, and in real life it shows that not a few marriages that have been fostered and built by husband and wife with great difficulty in the end disbanded and divorced because of various body problems. which hit his household. After the divorce, both parties (ex-husband and ex-wife) must strive and seek so that problems and disasters that are heavier and more dangerous will not arise. Disputes over child custody are one of the consequences of the dissolution of marriage or divorce between husband and wife.[3] When the divorce leaves a child, according to Burgerlijk Wetboek, children who are not yet adults who are not under parental control must be submitted under guardianship. The child's growth and development is greatly influenced by the nature of the caregiver, because the daily activities of the caregiver who are always with the child will be imitated by the child. A child who does not get affectionate attention from the caregiver will have a different character from a child who gets affectionate attention from the caregiver. A child is a victim when both parents divorce. There are also arrangements that address child custody. Based on Law Number 35 of 2014 Article 14 has regulated child custody, which in the law states that 1.) Every child has the right to be cared for by his own parents, unless there are valid reasons and/or legal rules. demonstrate that the separation is in the best interests of the child and is a last resort; 2.) In the event of a separation as referred to in paragraph (1), the child is still entitled to: a. meet in person and have regular personal contact with his parents; b. receive care, maintenance, education and protection for the growth and development process from both parents according to their abilities, talents and interests; c. obtain living financing from both parents; and D. get other children's rights.[4]

Research Method

Based on the research that has been done in Bedalawak Village, in this study the author uses a normative juridical research method. The normative juridical research method is a research conducted using the concept of law and legislation.[5] The normative juridical research method prioritizes research on materials sourced from the library or secondary materials. Reviewing library materials is the analytical method we use. A scientific research procedure to find the truth based on scientific logic from the normative side is the definition of normative legal research according to Johnny Ibrahim.

Results And Discussion

Understanding Children

Our country has guaranteed that every citizen has welfare, including the protection of children's rights which are human rights. Children are a mandate and gift from God Almighty which in the child is inherent in the dignity and worth as a whole human being. Children are buds, potentials, and the younger generation who will succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. Families, parents, government, and society must participate in the care or protection of children. To keep a child from becoming a golden generation that can continue our nation and country. Children when viewed from the sociological aspect, a child is a creature created by God who always interacts in the community, nation and state.[3] In addition, it also becomes the main object and subject in a generalization, legitimacy, and systematic rules governing children's rights. The most valuable asset of course is a child, besides that one of the assets to advance the Indonesian nation is a child. The State of Indonesia has explained the definition of a child, if it is defined based on Law Number 21 of 2007 according to Article 1 Paragraph (5) "A child is someone who is not yet 18 (eighteen)

years old, including a child who is still in the womb." So a child is someone who is in the womb and in the womb by a mother for a certain period of time up to the legal age as stated by law. If we observe and describe, children according to the Criminal Code, children are placed in the sense of someone who is not yet an adult so that a child can have special rights and must get protection according to the applicable legal provisions. Based on the Criminal Code in Article 287 it is stated that "a minor is if the child has not reached the age of 15 (fifteen) years". Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that "children who are 12 (twelve) years old, but are not yet 18 (eighteen) years old." [6]

Children's Rights

In the end of a marital relationship, namely divorce, of course, there will be consequences, especially if both of them have been blessed with a child. Based on the Marriage Law in article 41 due to the dissolution of marriage due to divorce, among others:

1. Both mother and father are still obliged to care for and educate their children, solely based on the interests of the child, if there is a dispute regarding the care of the child, the Court gives its decision.
2. The father is responsible for all the maintenance and education costs needed by the child, if the father is in fact unable to fulfill these obligations, the Court may determine that the mother is also responsible for the costs.
3. The court may oblige the ex-husband to provide living expenses and or determine an obligation for the ex-wife's share. [7]

The obligations of parents to a child, as a result of a divorce, are of course regulated in the Marriage Law in Articles 45-49:

1. Both parents are obliged to maintain and educate their children as well as possible.
2. The obligations of the parents referred to in paragraph (1) of this article are valid until the child marries or can stand alone, which obligations continue even though the marriage between the two parents is broken. [8]

Post-divorce does not mean eliminating the obligation of parents to care for and educate their children, because this obligation applies until the child is an adult until he is able to stand on his own or has worked and is able to finance or support himself. Custody of children according to the study of Islamic law is called "hadhanah", hadhanah is caring for children who have not been able to live independently. Independent living in question includes the cost of education and everything that is needed in the form of implementing or in the form of avoiding something that can damage it. [7] Based on Law No.1 of 1974 Article 41 letter (a) has included an affirmation of child custody for both parents after the divorce. As a result of the divorce decision, both fathers and mothers are still obliged to maintain and educate their children, because basically the responsibility of parents to their children is not cut off due to divorce. many applications are found that are not in accordance with the decision. According to the compilation of Islamic law, the maintenance of custody of children who are not yet "mumayyiz" or still under the age of 12 years is the full right of a mother, even though a father is still obliged to provide for his child. In fact, sometimes after the divorce and the decision regarding child custody to the mother, it does not mean that a father does not give his obligations, namely to provide a living for his child and does not mean that the relationship between father and child is also cut off. [9]

Divorce From Marriage

Marriage is a bond that binds two human beings because humans are actually created in pairs. Humans are social creatures, where a human being was created by God who cannot live alone and always needs help from others. Every family of course always craves or desires to have harmonious family ties and no divorce after marriage. One of the noble deeds and should not be damaged and divided by trivial things.[10] Forming a happy and permanent family is one of the goals of marriage. There is no religion or belief that wants divorce, but in reality, the number of divorces is getting higher and higher, it is even said to be increasing every year. In the marriage relationship there will be happiness, disappointment, understanding problems, economic problems, child problems.[11] Often married couples cannot solve household problems that arise in a husband and wife relationship, so their households choose to take the divorce route in order to solve a problem. "The breakup is also the end of a husband and wife relationship that is decided by law or religion (talak) because there is no mutual attraction, there is no compatibility, there is no mutual trust between each other so that there is no harmony in the household", is a short description of the meaning of divorce.[12] In short, divorce is a separation between husband and wife. In addition, divorce is the end of a marriage when both partners do not want to continue their married life. The disharmony of the household that they have fostered, is one of the factors to encourage divorce or even separation. The reason the household is no longer harmonious is usually caused by financial problems, a moral crisis, or even the presence of a third person (infidelity). In our country, the government has the right to separate a marital relationship if the government is asked by a couple who don't want to be together again.[13] Couples who have built a marriage, and the marriage ends due to several reasons is an explanation of divorce. If a husband and wife have asked the government to separate, then the decision has been recognized by the religious court and the judge's decision is a valid law from the marriage the husband and wife have officially lived apart. Divorce events are certainly not wanted or expected by everyone, both women and men because divorce events are not liked by most people and from their respective families.[14]

Conclusion

One of the most important events in human life is marriage. Humans as social beings cannot live alone, therefore to fulfill their biological needs or want to obtain offspring, humans must legally marry according to the laws in force in Indonesia. Humans are actually created by God with the aim of being in pairs. Disputes over child custody is one of the consequences of the breakup of marriage or divorce between husband and wife. When the divorce leaves a child, according to Burgerlijk Wetboek, children who are not yet adults who are not under parental control must be submitted under guardianship. Children are a mandate and gift from God Almighty which in the child is inherent in the dignity and worth as a whole human being. Children are buds, potentials, and the younger generation who will succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. Families, parents, government, and society must participate in the care or protection of children. Post-divorce does not mean eliminating the obligation of parents to care for and educate their children because this obligation applies until the child is an adult and can stand alone or is already working and able to support himself. Custody of children according to the study of Islamic law is called hadhanah, hadhanah is caring for children who have not been able to live independently, independent living in question includes the cost of education and everything that is needed in the form of implementing or in the form of avoiding something that can damage it.

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