

THE SOCIOLOGY OF LAW PERSPECTIVE ON CHILD PROTECTION AT THE SYAR'YAH COURT IN ACEH

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Abstrak

Kajian ini bertujuan mengkaji perlindungan anak pada Mahkamah Syar'iyah di Aceh. Penelitian ini menggunakan studi sosiologi hukum yaitu salah satu pendekatan yang memandang hukum sebagai alat untuk menciptakan keteraturan dalam masyarakat. Pendekatan yang dipakai adalah studi kasus yaitu perlindungan anak pada putusan pengadilan di Banda Aceh, Bireuen dan Lhokseumawe tentang perwalian anak. Teknik pengumpulan data adalah studi literatur dan kajian putusan. Kajian ini menyimpulkan bahwa Mahkamah Syar'iyah di Banda Aceh memberikan hak perwalian kepada saudara kandung laki-laki yang telah dewasa dan untuk menjadi. Di Bireuen hak perwalian diberikan kepada ibu untuk seorang anak karena ditinggal oleh ayahnya yang memiliki gaji pensiun. Sedangkan di Lhokseumawe hak perwalian juga diberikan kepada ibunya sedangkan ayahnya wajib memberikan uang satu juta perbulan dan biaya pendidikan dan kesehatan. Di samping itu, hakim juga menjadikan Al-Qur'an, Hadis dan pendapat para ulama sebagai dalil dalam putusannya yang sesuai dengan karakteristik sosiologis keagamaan di Aceh. Hal ini menunjukkan bahwa Mahkamah Syar'iyah sebagai bagian dan sistem sosial dan hakim sebagai aktor sosial telah berfungsi memberikan perlindungan anak sehingga tercipta ketertiban dan keteraturan dalam masyarakat.

Kata Kunci: *Perlindungan Anak, Perwalian Anak, Mahkamah Syar'iyah & Sosiologi Hukum.*

Abstract

This study aims to examine child protection at the Syar'iyah Court in Aceh. This research uses the study of legal sociology, which is an approach that views law as a tool to create order in society. The approach used is a case study of child protection in court decisions in Banda Aceh, Bireuen and Lhokseumawe regarding child guardianship. The data collection technique is literature study and judgment study. This study concluded that the Syar'iyah Court in Banda Aceh granted guardianship rights to male siblings who had grown up and to become. In Bireuen, guardianship rights are given to the mother for a child because her father has a pension salary left behind. Whereas in Lhokseumawe, guardianship rights are also given to the mother while the father is obliged to give one million per month and education and health costs. In addition, the judge also made Al-Qur'an, Hadith and the opinions of the ulama as arguments in his decision which were in accordance with the sociological characteristics of religion in Aceh.

This shows that the Syar'iyah Court as part of the social system and judges as social actors have functioned to provide child protection so as to create order and order in society.

Keywords: *Child Protection, Child Guardianship, Syar'iyah Court and Sociology of Law.*

A. Introduction

Child protection is not a simple matter that can be completed by only one or two institutions. It requires the cooperation of all parties across sectors, from the government, non-government organizations, religious leaders to social organizations and the general public. One government institution that is directly related to child protection is the judiciary, namely the Syar'iyah Court which is outside Aceh called the religious court. This institution can decide issues of child guardianship (*hadhanah*), child support and other legal rights (Salim et. al, 2009: 68 and Zein, 2004: 166).

Children are parts of the younger generation as one of the human resources who are the potential and successor to the ideals of the nation's struggle, which have a strategic role and have special characteristics and characteristics, require guidance and protection in order to ensure complete physical, mental and social growth and development, harmonious and balanced. To carry out coaching and provide protection for children, support is needed, both in terms of institutions and legal instruments that are more solid and adequate, and therefore provisions regarding the administration of court for children need to be carried out specifically (Zuraidah and Sadi Is, 2018: 152 and Makaro et. al., 2013: 1).

The fate of children in Indonesia is still worrying because they are not well protected and there is still a lot of violence that continues to beat and surround them even though these children are the future of the nation. The development feels uneven and fully accommodated even though according to Law No. 23 of 2002 concerning child protection states that every child has the right to receive protection from being subjected to torture, torture or the imposition of inhuman sentences (Salim, 2016).

In line with that, to realize child protection, the government has one responsibility through the judiciary, namely the Syar'iyah Court. Mansari (2018: 103) Zainuddin and Mansari (2018) explains that the role of judicial institutions such as the Syar'iyah Court through a judge's decision regarding the protection or care of children

after divorce, namely the demands of the petitioner/respondent, through a *verstek* decision, in the best interests of the child. The appointment of a caregiver, either father or mother or other family, is not against the applicable law and as long as it guarantees the interests of the child, even though in the regulation the more entitled is the mother.

Hidayana (2020: 302) explained that the thing that caused the difference in giving *hadhanah* was due to the handover by the mother to the father and it was decided in the *verstek* decision (the defendant was not present in court). Although in this case custody is given to the mother. The aspects of child protection after divorce are: first, the child has the right to receive care from both parents; second, the cost of maintaining and educating children is the responsibility of the father; third, the father acts as a guardian if the child is a girl; and fourth, between parents and children still inherit from each other.

Protection of children after divorce based on case decisions shows that 1) the rights of children due to divorce which are regulated in laws and regulations are limited to the right to care, education rights, and the right to pay for both; 2) factors that cause the father's rights to be not fulfilled after the divorce decision, including economic factors, factors of the father remarrying, and psychological factors; and 3) legal efforts to fulfill children's rights after the divorce decision, namely the execution of the contents of the verdict, civil suit outside the divorce case, and the transfer of responsibility for the fulfillment of children's rights (Kurniawati, 2019).

This study discusses child protection played by the Syar'iyah Court in Aceh from the perspective of legal sociology. The discussion focused on the judge's decision at the Syar'iyah Court, namely cases of child custody both due to divorce cases and in cases where one of the parents was left. This study is important in order to prove that the Syar'iyah court institution provides protection for children's rights.

B. Discussion

1. Research Methods

This research is a sociology of law, which is an approach in law that views law as something that works in society. Social theory makes order and order in the social system the main elements (Ritzer and Goodman, 2004: 121). Sociology of law treats the legal system as only one of many social systems and that it is precisely other social

systems that also exist in society that give meaning and influence to law (Ali and Heryani, 2012: 10 Amriruddin and Asikin, 2014: 202). The research approach used is a case study that takes into account the legal considerations used by judges to arrive at decisions (Marzuki 2014: 158). Meanwhile, data collection techniques are literature study and judgment study.

2. Child Protection at the Syar'iyah Court

Child protection through the Syar'iyah Court institution can be seen in decisions related to guardianship or child care (*hadhanah*). *Hadhanah* is one of the important problems that arise after divorce, the death of one of the child's parents while the child is not yet an adult. The judge will make the Compilation of Islamic Law (KHI) as a reference in addition to the 2014 Child Protection Law. KHI regulates the care of children in two circumstances; first, *ghair mumayyiz* child (under 1 year old); second, *mumayyiz* (over one year). KHI does not require the party who will take care of whether the father or mother (Salim et al., 2009: 69). Because the party who will take care of the child, the amount of living and costs of education, health and various other rights of the child really depend on the background of the case, legal facts, social factors that will be considered by the judge in deciding a case.

The following will describe child protection in child custody cases that occurred at the Syar'iyah Court in Aceh:

a. Lhokseumawe Syar'iyah Court

The case that occurred at the Syar'iyah Lhoksumawe Court was a child aged 12 years whose parents were divorced. The verdict of the Syar'iyah Lhokseumawe court is interesting to observe, because this ruling states quite a lengthy consideration, including the rule of law, the verses of the Koran and the hadiths of the Prophet, the psychology of the children and the opinions of the scholars. This shows that the panel of judges has a broad and wise scientific perspective before determining a case decision. The Panel of Judges decided that the child care rights for the biological mother and the father were obliged to provide for the child Rp. 1,000,000 per month excluding health and education costs on September 19, 2019 (Number 114/Pdt.G/2019/MS.Lsm).

b. Bireuen Syar'iyah Court

The case of determining a child guardian in the Syar'iyah Bireuen Court was a mother who died, her husband had a child who was 15 years old. His father is a member of the Tentara Nasional Indonesia (TNI or army) who has a retired salary, but because the mother is married, the salary cannot be taken on her mother's name. So the mother submitted a request to the Syar'iyah Court to be appointed as the guardian of the child (Number 0061/Pdt.P/2016/MS.Bir).

The basis of this child guardianship is to take care of the father's pension salary so that the child can receive a monthly salary which can be used as education and living expenses, because the mother has married someone else, but the mother and stepfather behave well in caring for their child. So that the judge gave custody rights to the biological mother.

c. Banda Aceh Syar'iyah Court

Then the case of a brother who was determined to be the guardian of a younger sister who was still under age occurred at the Banda Aceh City Syar'iyah Court. In the case in Banda Aceh, a brother's brother was appointed guardian after both of his parents died when the tsunami hit Aceh, December 26, 2004. The sibling has met the legal requirements because he is 22 years old while his younger brother is 18 years old. The two siblings are socially and legally able to take care of themselves and their inheritance in the form of land left by their parents (Number 0145/Pdt.P/2014/MS.Bna).

All of the decisions of the Banda Aceh, Bireuen and Lhokseumawe Syar'iyah Courts clearly show that child protection has been carried out as mandated in Islamic law. The judge's consideration stipulates that in order to provide protection for children, the interests of the child must be put forward, providing living expenses, education costs and medical expenses, as well as assets left by their fathers that can be used as living expenses and educational interests of their children.

3. Child Protection at the Syar'iyah Court in the Sociology of Law Perspective

Sociology of law studies have been widely used in the decisions of judges in general and religious courts. For example, Mubarok (2014: 370) says that a judge's

decision must meet three elements, namely; legal certainty, justice and benefit. In addition, Mahmudah (2019: 106) examines the sociological aspects of court decisions in suicidal divorce cases. According to him, the judge in giving a decision considers besides juridical factors, sociological factors are also quite considered. Legal sociology studies can also be used in resolving cases that occur in society not by taking formal justice but by means of customary mechanisms and local wisdom (Kasim and Nurdin, 2016 and 2020). Sociology of law is also an important element in the consideration of the decisions of court judges in Indonesia based on the Indonesian legal system, which obliges judges to understand and apply laws outside of statutory regulations (Novita: 2015: 68 and Usman, 2013: 111-113).

There are three cases examined related to child protection, especially child guardianship, each of which has a different background and pattern from the three jurisdictions, namely the Court of Syar'iyah Lhokseumawe, Bireuen and Banda Aceh. At the Syar'iyah Court in Lhokseumawe, the case was a family that divorced on June 6, 2017, which has one son (age 4 years). According to witness testimony, initially the child lived alternately in the place of the father and mother. But several months later his father refused to give the child to the mother's side. The defendant's reason was that the child preferred to live with his father's family. Likewise, he rejected the ex-wife's request to provide for the child as much as Rp. 2.000.000 each month because they feel that the child custody is not on the mother's side.

In response to this, the panel of judges in their decision rejected the defendant's wishes so that custody of the child fell to the mother, the child's support must also be paid Rp. 1.000.000 per month not including education and health costs. Judges as actors who provide a sense of justice have done their role in creating order and peace in society. Because sociologically underage children in Acehnese society are mostly cared for by their mothers or their mothers' families, as well as children who will still be supported by their fathers even though they are divorced.

For the case of the Banda Aceh Syar'iyah Court, a sociological perspective, as a consideration, the judge gave guardianship rights to his brother because the male sibling of a girl was an adult, who was 22 years old. Child protection, especially for managing the ownership of land inherited from their parents. In the sociological

context of Acehnese society, boys are guardians of younger sisters and even from other families. Moreover, the parents have property that the two children must take care of themselves after their parents died due to the tsunami. Then at the Syar'iyah Bireuen Court, child protection, namely the custody of the child to the biological mother, so that the child gets a pension salary from his deceased father. This salary can be used as tuition fees and living expenses until he reaches the age of 21.

If analyzed as a sociology according to Parsons (Martono, 2016: 60), the main elements in structural functionalism theory are social order and order. This is because in the social system each has a function in running well, mutually reinforcing (integration) to achieve the goal, namely order. The judiciary has succeeded in providing social order and order in society with decisions that are acceptable to both parties. Judges as social actors also consider social systems and structures by giving custody of children to the mother in the cases in Bireuen and Lhokseumawe. Likewise, the child's income was also granted as the mother's request made it. Providing child support plus the cost of education and health costs, this consideration also does not burden the father because it is based on the principle of ability and habits which mean customs and social realities which are usually given to children according to the age and education being passed.

This is what Rahardjo (1980: 112) and Ali (2012: 102-120) mentioned as the close relationship between the judiciary and the social structure of society, in this case the Syar'iyah Court is an integral part of the social system as understood in a sociological perspective of law. So that the judiciary and judges as actors have an integral relationship with the social system, social values that exist in society so that order and can be maintained. The goal of sociology of law is how law can control and organize society so that peace and harmony can be created. Moreover, children in families who divorce their parents, will be socially and psychologically depressed, so the presence of the Syar'iyah Court institution provides protection will slightly reduce this pressure.

C. Conclusion

Based on these three cases analyzed at the Banda Aceh, Bireuen and Lhokseumawe Syar'iyah Courts, all of them prioritize child protection. This study concludes that the Syar'iyah Court makes sociological factors into its considerations as

part of child protection. The Syar'iyah Court in Banda Aceh granted guardianship rights to a male sibling since he was an adult and to become guardian and take care of the inheritance of parents left by the tsunami. In Bireuen, guardianship rights are given to the mother for a child because her father who has a pension salary is left behind. Whereas in Lhokseumawe, guardianship rights are also given to the mother, while the father, who is still alive, is even obliged to give as much as one million per month plus education and health costs. In addition, judges also become Al-Qur'an, Hadith and the opinions of the ulama as arguments in their decisions that are in accordance with the characteristics of religious sociology in Aceh. This shows that the Syar'iyah Court as part of the social system and judges as social actors have functioned to provide protection for children so as to create public order and order. These are the goals and ideals of law from a sociological perspective.

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