

The Nature of Law Enforcement In The Case of Hadhanah Due to Divorce of Parents

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ABSTRACT: This study aims to present the essence of law enforcement cases *hadhanah* look at the implementation of the verdict *hadhanah* due to divorce in the Religious Court. The research uses a legal-empirical research approach. The results of the study suggest that the child is not an object to be contested by custody is a goal and goal to be achieved, the decision must consider the benefit and justice of children's rights through the approach of local wisdom of the people of South Sulawesi. Research recommendations The need to re-understand and not be rigid with a normative pattern by building a new paradigm so that article 105 and Article 156 KHI can *up to date* answer the problematics of the law due to the development of the times.

Keywords: Law Enforcement, Hadhanah Case, Effects of Divorce

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I. INTRODUCTION

The renewal of Islamic law in Indonesia, especially family law, is a necessity. This is due to the demands of changing times, the demands of the development of science, the influence of economic globalization, the influence of reform in various fields of law, and also the influence of renewal of Islamic thought that requires the door of *ijtihad* to be open to discovering new laws on new issues.^{1,2}

Referring to Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law there are at least two articles that determine child care, namely Article 105 and 156. Article 105 determines the care of children in two circumstances. First, when the child is still in a state not yet *mumayyiz* (less than 12 years) childcare is set to his mother. Second, when the child is *mumayyiz* (age 12 years and over), the child can be given the right to choose to be cared for by his father or mother. Article 156 regulates the care of children when their biological mother dies by giving the order that has the right to take care of the child. Whereas in Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 and Law Number 50 of 2009 as the second amendment to Law Number 7 of 1989 does not provide significant changes regarding settlement childcare problems.

It seems that childcare issues are very simple and will be sufficiently resolved by Articles 105 and 156 KHI. Even with the decision of the Supreme Court of the Republic of Indonesia Number 382 K / AG / 2012 dated 18 December 2012 concerning the case case *hadhanah* between PREEDERICA YULIANA R. binti ERRI ROZANO Tamara with RUDY RISWANTO PURBOYO bin TARMIDI HATMO, where one of the rulings stipulates the care of a child named Belvana Elora is in the care of her father, has given her own legal style in providing legal considerations for childcare outside of what was stipulated in the Compilation of Islamic Law, and it turns out that there are some problems that arise beyond the scope of the two Articles. Among the legal issues were:

1. Childcare when his parents divorced because the wife returned to her original religion (*apostasy*).
2. Possible deviations from written provisions regarding childcare.
3. Child care is based on sharing the same rights, one for the husband and one for the wife.
4. Reevaluation of the age of the child who can determine the choice of care between mother or father.

This paper will elaborate on how the legal problems of childcare in the Religious Courts are viewed from various aspects, especially from the side of normative law (Compilation of Islamic Law as applied law),

¹ Ahmad Zaenal Panani, 2015, *Pembaharuan Hukum Sengketa Hak Asuh Anak di Indonesia: Perspektif Keadilan Jender*: UII Press, Yogyakarta, hal. 1

² Munajat, M. (2008). *Metode Penemuan Hukum dalam Perspektif Filsafat Hukum Islam*. *asy-syirah uin-suka*, 42(1), 179-203. hal 180

the position of jurisprudence on subsequent legal cases and sociological factors and others. The Case of *Hadhanah* which is intended is a Religious Judicial Product in the form of a decision as something more conceptual and significant, namely as the basic assumptions that are believed and determining how to look at the symptoms being examined. The product is a related review decision from the judge's decision process intended for how to enforce the law, especially after Divorce.

The Supreme Court has taken the position to establish child care when a married couple divorces and the wife returns to her original religion. The child is assigned care to the father with consideration of maintaining the child's faith.³ For example, the decision No. 382K / AG 2012, in the Supreme Court's decision, can be concluded that the problem of religion / aqeedah is a condition for determining whether a mother's right to maintain and care for her child is still not yet *mumayyiz*.

Consideration of aqeedah as the feasibility of caring for children is a consideration from the point of view of *syar'i* which puts forward one of the *maqasidusy of shari'ah* (the aim of the Islamic Shari'ah) which is to maintain the integrity of the Islamic religion supported by some of the Prophet's Hadith. But on the other hand, it needs to be examined from a normative juridical perspective, the consideration of the Supreme Court has at least deviated from the two legal provisions.

Article 105 of the Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law which determines the care of minors (under the age of 12) are in the care of their mothers, without ever mentioning their mother's religious problems. In comparison, Article 116 letter h states that divorce because of apostasy can be done if it turns out that apostasy will cause division in the household. In understanding *a contrary*, when the apostasy does not cause household disunity or post-divorce, a good and well-maintained condition of the child, the wife has the right to take care of the child in a legal marriage or in a legal divorce. Therefore the husband and wife (after divorce) still have the right to care for the child, even though one of the parties apostates.

The provisions of Human Rights law stated in Law Number 39 of 1999 concerning Human Rights Article 51 paragraph (2) where after the termination of marriage, a woman has the same rights and responsibilities as her ex-husband over all matters relating to his children, taking into account the best interests of the child.⁴

Judges pay more attention to the interests or problems faced by the parties concerned rather than the law. The judge basically cannot violate the law, must not violate the system, must think *system oriented*. However, if there is a conflict between legal certainty and justice in certain circumstances, the interests of the parties must be prioritized.⁵

The discourse on legal certainty and justice always leads to the attitude of judges to see the position of legal sources of legislation or in a broader view always backed by the prevailing legal system. Legal certainty and justice are two factors that support each other in maintaining harmony between interests in the community, legal certainty is more general in nature which is reflected in the form of regulations and general rules, while justice is more specific because it is rewarding for individuals in society.⁶

During this time a judge, especially for the first level judge (*judex factie*) is almost impossible violating an existing statutory regulation, because if this is done besides he violates the provisions of the regulation also has violated some of the decisions of the previous judge who always positioned the law as a source of law. By expressing a number of notes, Bagir Manan, former Chair of the Supreme Court of the Republic of Indonesia, viewed the Indonesian legal system as inappropriate for a *continental legal system* or a *civil legal system* or a *codified legal system*.⁷ According to the flow of law, this is known as legalism which identifies the law with the law.⁸ on the other hand, there is the legal system *Anglo Saxon*, the *common law* with the legal flow of the *rechtsbewegung frei* which contradicts the first. In essence, the *common law* is a *judge-made law*, meaning the

³ Syamsuhadi Irsyad, 2004, *Kapita Selekta Hukum Perdata Agama Pada Tingkat Kasasi*, t.pen., t.tem, hal. 20

⁴ Hadi Setia Tunggal, 2002, *Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia*, Harvarindo, Jakarta, hal. 7

⁵ Sudikno Mertokusumo, 2014, *Teori Hukum (edisi Revisi)*, Cahaya Atma Pusaka, Yogyakarta, hal. 24

⁶ Soerjono Soekanto, 1991, *Sosiologi Hukum Bagi Kalangan Hukum*, Citra Aditya Bakti, Bandung, hal.50-51

⁷ Bagir Manan, 2006, *Dissenting Opinion Dalam Sistem Peradilan Indonesia*, Varia Peradilan Nomor 253, Jakarta, hal.6

⁸ Sudarsono, 1991, *Pengantar Ilmu Hukum*, Rineka Cipta, Jakarta, hal. 113

law established by the judges' judiciary and maintained thanks to the power given to the precedents (decisions) of judges.⁹

Juridically, the Indonesian legal tradition is another feature of a combination of legal systems *continental European* and *Anglo Saxon*.¹⁰ This can be known by comparing article 50 paragraph (1) and article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Article 50 paragraph (1) states that all court decisions besides having to contain the reasons and grounds of the decision, also include certain articles of the relevant legislation or unwritten legal sources that are used as the basis for judicial proceedings.

The necessity to contain the Articles of legislation shows that the law is made as to the main source of law as in the tradition *European continental*, while the necessity to include an unwritten legal source is one of the *Anglo Saxon features*,¹¹ this is also confirmed in Article 5 paragraph (1) Law Number 48 of 2009 which requires judges to explore, follow and understand the legal values and sense of justice that lives in society. Because the legal system in Indonesia is in two different poles (*continental Europe* and *Anglo Saxon*), it needs to be questioned what if the judge is faced with a situation where there is a different attraction between laws and values that live in society or with jurisprudence, it is necessary to observe the rules in the system of *common law*, *conflict between common law and statute law*, *statute law prevails* when there is a difference between jurisprudence and legislation, the law will eliminate jurisprudence.¹²

However, it is also possible for a judge to deviate from the provisions of the legislation or be known as the *contra legem*, with a note that it must sufficiently provide clear legal considerations by considering various aspects of legal life.¹³

This view will be of little help to the second problem regarding the possibility of some deviations from normative provisions regarding childcare disputes. The first is child care based on the same division. This possibility occurs when a divorced couple has two or more children. If this happens, then the approach taken is not just a normative approach that determines child care based on age (Article 105 KHI), but must also consider the authority and desires of both parties (divorced couples) to care for their children.¹⁴

Soedjono Dirdjosisworo views legalism as giving legal syllogism¹⁵ *juridische syllogism* a logical deduction from a broad formulation will apply the provisions of article 105 KHI by directly assigning the two children in the care of their mother. In this situation, a father should never expect to be able to care for his child because the law has determined this. So far, deviations from the provisions of Article 105 KHI are only possible when the husband and wife agree to share authority in caring for children.¹⁶ This agreement is part of freedom of *contractvrijheidcontract* in accordance with Article 1338 BW will be the same value as the legislation *pacta sunt servanda*.¹⁷

It seems to be closer to justice the actions of judges who resolve childcare disputes (who have 2 or more children) by giving direct rights (without having to agree to the parties) to the father to care for one of his children, despite deviating from Article 105 Presidential Instruction Number 1 of 1991 concerning KHI. In turn, the appreciation of the individual shown through the judge's attitude will be felt as a justice for the father who shares a share in producing offspring, of course, the opposite is very unfair when a husband and wife are divorced and have two or more children (still underage), then the care of the two children was set to his mother.

The second legal problem is a review of the age provisions that can be chosen in care between a mother or her father. Determination of the age of 12 years in Article 105 Compilation of Islamic law is determination *ijma'* carried out by ulama in Indonesia *communis oppinim doctoral*.

⁹ Emeritus John Gillissen dan Emeritus Frits Gorle, 2005, *Sejarah Hukum Suatu Pengantar*, Diterjemahkan oleh Freddy Tangker, Refika Aditama, Bandung, hal. 348

¹⁰ Rismawati, SD (2018). Mengukuhkan Otensitas Tradisi Hukum Campursari dalam Sistem Hukum Nasional. *Jurnal Hukum Islam*, 73-93. hal, 78

¹¹ Rismawati, SD (2018). *ibid*, hal, 79-82

¹² Ahmad Kamil, M. Fauzan, 2005, *Kaidah-kaidah Hukum Yurisprudensi*, (Cet. II; Prenada Media), Jakarta, hal. 40

¹³ Ahmad kamil, *ibid*, hal. 9

¹⁴ Budiman, AA (2014). Penemuan Hukum dalam Putusan Mahkamah Agung dan Relevansinya Bagi Pengembangan Hukum Islam Indonesia. *Al-Ahkam*, 24(1), 1-30. hal, 8

¹⁵ Qamar, N., Busthami, D., Aswari, A., & Reza, FS (2017). *Logika hukum, CV.Social Politic Genius, Makassar*.

¹⁶ Soedjono Dirdjosisworo, 2005, *Pengantar Ilmu Hukum*, Raja Grafindo Persada, Jakarta, hal. 159

¹⁷ Mariam Darus Badruzaman, 1996, *KUHPerdata Buku III Hukum Perikatan Dengan Penjelasan*, Alumni, Bandung, hal. 108

In comparison, the classical fiqh divides between nurturing girls and boys. In the care of boys according to Imam Abu Hanifah a child can choose to be cared for by his mother or father when he is 7 years old, whereas according to Imam Malik his mother is more entitled to care for him until the child is toothless (date of the tooth). Whereas in the care of girls according to Imam Shafi'i so that the choice is made by the child which according to Imam Abu Hanifah, the mother is more entitled to take care of the child until she is high. Imam Ahmad bin Hanbal, a mother has the right to care for her child until the child is 9 years old. Age determination according to Imam Malik is not limited but is determined by the condition when the child dated his teeth, or around the age of 6 to 8 years.¹⁸

The existence of child care law institutions is due to the child being unable to stand alone or in Islamic legal terms is called *hadhanah*. Consequently, when the child is considered capable of standing alone, the care of the child will depend on the child's choice to choose his father or mother. According to Abdul Manan, the size used is *tamyiz* and is able to stand on its own, such as being able to eat alone, bathe alone and so on.¹⁹ The problem that arises is that at the age of how many years a child can be said to have been *mumayyiz*, KHI believes that the age of 12 years is the limit of *mumayyiz* to determine the right of the child to choose maintenance between his mother or father.

While the scholars of jurisprudence (which is a reference from KHI) did not determine this, they disagreed and Imam Ahmad bin Hanballah who set the highest age limit of 9 years to determine a child was *mumayyiz*.

In addressing this, it seems necessary to use interpretation methods of *restrictive* limiting meanings reasoning methods to *rechtsvervijnings* narrow the meaning.²⁰ With this method, the limitation of the age of 12 years as the age of *mumayyiz* in KHI must be interpreted as the deadline for determining child is not *whethermumayyiz* or in other words after the age of 12, a child must be said to be *mumayyiz*. judge whether the child has been said to be *mumayyiz* or not, then the determination of *mumayyiz* by KHI with the age limit of 12 years is not an absolute limit. A judge who resolves child care disputes under the age of 12 years, can judge the child has been *mumayyiz* or not, then will determine the attitude of the next judge to give the child the right to choose maintenance by his mother or father. The judge's attitude was not categorized as a legal deviation, because in addition to being supported by the opinion of the scholars, it was also possible from the point of view of legal interpretation. On the other hand, it seems very appropriate to pay attention to the thinking of the law school that developed in America (*Anglo Saxon*), good law is a law that is in accordance with the laws that live in society.²¹ The age factor cannot be used as a standard to determine a child's psychological and physical development, so a judge's attitude is needed to assess *mumayyiza* child's both mentally, physically, and the views of the surrounding community.

II. RESEARCH METHODS THIS

Type of writing is the writing of *socio-legal research* using normative and empirical legal approaches because it is focused on legal norms that are spread out in various relevant legislation with the object under study, while the empirical legal emphasis is on juridical facts in the field. Therefore this writing is a combination of typewriting (*mix legal research*). It tries to combine normative writing with the writing of the law in reality. In this stage, the author focuses on observing the effectiveness of the implementation of child care after divorce by conducting a direct review in the Religious Court, among others, by conducting interviews and observations in the institution of the Religious Courts.

III. RESEARCH & DISCUSSION RESULTS IN THE

Nature of Law Enforcement of the Case *Hadhanah* (Child Care) As a Result of Divorce in the Religious Courts

Divorce is not an obstacle for children to obtain parenting rights for themselves and their parents, one obstacle that becomes a great fear for a child is parental divorce when divorce happens children will be the main victims. Divorced parents must continue to think about how to help children to overcome the suffering caused by the separation of their parents. Parents are the first people responsible for paying for the rights of their

¹⁸ HSA Al-Hamdani, 2002, *Risalah Niukah Hukum Perkawinan Islam*, Pustaka Amani, Jakarta, hal. 325

¹⁹ Abdul Manan, 2005, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, Edisi Revisi, Cet. 3, Pranata Media, Jakarta, hal. 426

²⁰ Manan, A. (2013). Penemuan Hukum Oleh Hakim Dalam Praktek Hukum Acara Di Peradilan Agama. *Jurnal Hukum dan Peradilan*, 2(2), 189-202. hal, 195

²¹ Lili Rasjidi, Ira Rasjidi, 2001, *Dasar-dasar Filsafat dan Teori Hukum*, Alumni, Bandung, hal. 66

offspring as a result of a divorce based on the concept of justice.²² However, it is not uncommon for the task of materializing the justice of children's rights to be severed either by the wishes of the husband and wife or beyond their will.

A divorce, especially for divorce, although it can relieve the hearts of two parties, on the other hand, there are consequences where it is definitely a bitter experience for the child. Children also want a form of justice in law enforcement, craving divorce cases that are brought to court can be decided by judges who are professional and have high moral integrity so that they can produce decisions that not only contain aspects of legal certainty based on procedural justice, but also *legal justice, moral justice, and social justice* considering that justice is the main goal to be achieved from the dispute resolution process in court.²³

1. Objectives and Objectives of the Implementation of the Case *Hadhanah* Verdict.

The implementation of the verdict *hadhanah* in the religious court, especially in the area of the Makassar Religious High Court, can be analyzed in 10 (ten) decisions, one of the decisions of the Polewali Religious Court, as stated by Hj. Nailah B.,²⁴ as follows:

"In child care cases, we law enforcers, especially judges, generally give consideration that in carrying out the hadhanah case decisions must pay attention to the interests and psychology of the child, so as to avoid the difficulties of execution, the Judge can punish the party (the loser) to pay dwangsom, as referred to in the provisions of Article 606 Rv. letters (a) and (b), and based on the results of the RACERNAS of the Supreme Court of the Republic of Indonesia. In 2012"

The need for the application of *dwangsom* or *astreinte* is an additional sentence in a judge's decision against a person convicted to pay a sum of money other than the one stated in the basic law with the intention that he is willing to carry out the basic sentence properly and on time. *Dwangsom* is regulated in articles 606 a and 606 b B.Rv. which began to be used by *Raad Van Justitie* and *Hoegerechtteshof* in 1938, indeed in the HIR and RBg, not mentioned in detail.

There is still a dualism of thought, in this case, there are those who argue that it is not feasible to apply to the case *Hadhanah*, because the context is different from compensation (Article 225 HIR) or compensation in civil law or debt problems, where the law of *Hadhanah* is not an issue. objects that are contested are rights, whether they have rights or do not have rights to objects that are disputed and reap court decisions, but more about the problem of being willing or not willing to care for children that cannot be forced so that children get a fundamental form of rights. The opinion that children need to be applied by *dwangsom* in the decision *hadhanah*, with the following reasons:

1. As a strategic step in an effort to prevent the parties from carrying out decisions and preventing empty decisions (*illusory*).
2. Only an additional sentence, if the basic sentence is not fulfilled so that the violation *dwangsom* can be executed.
3. As psychological pressure, so voluntarily carrying out the verdict.

Article 225 HIR, Article 259 R.Bg., namely the claim to implement an agreement based on article 1267 of the Civil Code can be used as a basis in the decision that contains the guidance of *dwangsom*. Therefore, the plaintiff who demands *hadhanah* can submit guidance *dwangsom* (article 606 a B. Rv) based on a clear position, 1) the amount of *dwangsom* is not related to the claim of payment of money, 2) the guidance of *dwangsom* is clearly stated petition, 3) judges who examine the guidance *hadhanah* which included *dwangsom* should really pay attention to whether or not worthy to be accepted with the condition of economically which will carry

²²Children as victims of divorce must not reduce the rights and benefits of justice, legal certainty must be formed by not ignoring the value of justice and benefit for children, guaranteeing justice must continue to be obtained by children continuously to adulthood / self see: Three due to breaking up marriage due to divorce , to his children, Misnianto, B. (2015). *Upaya Mencari Keadilan Pada Kasus Perceraian Perspektif Hukum Positif Di Pengadilan Agama Kraksaan. Gema Genggong: Jurnal Hukum, Keadilan & Budaya*, 1(1), 3-3. Hal, 12

²³Swantoro, H., Fakhriah, EL, & Ikhwanasyah, I. (2017). *Permohonan Upaya Hukum Peninjauan Kembali Kedua Kali Berbasis Keadilan dan Kepastian Hukum. Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 29(2), 189-204. Hal 190

²⁴Interview with Piliwali Religious Court Judges, November 1, 2018

outdwangsom⁴) including decent notdwangsom in the case that is being examined in terms of legal grounds or not the demands of dwangsom²⁵.

The execution of decisions in cases *hadhanah* with *dwangsom*, or no *dwangsom*, can be analyzed from the explanation of H. Muh. Basyir Makka,²⁶ (Registrar of Sidrap Religious Courts) as follows:

"Sofar if there are decisions in the *hadhanah* and *dwangsom* cases that have been decided by the panel of judges, the parties to the dispute can be accepted with grace, even as executors of the verdict forcibly carried out the *hadhanah* case "

Likewise the case stated by the Apollo Nox.²⁷ (Assistant of the Makassar Religious Court) that:
"as the bailiff of the Makassar Religious Court, which carries out the contents of the decision whether there is *dwangsom* or not in the field of every Makassar Religious Court decision, if there is an execution request granted, up to now the cases have been voluntary by litigants ".

As the case *courtesy* has been stated by the litigants, Jeani Sam Astri binti Sambas, age 28, Islamic religion, final education in High School, employment for Suraco Abadi Yamaha Motorbike, residence on Jalan Pelita IV, Lorong 5, No . 29, RT. 002, RW. 004, Ballaparang Sub-District, Rappocini District, Makassar City.²⁸ Said that I was the wife (Defendant) between the Plaintiff and the Defendant had divorced as husband and wife in the Makassar Religious Court on September 20, 2016, and during the marriage bond between the Plaintiff and Defendant had been blessed with 3 children each named: Putri Alya Zahra, date of birth August 23, 2008 (age 8 years); Nabila Rihadatul Aisya, date of birth September 1, 2010 (age 6 years); Muh. Basudewa Firman, date of birth December 13, 2014 (age 2 years). As for the problem of the child after the decision of the Religious Court, we continue to comply with the decisions of the Religious Court in accordance with the judge's order. Carry out voluntarily.

The concept of welfare and justice rights of children have started to be taken into consideration which can be seen in one of the Court's Decisions of Religion Makassar is actually what has been considered by the judges at the will of the parties, in which the desire of the Plaintiff (the husband) was approved by the Defendant (ex-wife) with requirements at the Plaintiff's meeting with children, the Plaintiff must maintain the health of these children. However, due to the age factor, the defendant's children kept the children under their care, among others because the children were still underage or not yet *mumayyiz*. And considering Article 1 letter (g) Compilation of Islamic Law called "*hadhanah*" is the care of children, namely the activities of nurturing, nurturing and educating children to adulthood or being able to stand alone. Article 1 number 11 Law No. 23 of 2002 as amended by Act No. 35 of 2014 concerning Child Protection, namely "the power of parents to care for, educate, maintain, foster, protect, and grow children in accordance with their religion and their abilities, talents, and interests. That what is meant by adult or independent is when the child is 21 years old, as determined in Chapter I Article 1 of Law No. 4 of 1979 concerning Child Welfare. And in Chapter I Article 1 number (12) Law No. 23 of 2012, as amended by Act No. 35 of 2014 concerning Child Protection, that children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, family, community, government and the state.

Similarly, in case number 756 / Pdt.G / 2017 / PA. Mks. the case was *hadhanah* decided on July 31, 2017 at the Makassar Religious Court, with the decision following:

1. To grant the Plaintiff's claim;
2. Declare the Plaintiff's son and Defendant are:
 - 1) Aiman Rezky Talia, born on April 24, 2004;
 - 2) Aqilah Ratu Talia, born November 6, 2005;
 - 3) Alifa Ratu Talia, born September 5, 2008;
 - 4) Anugerah Rezky Talia, born on May 21, 2011;
3. Declare the Plaintiff and Defendant's children respectively named:
 - 1) Aqilah Ratu Talia,
 - 2) Alifa Ratu Talia,
 - 3) Rezky Talia Award,

²⁵Tim Pengadilan Agama Selayar, Wednesday, April 20, 2016, Eksekusi Anak (Studi Analisis Putusan *Hadhanah*).

²⁶Interview with the Registrar of the Sidenreng Rappang Religious Court, November 2, 2018

²⁷Interview with the Staff of the Class 1A Religious Court in Makassar, November 5, 2018

²⁸Interview with the litigant on September 3, 2018

Fall in the Plaintiff's care / Maintenance;

4. Declare the Plaintiff's son and Defendant named Aiman Rezky Talia, born on April 24, 2004, handed over to the child to choose to live together, whether to the Plaintiff (his mother) or to the Defendant (his father);
5. Sentencing the Defendant to hand over the child named Anugerah Rezky Talia, to the Plaintiff;
6. Sentencing the Defendant to provide child support to the Plaintiff, each for one child, a minimum of Rp. 500,000 (five hundred thousand rupiah) every month, since this decision is read until the child is mature and can stand alone;
7. Charges the Plaintiff to pay a court fee of Rp 611,000 (six hundred eleven thousand rupiah);

For the parties after breaking up the case there is rarely a forced execution of children, by submitting an application for execution to the Makassar Religious Court, according to the results of an interview with the plaintiff (former defendant's wife), claiming to be named: Dahlia, ST., M.Pd. bint H. Dahlan, 39 years old, Islamic religion, S-2's last education, civil servant work, residence at BTN. Ranggong Sakinah, Blok A, No. 1 A, Tamangapa Village, Manggala District, Makassar City²⁹, said that the plaintiff was the legitimate wife of the defendant, married on Sunday April 6, 2003 and has been blessed with 4 children, on June 18, 2012, between the plaintiff and defendant divorced in the Religious Court Makassar. As for the problem of the child after divorce, the second child (Aqilah Ratu Talia) and the third child (Alifa Ratu Talia) are at the plaintiff while the first child (Aiman Rezky Talia) and fourth child (Anugerah Rezky Talia) are in the defendant, but because the children are still underage please set everything to his mother and her income from her father. It turned out that the Judge's decision had been handed down in accordance with the order of the verdict, so we litigants accepted the decision.

After hearing the explanation from the plaintiff, how the opinion of the defendant (as well as the plaintiff's husband) in the interview claimed to be named: Tawakkal Talib, ST., MM. bin Drs. H. Abd. Muttalib, 39 years old, Islamic religion, S-2's last education, civil servant work, place to live at BTN. Graha Mutiara Asri, No. B 2, Taeng Village, Pallangga Subdistrict, Gowa Regency³⁰, said as follows:

Responsibility for the law enforcement efforts was *hadhanah* seen as a manifestation of justice for the defendant's children agreeing not to object to the Makassar Religious Court's decision. It appears that what my ex-wife said was true has happened the agreed division of child care as a form of division of tasks and responsibilities between the Plaintiff and Defendant, given the busy work of each civil servant and the condition of the Plaintiff after divorce who lives alone who is not at home with his family and to ease the burden of the Plaintiff; That as long as in the Defendant's care, the child is in a condition that is both physically and mentally healthy, fulfilled his life needs adequately and obtains proper and proper care by the defendant and other family members, so that there is nothing physically and psychologically to worry about.

That the defendant with high awareness acknowledges his responsibility as a father to provide for his children, but is adjusted to the limits of the defendant's ability and the reasonableness of his salary. Whereas one of the Defendant's forms of awareness and responsibility is to provide all joint assets between the Plaintiff and the Defendant to the plaintiff in the form of 1 (one) housing unit and its contents, 1 car and motorcycle unit and savings or deposits to the plaintiff solely for the needs and needs of their children. That the Defendant submitted and obeyed and referred to Government Regulation (PP) Number 10 of 1983 Jo. PP No. 45 of 1990 Article 8 paragraph (1 & 2) concerning divorce gives 1/3 salary for children or children. Whereas with the Regulation the Defendant is willing to provide for the child, namely 1/3 of the Defendant's salary, which is Rp. 2,000,000.- (two million rupiah) every month for the four children;

According to the author, the results of the interviews, both the exposure of the plaintiff and the defendant, had no problems in managing the child because what had been decided by the case of the *hadhanah* could be carried out voluntarily. This is the awareness of the parties which are part of the mindset and culture of shame that applies to the people of South Sulawesi.³¹

The consideration of the Makassar Religious Court panel of judges according to the author is that it is just that the writer must be equipped with consideration of people's mindset and culture in the matter of childcare, because dynamic legal changes must continue to occur in law enforcement especially the case *hadhanah*, as stipulated in the Law No. 48 of 2009 concerning Judicial Power stated in Article 5 paragraph (1), but the consideration of the panel of judges is only to consider formal matters because it has not been thoroughly explored in the community, as follows:

Considering, that the claim of the Plaintiff regarding the Plaintiff's child and the underage Defendant

²⁹ Interview with the plaintiff on September 5, 2018.

³⁰ Interview with the Defendant on September 7, 2018

³¹ Idrus, NI (2014). Siri', gender, and sexuality among the Bugis in South Sulawesi. *Antropologi Indonesia*. Hal, 38

was handed over to the plaintiff's maintenance, on the grounds that the child had a stronger closeness and emotional connection to his mother;

Considering, that the plaintiff's claim regarding child care rights was handed over to the Plaintiff, then based on Article 105 letter (a) Compilation of Islamic Law, that the maintenance of children who have not been mumayyiz or 12 years old is the right of their mother, as evidenced by the three children: Aqilah Ratu Talia, born on November 6, 2005, Alifa Ratu Talia, born on September 5, 2008, and Anugerah Rezky Talia, born on May 21, 2011, are underage (not yet 12 years old), so the plaintiff's demands are determined as rights holders Hadhanah can be granted, and the defendant is given the right to meet with his child;

Considering, that although the maintenance of the child is with the plaintiff, but in accordance with the provisions of Article 105 Letter (c) and Article 149 letter (d) Compilation of Islamic Law, the defendant is obliged to bear the cost or maintenance costs of the child;

Considering, that the demands regarding the future income for the Plaintiff's children, which the Plaintiff demanded a total of Rp. 6,000,000 (six million rupiahs) for the four children each month that must be submitted by the Defendant to the Plaintiff;

Considering, that based on the claim, then based on Article 156 (d), that due to the termination of marriage due to divorce is all hadhanah costs and the livelihood is borne by the father according to his ability, at least until the child is mature and can take care of himself;

Considering, that by taking into account the Defendant's economic capacity as considered above, then in accordance with Article 80 paragraph (4) letter (c) Compilation of Islamic Law, and as evidenced in P5 and P6 submitted by the Plaintiff, it is fair and appropriate for the Defendant to give minimum income of Rp. 500,000 (five hundred thousand rupiahs) for his child

Given the conditions in the communities of South and West Sulawesi, child care is part of the culture of the Bugis-Makassar people who still uphold the "siri na pacce" culture, which means that in the culture it is very intoxicating for a husband and wife who have been given children without child care, either both of his parents still get along well in fostering the household and have separated divorce. If the child is abandoned due to divorce both parents are not part of the siri na pacce culture. Very embarrassed and deformed when the child is stressed. This is the culture and mindset that must be maintained because formally it does not conflict with laws and regulations, even supporting each other between the culture and the rules that apply.

Indah nan is beautiful if the term "siri na pacce" in the judgment of judges should be strengthened by Undang-Law Number 1 of 1974 concerning Marriage, Law Number 4 of 1979 concerning Child Welfare, Law Number 7 of 1989, concerning Religious Courts which has been amended by Law Number 3 of 2006 and the second amendment to Law Number 50 of 2009, and Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014. Therefore, in consideration of such justice will be felt by father, mother and child, this is the true hope of the community.

IV. CONCLUSION

The essence of the law enforcement of hadhanah cases in the Religious Courts is realized since the construction of the decisions of the Religious Court Judges is not only with formal and material legal approaches, but also by using the local wisdom approach of the people of South Sulawesi including the Siri concept. Realizing that a child is not an object, the goals and objectives to be achieved through the concept of responsibility of parents built by the judge in an effort to make a fair and sustainable decision for the child, at least the child can feel as if the divorce has never occurred despite enforcement the law is carried out child care rights, namely love and love for children that have never changed one bit for the sake of the realization of the benefit and justice of children's rights.

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