Custody and Obligations of Parental Alimation of Children After the Breakup of Marriage Due to Divorce in Terms of Law Number 1 Of 1974 Concerning Marriage

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The research entitled; Parents’ Custody Rights and Alimentary Obligations for Children After Dissolution of Marriage Due to Divorce in View of Law Number 1 of 1974 concerning Marriage; was carried out in the jurisdiction of Jayapura City with the aim of finding out and analyzing the causal factors the occurrence of divorce and custody and fulfillment of parental alimony obligations towards children. This research is empirical legal research using the Normative Juridical and Empirical Juridical approach methods. The Normative Juridical Approach is by reviewing the provisions of statutory regulations relating to the rights aspect of divorce and the legal consequences of divorce in relation to Custody Rights and Parental Alimony obligations following the dissolution of the marriage due to divorce, while the Empirical Juridical approach is by looking at the implementation of the provisions Laws relating to divorce and custody rights and parental alimony obligations apply in society. The results showed that the factors causing divorce in the city of Jayapura in general for the continuous disputes, disputes and quarrels triggered by the attitudes and behavior of both the husband and wife namely a. The existence of love with women and other men, b. Husband rarely goes home; c. Husband is light hand by beating the wife. Meanwhile, in most court decisions on divorce cases, the majority of judges decide that custody rights are given to the wife based on psychological considerations and legal considerations. The psychological considerations are because the children are still small and not yet numayyiz so they still really need more attention from their mother, and the husband’s morals are not good, so there are concerns that it will affect the child’s psychological development during his growth period. Furthermore, regarding the fulfillment of alimony obligations in the context of the care and development of the child, in general it is not carried out well, generally parents (fathers) lack or neglect their alimony obligations towards the child on the grounds that they have a new family, because they are not given custody, because of their economic
capabilities, so does not carry out his alimony obligations as ordered by the applicable statutory provisions.
I. Introduction

Humans are essentially individual creatures, but because they have a feeling of love, they always want to live in association with each other, as Aristotle called them Zoon Politicon creatures. Humans as individual creatures with a social spirit are actually in line with human nature as outlined by God the Creator, where one human will always need other humans to live together, live in groups and in society in living life in this world.

Relationships through marriage are basically a forum for developing and maintaining a relationship between a man and a woman through marriage based on mutual trust, mutual love, mutual affection and sharing feelings with their partner in building a household. Of course, all parties always want the household ark they build to be able to survive and last until the end of their lives.

The household or family as an institution is the smallest community consisting of husband and wife and children formed from a marriage process. As a social institution, of course marriage is based on the existence of physical and spiritual bonds which are the foundation of the relationship created. These two bonds must exist and be created in a marriage, because these two bonds are a strong and sacred agreement to be able to live together legally between two human beings of different types and characters.

R. Sardjono in his book Muhd. Idris Romulyo who said that:
Birth bond means that the parties concerned because the marriage is formally husband and wife both for them in their relationship with each other and for them in their relationship with the wider community. This bond can be seen and shows the existence of a legal relationship between a man and a woman to live together as husband and wife, the meaning of inner bond in marriage means.2

When navigating the household ship, it is not uncommon for a family to often have disputes between husband and wife, this is very likely to happen considering that the family in a household is a place of struggle between two personalities who have many differences, so it is very possible for this to happen, conflict in the family and at the same time also becomes an arena for creating harmony and harmony.

The conflict that occurs in the household, is sometimes not solely caused by the differences that exist between a married couple, but it is precisely because the couple is unable to live together with the differences that exist between them. If the differences cannot be sorted out by the husband and wife, for example the wife's shortcomings are covered by the husband's advantages and on the other hand the husband's shortcomings are covered by the wife's advantages, then the family will encounter obstacles that can certainly become pebbles that are ready to become an arena for quarrels and disputes which will worsen the relationship between husband and wife, which in the end can lead to the end of the marriage relationship through divorce.

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Of course, if divorce is the last way to end a marriage bond relationship between husband and wife, then it can be ascertained that it will bring legal consequences not only for husband and wife couples but also affect children of offspring, even often in a divorce process accompanied with physical, emotional actions from one party to the other.

Divorce as an effort to end the marriage bond will certainly give birth to various legal consequences, including it will bring legal consequences to the position of parents to the right to the maintenance of children which is an aliecent obligation for parents of children born from marriage. When there is a divorce, it is certain that the child is the one who feels the most pain if in the family already has offspring. A child from birth until he becomes an adult is under the control of his parents as long as his parents are still married. However, if both parents have terminated their marital relationship due to a divorce that has been decided by the court, this will give rise to legal problems regarding the maintenance of the child.

In a normal and happy life, caring for the child is the right and obligation of husband and wife together as parents. However, if the marital relationship ends in divorce, the right to control and care for the child becomes a legal issue in the divorce process. It cannot be denied that in a divorce, issues relating to custody rights and alimony obligations in relation to child maintenance often become disputes between the husband and wife who are divorcing, where often in a divorce the issue of custody of the child is involved for each party, both the wife and The husband claims that he is the most worthy and entitled to have custody in carrying out his alimony obligations towards the child.

In the provisions of the marriage law explicitly regulated that if a problem occurs regarding the right to maintain the child when divorce occurs as a result of the breakup of marriage between husband and wife, then the court can decide. This means that concerning the right to maintain a child if a marriage relationship is broken is the authority of the judge to decide who has the right to obtain the right to the maintenance of children who are often referred to as child custody. As regulated in the provisions of Article 45 paragraphs (1) and (2) which states that both parents are obliged to care for and educate their children as well as possible, (paragraph 1). It is further stated that the parental obligations referred to in paragraph (1) of this article apply until the child marries or is able to stand alone, which obligations continue to apply even if the marriage between the parents breaks down. (paragraph 2)³

Moving on from the background as described above, the author feels interested in conducting further research to find out, examine and analyze in more depth the legal issues that arise in a divorce relating to custody rights and alimony obligations for child care as a result of the breakup, marriage due to divorce as determined by the Marriage Law, with the title: "Custody and obligations of parental alimation of children after the breakup of marriage due to divorce in terms of Law Number 1 of 1974 concerning Marriage”.

³ Pemerintah Republik Indonesia, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan
2. Research Method
This research is an empirical legal study, using a normative juridical approach and supported by an empirical juridical approach. This study aims to see the application of statutory provisions on marriage law in relation to custody and parental alimation of obligations to children that arise as a legal result of marriage due to divorce.

The data collection techniques required in this research are carried out through:

a. Library Research
   Namely research carried out to collect secondary data which is carried out by reviewing various documents such as Marriage Laws, Court Decisions in divorce cases, literature books, which consist of Primary, Secondary and legal materials. Tertiary.

b. Field Research
   Namely research carried out directly in the field to obtain primary data. To obtain primary data, this was done by observation and interviews. Furthermore, the data collected, both in the form of primary data and secondary data, is classified and arranged systematically to be processed and analyzed qualitatively by making comparisons between primary data and secondary data. The results of processing and analyzing this data are then compiled in the form of a research report which describes the results of research on the problems studied in a report in the form of a Scientific Work.

3. Results and Discussion

Factors that cause divorce
Basically, every person who gets married wants the marital relationship that has been established to last intact until the end of their life. No one wants their family's ship to fall apart in the middle of the road. This is in line with the purpose of marriage as mandated by the provisions of the Marriage Law which requires that a marriage can be built eternal and everlasting.

However, it cannot be denied that in building a family relationship through marital ties, sometimes you will encounter many obstacles that will become obstacles or stumbling blocks that can destroy family harmony. Families that cannot face obstacles that are obstacles to household harmony, such as arguments, usually tend to end in the termination of marital relations.

Divorce as one of the causes of breaking up a marriage bond is a picture of the inability to maintain the integrity of the household. This is as stated by Wirjono that "Divorce is a sign of human failure in realizing their noble ideals in a marriage bond which is a natural thing for humans in real marriage".

The Marriage Law does not clearly regulate the meaning of divorce. The provisions of Article 38 of the Marriage Law only state that a marriage can be dissolved due to death, divorce and a court decision. The dissolution of a marriage is an event that is contrary to religious

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teachings. This is in line with the view expressed by Happy Manurung\(^5\) who said that the provisions for divorce appear in church norms; No divorce is desired other than because of death.

However, dissolving a marriage is not that easy to do. In accordance with the legal provisions applicable in the field of marriage, to carry out a divorce there must be sufficient reasons, that between husband and wife, there is no possibility of living in harmony anymore. This is clearly regulated in the provisions of Article 39 paragraph (1) and paragraph (2) of the Marriage Law which states that: Divorce can only be carried out in front of a Court hearing after the Court concerned has tried and failed to reconcile the two parties (Article 1) and It is stated that in order to carry out a divorce there must be sufficient reasons that the husband and wife will not be able to live in harmony as husband and wife (Article 2).

The strong reasons for carrying out a divorce as stated in the provisions of Article 39 (2) of the Marriage Law can be found in the Elucidation of Article 39 paragraph (2) of the Marriage Law, then in the provisions of Article 19 of Government Regulation Number 9 of 1975 and the provisions of Article 116 of the Compilation Islamic law basically determines several reasons that can be used for divorce, namely:

- a) One of the parties commits adultery or becomes an adulterer, gambler and so on which is difficult to cure;
- b) One party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond his or her ability;
- c) One of the parties will receive a prison sentence of 5 (five) years or after the marriage takes place;
- d) One party commits cruelty or serious abuse that endangers the other party;
- e) One of the parties suffers from a physical disability or illness as a result of being unable to carry out their obligations as husband or wife;
- f) Between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony in the household again.

The reasons for divorce as formulated in the various provisions are reasons that are limitative in nature, meaning that there are no reasons that can be used other than those stated in the law. Thus, it can be said that divorce can only be carried out if one of several reasons is met. As stipulated in the Marriage Law, the goal to be achieved from a marriage is to form a happy and eternal family or household based on the Almighty Godhead. This actually illustrates that marriage is a holy and sacred institution because it is based on religious beliefs. The consequence of this goal is actually to hope that a household will run forever. However, in reality, often a household bond that is so sacred ends in the termination of the marriage bond through divorce.

The termination of a marriage bond does not actually just happen, but there are several problems faced by married couples that cannot be resolved and tend to reach an impasse so that both parties prefer to end a marriage relationship by going through various processes to

\(^5\) Happy Marpaung, *Masalah Perceraian*, Penerbit Tonis, Bandung, 1983, hal. 3
end it. a marital relationship that they had agreed to in the past. Various kinds of problems
that become gravel on the journey of the household ark which if not solved or resolved by
husband and wife will be a very decisive factor for both parties whether they are still strong
to maintain their household or will end their marriage.

Regarding the factors that are the reasons for the termination of marriage ties through divorce
which begins with a divorce lawsuit at the District Court or Religious Court. In practice, in
divorce cases that are entered and decided by the Court, it is because the household is no
longer as harmonious as before. The causes of marital disharmony between husband and wife
are continuous disputes, quarrels and quarrels. The occurrence of continuous disputes,
disputes and quarrels between husbands and wives is triggered by attitudes and behavior both
originating from the husband and originating from the wife, where it turns out that there are
husbands and wives who are in relationships with other men or women, and some even
already have descendants/children of the relationship.

Apart from that, the behavior of husbands and wives, both as husbands and wives, also has
the nature and behavior of being lighthearted in carrying out beatings, even husbands have
even beaten their wives. Even the behavior of husbands who take beatings lightly causes
relationships within the household to always cause arguments and commotion. In fact, efforts
have been made to improve the condition of the household, but these efforts have not yielded
results. This means that the attitudes and behavior of husband and wife do not change. Because there is no change in the husband's attitude and behavior, the wife feels that she is
no longer able to live side by side with her husband like husband and wife in continuing their
household relationship. Because if this continues to be forced while the wife's attitudes and
behavior remain like that, then what will happen is physical and spiritual torture.

Apart from that, because the child resulting from a marriage between a husband and wife is
under the care of the wife, the real situation is that the child is very close to the wife as the
mother and still needs love. In several divorce cases that occurred in the District Courts and
Religious Courts, there were children who were still immature or not yet mumayyiz, so the
wife felt able to care for, educate the children until they were mature and independent and
become useful children for the nation and religion. and filial piety to both parents.

In the household ark apparently does not always run smoothly, sometimes household life is
tested with various problems that become pebbles in fostering happy households. Family
problems that befall the relationship between husband and wife in this modern era may occur
due to social conflict within the family which can occur due to several things, including
differences in culture, religion, deviant sexual behavior, socio-economic factors, and so on.
In normal cases no one wants failure in the household. However, even though everyone wants
the life of his family's ark to remain lasting until the end of his life, it turns out that in the
middle of the desire foundered and failed because of various problems encountered.

Various problems faced by domestic life if it cannot be removed will bring a gap and
destruction in the household which ultimately leads to a divorce. Sometimes problems that
occur in the household can be overcome and resolved. However, it often results in the
termination of the marital relationship. Usually the last resort taken by married couples who
fail to overcome various family problems is divorce. Divorce as a last resort to resolving conflicts in the household is indeed a despicable and hated God despite being legalized/allowed. Divorce as an act that God does not like is reflected in the teachings of religion, among them in the teachings of Islam as the hadith of Prophet Muhammad saw narrated by H.R. Abu Daud and it was stated by Shaheh Al Hakim who said: The halal act that Allah hates is divorce/divorce. Likewise, in Christian teachings, it can be seen in church norms which stipulate that: No divorce is desired except because of death.

The divorce was carried out as the last resort taken by the husband and wife after other methods which had been tried previously were unable to restore the integrity of the married life of the husband and wife. Basically, every person who gets married always has the belief that their marriage will become a family that is full of happiness and will last forever. This is in line with the philosophy in running a household, which is not to separate (divorce) except because of death, which is the main guideline for carrying out an eternal and happy marriage. An act of divorce will only be carried out if marital harmony can no longer be maintained. It’s just that even though it may be done, its implementation must be based on strong reasons, it must not be done arbitrarily.

As a legal provision that applies in the field of marriage, Law Number 1 of 1974 in conjunction with Government Regulation Number 9 of 1975 (as implementing regulations for Law Number 1 of 1974 concerning Marriage) clearly formulates several reasons that can be used as a basis for do a divorce. From the results of the study conducted on the decision of several court decisions, both the District Court and the Religious Court in the City of Jayapura, it can be seen that the reason for the divorce suit made by the wife against her husband is due to the occurrence of disputes, disputes and continuous quarrels between the husband and the wife.

There are continuous arguments and quarrels between husbands and wives because they are triggered by the attitudes and behavior of wives who are in relationships with other women, often come home early in the morning and even always take light-hearted actions by beating their husbands. Disputes, quarrels and continuous quarrels between husband and wife as reasons for divorce were confirmed by one of the Religious Court Judges who said that of the many cases of divorce lawsuits that were submitted to the Religious Courts, the majority of the reasons for divorce that were filed were continuous quarrels between husband and wife.

Furthermore, he also stated that of all the divorce cases submitted, most of the reasons for divorce in the divorce lawsuit were continuous disputes and quarrels and it was no longer possible to live in harmony in the household. Apart from these reasons, there are also other reasons for divorce which are the basis for a divorce lawsuit, including: the husband is not responsible for providing for his wife and children, the husband violates the sighap taklik

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6 Soemiyati, *Hukum Perkawinan Islam Dan Undang-undang Perkawinan (Undang-undang No.1 Tahun 1974 tentang Perkawinan)*, Penerbit Liberty, Bandung, 1982, hal.105
7 Happy Marpaung, *Loc.Cit*, hal. 10.
9 *Hasil Wawancara* dengan Mr.X., salah seorang Hakim pada Pengadilan Agama Jayapura, tanggal 28 April 2021.
talak which was pronounced at the time of the marriage contract, the husband or wife becomes a drunkard, gambler and because the husband or wife has apostatized from the religion of Islam.

From the results of research on court decisions regarding divorce cases as well as the results of interviews with one of the judges at the Religious Courts, it can be formulated that the factors or reasons for divorce that husbands and wives use to file for divorce are primarily the reasons for the existence of disputes, quarrels and quarrels continuously between husband and wife. If we connect it with the provisions of the law in force, then basically the grounds for divorce contained in the lawsuit for divorce in the Religious Court or State Court are actually appropriate and in line with the grounds for divorce as stipulated in the provisions of Law Number 1 Year 1974 on Marriage and Government Regulation Number 9 of 1975 as the Implementing Regulation.

Custody Rights and Fulfillment of Parents' Alimony Obligations towards Children

A divorce will have legal consequences for family life. Whether you realize it or not, the consequences of a divorce are also borne by the child. Children must experience disturbances and suffering in their growth and development. Children born in a marriage really need attention, love and protection from their parents. Even though the statutory provisions require that a divorced husband and wife still have an obligation to look after their children, this does not provide a guarantee that the children will remain well cared for and cared for.

Custody Rights and Obligations Alimentation of child maintenance as one of the legal consequences of a divorce is sometimes precisely what becomes a problem in a divorce decision. This means who will get custody and maintenance obligations (alimentation) and control of the child after the divorce. Another dimension of the legal issues of a divorce concerns who has more rights and authority to care for and care for children. Sometimes the determination of who has the right to obtain custody and maintenance of the child after divorce often has to be resolved through legal means.

In fact, another dimension of the child's maintenance rights after divorce is not the child is in whose control, but how the child in growth and development really gets serious and serious attention from his parents even though it is divorced. Apart from the question of the ego of the parents who question who has the right to obtain custody of the child after divorce, what needs to be noticed is the control and custody of the child must really consider the well-being of the child, both from the economic and psychological aspects. The economic aspect, for example, is that the child must really get all his needs as he should, while the psychological aspect of the child is not in an atmosphere of inner stress because of fear of the behavior of the parents who care for him.

As mandated by the Marriage Law jo the Child Welfare Law, the responsibility of maintaining the child as a result of divorce must be fully aimed at the benefit of the child, especially in terms of economic. That is, whoever parents who obtain custody of children must pay attention to the welfare of the child in the implementation of the maintenance of the
child. From the analysis of the results of the research of the court's decision in the divorce case it was revealed that the dominant judge decided on custody of child care given to the wife. The basis for the judge's consideration decided that child custody given to the wife is a psychological consideration, namely considering the children from marriage between husband and wife are still small still not mumayyiz (not yet 12 years old) and closer to their mothers.

The policy of other judges' judgment is that his mother is good in the interests of the child's psychological and psychological growth and will surely be better if the cyanak is under the mastery and preservation of his parents who are more dignified and good. However, from the results of research on several decisions of the Religious Courts, in general it can be seen that the judge decided to give custody and maintenance of the child was in the mastery of the mother. This can be seen from the percentage of decisions on the cases entering the Religious Court.

From the results of research at the District Court and Religious Court, data was obtained showing that 75 divorce cases had been decided. Of the 75 cases that have been decided by the Court, there are 85% decisions that give custody and maintenance of children after divorce to the wife (mother) and 15% of decisions that give custody and maintenance of children to the husband (father). From the analysis of the Court Decision, it can be seen that the basis for consideration in the court decision to grant custody and maintenance of the child after the breakup of the marriage due to divorce to the wife is based on psychological considerations where the child is still not mumayyiz and children are closer to the mother (wife), the mother's morals and behavior are good, the husband is apostate and has bad morals, and based on the Compilation of Islamic Law as regulated in the provisions of Article 105 letter a which states that: Children under the age of 12 years (or not yet mumayyiz) is under the care of his mother.”

On the other hand, the judge's basis for deciding to give the right to care for the child falls to the husband (father) basically based on considerations of the following things, including the mother's bad morals, the wife's inability to care for him, especially from an economic perspective, in order to save the Islamic faith. the child because the mother apostatized from her religion. However, even though in his decision the judge gave post-divorce child custody rights to both the husband and the wife, each party, both ex-husband and ex-wife who did not obtain custody of the child, may not relinquish responsibility for the child's care as a form of obligation. Parental alimony towards children.

In other words, the obligation of alimony as a parent's responsibility for child care as a result of the breakdown of a marriage due to divorce basically remains the responsibility of both parents as long as the child is still not an adult. This is in accordance with the provisions of Article 45 paragraph (2) of the Marriage Law which states that: the obligation of parents to care for and educate their children as best as possible applies until the child marries or is able to stand alone, which obligation continues even if the marriage breaks up.”

However, as stipulated in the Marriage Law, if there is a difference of opinion regarding the

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10 Sumber Data, Kantor Pengadilan Agama dan Pengadilan Negeri Jayapura, 2021
right to care for and care for the child, it will be resolved or decided by the Court. In the implementation of the alimony obligations of parents towards children, based on the results of the research it was revealed that it has not gone well. There are still many parents, especially husbands (Fathers) who have not fulfilled their alimony obligations in fulfilling their responsibilities for the upkeep of the child. As for the reasons for the husband (father) who has not even fulfilled his alimony obligation, the reason is because the husband is not given custody, the husband already has a new family, the reason is economic inability.

Thus, it can be said that the child's right to maintenance after the divorce of his parents has not been protected. This happens because the wife (mother) does not understand how to sue a husband who does not carry out his alimony obligations after a court decision dissolves their marriage. On the other hand this shows the lack of moral responsibility and legal responsibility of the husband (father) to carry out his allegation obligations to the fulfillment of children's rights in maintenance as a legal obligation that has been regulated and determined by the law and strengthened by a court decision that decides marriage by establishing an aligning obligation for both divorced parents.

4. Conclusion
The conclusions of this study are as follows:

a) The factors that cause divorce are generally caused by continuous disputes, arguments and quarrels which are triggered by the attitudes and behavior of both the husband and the wife in the form of: the presence of a third party in the household, the husband rarely comes home, the husband is lighthearted hands by beating his wife. These behaviors mean that there is no longer any harmony, comfort and tranquility in the household because there are always arguments.

b) In the court's decision concerning the divorce case, the majority of judges in their decision (85%) provide custody and child care to the wife on the basis of psychological considerations and legal considerations. Psychological considerations because the children are still small and not yet mumayyiz so they still really need more attention from their mothers, because of the close relationship between the children and their mothers, as well as the husband's bad morals, so it is feared that this will affect the child's psychological development during his growth period. Furthermore, fulfilling the alimony obligations of parents, especially the father (husband), has not or has not carried out his obligations in caring for the child. Parents’ alimony obligations towards their children have not been or are not fulfilled based on reasons such as: they already have a new family, because they do not have custody, economic inability because they do not have a permanent job and so on.
Coffee by registering Geographical Indications with the Directorate General of Intellectual Property Rights.
Whereas in repressive legal protection, by anticipating disputes over the misuse of Geographical Indications by other parties, the owner or holder of the rights to Geographical Indications has the right to file a claim for compensation to the Commercial Court due to violation of the rights to Geographical Indications or use of Geographical Indications without rights or against the law. Theories in this legal protection are Risk Theory and Economic Growth Stimulus Theory.

a. Constraints Factors in the Implementation of Legal Protection for Lampung Robusta Coffee in Economic Improvement of West Lampung Coffee Farmers include the low level of public education, lack of awareness of coffee farmers in West Lampung Regency in including geographical indications of West Lampung Robusta coffee in product design, and the absence of regulations at the government level. West Lampung Regency in implementing the inclusion of West Lampung Robusta coffee geographical indications and the weak legal awareness of the community towards the importance of geographical indications.
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*Hasil Wawancara* dengan Mr.X., salah seorang Hakim pada Pengadilan Agama Jayapura, tanggal 28 April 2021.


Pemerintah Republik Indonesia, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*


*Sumber Data*, Kantor Pengadilan Agama dan Pengadilan Negeri Jayapura, 2021

