

DISTRIBUTION OF AGAINST ASSETS AND DETERMINATION OF CHILDREN'S RESPONSIBILITY DUE TO DIVORCE

Carissa Christiana ^{a1*}

^{a)} Master of Notary , University of Surabaya

¹ carissachristiana09@gmail.com

(*) Corresponding Author

carissachristiana09@gmail.com

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ABSTRACT

This research was conducted with the aim of finding out how the dividend of property due to divorce according to the Marriage Law and how to determine custody of children due to divorce. By using the normative juridical research method, the following conclusions are: 1. Distribution of property due to divorce based on the provisions of Article 36 of the Marriage Law, husband and wife can act with the consent of both parties. 2. Determination of custody of children due to divorce according to Presidential Instruction No. 1 of 1991, for children who are not yet mature or not yet 12 (twelve) years of age are the rights of the mother. Meanwhile, for adult children, it is up to the child to choose between the father and mother as the holder of the child's rights. Or according to the judge's consideration based on the condition of the wife's and husband's behavior in raising children. The court ruling on child custody does not sever the blood relationship between the child and the biological parents and does not eliminate the obligation of both parents to support their child.

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INTRODUCTION

Marriage , in essence , is meeting two different people type gender that has the same worldview and intentions For build full relationship _ love and long lasting , isn't it only connection while . Simply put , marriage is very stable relationship . this _ enter sense , remember wedding own a number of objective in life someone , fine in a manner social nor private , as well religiously (Tutik , 2015) . Article 199 of the Civil Code state that events following can resulted he decided marriage : death of one partner ; absence from one _ partner during ten years , followed with return one _ couples and celebrations wedding new ; judge's decision regarding separation table and place recorded sleep _ in the note list civil ; and finally , divorce (Iskandar et al., 2021) .

Divorce is one _ reason he decided marriage , according to Article 199 of the Civil Code which has mentioned before . If it happens divorce court _ in a manner official end wedding . On the other hand , a divorce which is results agreement together between partner forbidden (Tutik, 2015) . Partner You're welcome suffer when wedding end with

divorce . Divorced couple usually feel impact from farewell in two fields Main : division treasure gono-gini (treasure together) and treatment to every born child during marriage (Bahari, 2016) .

children _ from failed marriage _ often become source friction (fighting) for ex- couple . As a result , it is the children who suffer the most consequence parents choose _ divorce as escape from full marriage conflict or not Can resolved . Because every child born with qualities , behavior , and personality of each one that should be built and preserved , son own system evaluation self reflecting _ values and standards the . Unfortunately , deep Lots case , p This No happened . For example , when wedding partner end with divorce , trouble right foster child must resolved in court .

Article 49 paragraph (1) of the Law Number 1 of 1974 concerning Marriage (Marriage Law) , which states , " one or both parents _ can deprived his power on a child or more For time certain on parents request another , family child in a straight line to above and brother existing sibling mature or authorized official , with decision court in matter He neglect heavy not quite enough answer as a parent , " gives base law For determine power or right foster child in divorce proceedings .

Based on p above , the court _ will consider circumstances husband divorced wife _ For request right foster child on the side base laws discussed above when make decision right her foster . Divorce is also attractive For investigate How gono-gini (treasure together) shared Because lack of knowledge public . Based on p above , purpose study This is For study application Constitution Number 1 of 1974 against problem distribution treasure gono-go and determination right foster child after divorce.

RESEARCH METHODS

Research in question characteristic normative Because take law as point refuse (norm) (Efendi & Ibrahim, 2018) . Data collected through method study library , in particular with read laws , rules , papers laws and materials written other relevant. After the data is obtained , it is analyzed in a manner qualitative.

RESULTS AND DISCUSSION

Distribution Gono Gini's Treasure

When a pair husband wife split , division treasure gono like this often become debatable issue . One might say , marriage is one _ institution most socially significant . With a purpose solely For formalize the status of the federation law between men and women , institutions This There is (Salim, 2005) . For reasons here it is institution wedding honored high by a lot authority . According to Wiarda, marriage is " relationship between a man with a women who are legitimate recognized by the state as something capable institution _ produce descendants " (Prawirohamidjojo & Pohan, 2008) . What 's in the marriage certificate and why That important very important For wedding as institution law .

Prawirohamidjojo , on the other hand , said that marriage is commitment lifetime life between a man and one women who are law (juridical) and especially (main) recognized by religion. According to Subekti , a different view is that marriage is connection law period long between a man and one woman (Subekti, 2003) . After divorced , assets wedding usually split 50/50, with each partner accept half from total value . this _ in accordance with Article 97 Compilation of Islamic Law, as stipulated by Presidential Decree No. 1 of 1991, and the relevant articles of the Civil Code (Subekti, 2003) . Furthermore treasure together This No The same with treasure mere inheritance _ become not quite enough replied the person who bequeathed it . because _ that is , divorce No can resulted distribution legacy . Religious Court will use This For determine How distribution treasure marriage (gono-gyno) .

So, if want to enter request distribution treasure fair together _ in case divorce to Religious Courts , then must enter it to in letter complaint or the application submitted to court the (Sultans, 2020) . In addition , it is recommended

that the husband wife prepare letters ownership on treasure object obtained _ during marriage , fine form certificate land , proof ownership vehicle motor , papers valuables and papers valuable others , deposits / bank savings and evidence letters valuable or receipt payment , or something else .

If one partner want to divorce Because disagreement on treasure marriage , partner the usually recommended For divorced and filed appropriate document _ to court before continue divorce That alone . For that , thing divorce as the main thing will get judge 's decision first . Case divorce resolved , and then filed lawsuit on distribution treasure together them . According to real- world data , in part big case Religious court level First can resolved in a manner peace between husband and wife . It's not like involving cases _ property together , which can dragged on in long and hard time For resolved with fast (Robiyah, 2019) .

Divorced husband and wife will experience difficulty share One House into two places stay separately , one car into two vehicles separately , or other necessary items shared exactly in two. That is, accordingly with Article 36 of the Marriage Law , divorced couples should each other negotiate before share treasure gono-like them . Experienced wife _ or experience divorce with her husband sometimes find self they deal with division that is not fair from treasure together , which is often known as treasure gono-this .

Arrangement Right Babysitting After _ Divorce

main problem to be consideration for partner husband and wife when divorce is if Already There is child as fruit heart love them . Shared child a number of circles as if become load , however reality prove that most partner divorce really wanted For get power / rights foster on children it .

In case this , “ Power ” or “ right foster ” a child means that someone (father, mother , grandfather grandmother , etc.) or institution own authority law For make decision about care and health child , in parent thing _ biological No can do it Because related reasons _ with trust child or parents , abilities , talents , and interests child , or interest best child determined by the court (Abas, 2017) .

The judges at the Religious Courts have not provided clear and signed rules _ sense For determine paternity in context dispute divorce and rights foster child . Then, no surprising If dispute about right foster child often generates _ discord within and without _ court . However thus , from limitations device existing laws _ moment this , there is possible guidelines _ used by judges of the Religious Courts in do determination right foster care , and guidance the can seen in Article 105 Presidential Instruction No. 1 of 1991 concerning Islamic Law Compilation . In case happen divorce : “ Maintenance unborn child _ mumayyiz or Not yet 12 years old is right his mother ; Maintenance already child _ mumayyiz submitted to child For choose between father or _ her mother as holder right maintenance ; Cost maintenance borne by his father .”

In religious courts , the Compilation of Islamic Law (KHI) is source normative For interpret problem law . Custody child in context KHI theory about parenting child . Right law For nurturing , educating , and raising a child until he reach age grown up , married , or become independent . Article 105 of the Compilation of Islamic Law regulates problem this , and stated that Mother own legal rights _ on their still children children (under 12 years of age) . According to KHI framework , interests best child must take precedence in taking decision right foster , especially for child below _ still 12 years old _ need love love and care his mother .

Though , girl Can get profit from idea right maintenance children at KHI in his efforts get right foster on his son . However _ Article 229 of the Compilation of Islamic Law states that the judge should notice in a manner special values living law _ in society to make a decision in accordance with a sense of justice , so provision This No apply entirely . because _ that , the judge must evaluate with Be careful is Mother must given right foster on children under 12 years of age _ or still below _ age .

because _ that , in general can accepted that draft right foster in KHI no different with draft protection as arranged in provision applicable law _ general , ie still need consideration on parents (eg _ Mother No work). until late evening , prioritize sensitivity to child compared to busy outside _ house , etc.) and related matters with interest children (psychological , material , etc.).

According to Article 41 of the Law Marriage , that consequence he decided marriage Because divorce are :

- (1) parents _ still obliged maintain and educate their children , simply based on interest child ; when There is dispute about mastery children court give the verdict .
- (2) Responsible father answer on all cost necessary maintenance and education _ child ; when father in reality not can fulfil obligation such ; court can determine that Mother follow carry cost the .
- (3) Court can oblige to used husband For give costs __ livelihood and/ or determine something obligation for used wife .

Every time marriage end with divorce , both parents _ Still own not quite enough answer law to children they For profit them , though only one old man really _ give care and support finance everyday . In other words, until child reach 18 years old , one parent _ role as guardian .

In case happen dispute about ownership son , court base the verdict only at what is best For interest child , as outlined in Article 41 of the Law Marriage .

For Muslims , the Religious Courts are right place _ For submit application divorce and petition right foster child , meanwhile for Christians , the District Court is right place . _ because _ it , one partner can request right foster on kids below _ age from marriage the as part from action divorce .

Repeat that scramble right foster This must decided based on what's the best For kid , it's important For noted that interest best children and needs child must prioritized . parents _ need realize that , in Lots case after divorce , son entitled on support emotional , as well parental support , law , and protection education (Bahari, 2016) .

If partner own child together after divorce , both parents _ own not quite enough answer For ensure fourth condition This fulfilled . But also visible exists case parents divorce _ but one of the parents No do effort For protect rights child . According to Islamic Law, Article 105, is not quite enough answer Mother For support their still children children (under 12 years of age). Women now No only role as mother and teacher, but also as best friend and lover for male , as member society , as creation of God, and as seeker living for his family (according to definition (Situmorang, 1988) about “ roles double ”).

The ideal mother is capable mother _ support his children and have a strong moral , foundation solid education , and intelligence high brain _ (Shahid, 2015) . No actions and efforts are at stake , but his job in line with code and code as girl , that's all that matters from corner view liberation girl . Women must own comprehensive knowledge , for _ fulfil something need , use operate his job as educators and coaches for their children , and women is the supporting pillar roles the (Situmorang, 1988) .

View traditional about Woman as the only one in charge answer on tasks House ladder has shift . When more Lots door opened for Woman For chase more degree _ high , over Lots door will open for they For join with the world of work .

Own life House stable ladder _ even more important for working mother . _ However , other values , such as How children it must _ noticed , because children small specifically need high attention and care . _

Contribution value a wife to House has acknowledged in a manner periodically and continuously throughout history . Thus , women _ own impact significant social _ Because role central they in form and educate generation next . Public health in a manner whole can influenced by way We educate children us .

Article 105 Compilation of Islamic Law states that “ the child below 12 years old more need love and tenderness motherhood .” This means that child young That especially together his mother . Rule it also states that a child mature own choice For designate father or her mother as payer allowance (Tan, 2015) .

Of course course , in fact , no There is guarantee that child the will stay together Mother or ex- his wife . For that , the judge based his decision on the evidence presented at trial , which includes actions of parents (father and mother) and interests best children (psychological , material , and non-material) . As a result , important for husband and wife For give reason strong law _ during the judge For win ownership child the . However , everything will depending on the attitude of the judge and the extent to which he capable consider interest children born and married _ during trial .

Regardless from gift support finances , a woman Possible lost right foster on his son If he No can give protection the child 's body and soul based on Article 156 letter c of Islamic law (all cost maintenance and life child charged to the father of child such) . child in accordance with ability) .

According to Article 49 paragraph (1) of the Law Number 1 of 1974 Concerning Marriage , that “ one or both parents _ can revoked his power on a child or more For temporary time on another parent's request , family child in a straight line , mature you sibling , or authorized official , based on decision court in situation like He was so negligent in his job to child .”

because _ that , the judge's decision to give right foster on child the will consider parental behavior . _

Besides , court _ can consider view or objective child moment make decision right foster in related situation _ interest best child . this _ in line with not quite enough answer the judge to make no decision _ take sides based on research , compliance to precedents , and awards to principles law and ethics . The judge must take into account the child's age and IQ moment make decision . Article 10 of the Law Number 35 of 2014 concerning Child Protection is called as documentation supporters For position This Because set right every child For in a manner free stating and being heard , receiving , seeking , and giving appropriate information _ with level intelligence and age For objective development himself in accordance with standard decency and propriety .

because _ that , except There is base law or regulation statutory provisions _ that separation it's for the sake of interest best son , then child entitled raised by his parents alone .

Important For remembered that only Because husband wife has divorce and court has decide who will _ own right foster on children that , no means connection blood child with parents _ biological has end or that parent _ the is No Again responsible answer For fulfil need child . Because , as listed in Article 49 Paragraph 2 of the Law Number 1 of 1974 Concerning Marriage , even parents _ lost right foster them _ still must finance maintenance his son .

Because of the verdict court No decide connection biological between children and their parents or let go of parents from not quite enough answer anything up _ child that , no There is reason for one parent __ For reject parental access _ others (which are not own right foster) . child . In fact allocation time visitation or parenting determined by conditions agreement between parents (husband and wife) .

Can also be pulled conclusion from Article 41 letter (a) Law Number 1 of 1974 concerning Marriage that if parents marriage _ separated Because divorce , fine Mother nor permanent father must support and educate . children , with consideration given _ solely For interest best for the children concerned ; in matter happen dispute right foster , court will make decision end .

Consequently , no Correct if parents _ No can see his son . Although the term " former wife ” and “ ex husband ” already common in modern society , the word “ ex child ” no There is in sociology . However very again , order pattern think psychological child No distracted , it's important For build agreement together between ex- husband and ex wife in matter visit to child . As descendants is results from happy marriage _ (Subekti, 2003) .

Thus, indeed, it is correct that gift right foster to one of the parents No decide parent bond, other with child that, regardless from are parents, the is father or Mother biological from child the. for the sake of interest child, parent custodian Possible want to matter That stated in decision end (as requested by the parties) that the parent is non-custodial can see child the When just. However, you can imagine, ex wife and ex husband reach deal outside court. Remember time visit child that, parents Can talk about it later.

Furthermore Article 14 of the Law Number 23 of 2002 concerning Child Protection set matter said, stating that " every child entitled raised by his parents alone, except There is valid reason and / or regulation statutory provisions, that separation it's for the sake of interest best child and is consideration last." In his defense, he confirm that bond a child with his parents, still No changed after parting described, in chapter this. When one of the parents Already set as guardian legitimate child that, no There is reason For prevent parents, other For see his son.

Although thus, in life everyday, us Still often see somebody try affect opinion a child towards one of the parents (usually the father) with say things negative about parents, the to the child. Child mental health will suffer consequence matter this. Although Possible difficult for divorced couple who already hate One each other, for the sake of interest the child 's best If No some parents try teaching child the For hate ex-partner. Due to divorce is problems adults, children, No can treated as abandoned party.

According to KHI, mother in a manner law responsible answer on children they until they reach age 12. Those over 12 years of age can choose For follow father or his mother. When confronted with aged child, more from 12 years, important For fulfil need his physical and spiritual as much Possible so that he choose For look for himself alone. And usually This is competition between husband and wife, with both of them try win love love the child with rain they with material and support emotional until arrive it's time for the child requested by the Jury Panel to input they about problem the.

CONCLUSION

Based on results findings and discussion, can concluded that Article 36 of the Marriage Law state that divorced couple can Act on agreement together For share treasure gono-this. Acquired properties, through gono-like can divided between partner If second split party agree with provision settlement and agree after discussion. in a marriage, husband and wife You're welcome own same power, so they can share treasure in a manner equally.

When father and mother separated and child the under 12 years of age at the time divorce, mother entitled take decision about parenting child in accordance Instructions President No. 1 of 1991. The child, as an adult, has the right choose one parent For Act as guardian interest law child. Possible court can decide depending on circumstances habit parenting couple. Order court about right foster No decide connection biological child with one of the parents, also not free one of the parents from need For support his son.

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