

Implementation of Article 45 of Law No. 1 of 1974 concerning Marriage Related to the Fulfillment of Children's Rights After Divorce Based on the Principle of Legal Certainty

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Abstract

This study explores how Article 45 of Law No. 1 of 1974 concerning Marriage is applied to fulfill children's rights after divorce. The main focus of this study is to understand how the principle of legal certainty, which is the legal basis in Indonesia, is implemented in divorce cases, especially related to the fulfillment of children's rights. This study uses a normative juridical method with a legislative approach and secondary data analysis. The results of this study show that although Article 45 of the 1974 UUP explicitly regulated the obligations of parents to fulfill the rights of children after divorce, in practice, there are still various obstacles. These obstacles include a lack of legal understanding and awareness from the parties, as well as gaps in the application of the law that cause children's rights to not be fully fulfilled. This study recommends improving regulations and increasing supervision in implementing existing policies. Thus, it is hoped that children's rights in divorce cases can be better protected, in line with the principle of legal certainty guaranteed by law.

Keywords: Children's Rights After Divorce, Legal Certainty

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INTRODUCTION

Divorce is a social phenomenon that cannot be avoided in the life of modern society (Kitanović, 2015). When divorce occurs, not only the husband and wife are affected, but the children who are the result of the Marriage also experience significant consequences (Roza et al., 2024). Children are often the victims who suffer the most in these situations because they are caught between their parents' conflicts (Sullivan et al., 2024). Therefore, the law needs to protect the rights of children after divorce, ensuring that they continue to get their basic rights even if their parents are no longer together.

In Indonesia's legal context, Article 45 of Law No. 1 of 1974 concerning Marriage regulates parents' obligation to maintain and educate their children. This article confirms that the responsibility remains valid even after a divorce. However, implementing this rule often encounters various obstacles that hinder fulfilling children's rights (Quennerstedt & Quennerstedt, 2014).

This research is motivated by concern about the fate of children whose rights are not fulfilled properly after divorce (Djawas et al., 2023). In addition, it is important to analyze the extent to which the principle of legal certainty on which the law is based has been applied in reality (Acar & Sudrajat, n.d.). The study aims to identify problems arising in implementing

Article 45 and provide recommendations that can improve the effectiveness of protecting children's rights (Adi, 2023).

Problem Formulation

This research focuses on two main questions. First, how is Article 45 of Law No. 1 of 1974 concerning Marriage applied in the fulfillment of children's rights after divorce? Second, has the principle of legal certainty been effectively implemented in this context? These two questions are important to answer how the law can protect children whose parents are divorced.

Research Objectives

The main purpose of this study is to analyze the application of Article 45 in the context of fulfilling children's rights after divorce (Rohman Uni et al., 2020). It also aims to assess whether the principle of legal certainty guaranteed by law has been effectively implemented in divorce cases (Shcherbanyuk et al., 2023). The results of this research are expected to provide deeper insights into existing problems and become the basis for future legal policy improvements (Dwivedi et al., 2021).

Research Benefits

This research has several important benefits, both theoretically and practically (McShane & Böckenholt, 2017). Theoretically, this research is expected to enrich the study of family law, especially protecting children's rights after divorce. Meanwhile, practically, the results of this research can be a reference for legal practitioners, policymakers, and other related parties to improve the law's implementation so that children's rights can be better protected.

RESEARCH METHODS

This research uses a normative juridical approach, which is an approach that focuses on the analysis of laws and regulations relevant to the issue being studied. This method was chosen because it is by the purpose of the research, which is to examine the extent to which existing legal provisions have been applied in practice. The data used in this study is secondary data consisting of literature, laws and regulations, and related court decisions.

RESULTS AND DISCUSSION

1. Challenges in the Implementation of Article 45 of Law No. 1 of 1974

Implementing Article 45 of Law No. 1 of 1974 faces serious challenges in protecting children's rights after divorce. One of the main challenges is the lack of legal understanding among divorced parents. Many parents are unaware that their obligations to their children do not end in divorce. This is often due to a lack of legal education or a superficial understanding of the rights and obligations governed by law. As a result, children fall victim to this ignorance, where their needs for treatment, education, and financial support are not met.

In addition to the lack of legal understanding, another problem is the existence of varying interpretations among judges regarding the application of Article 45. Although the law has established clear provisions, the application of these provisions may vary depending on the subjective views of the judge handling the case. This can create legal uncertainty, where the parties involved in a divorce case are not clear about their rights and obligations.

In addition, challenges in law enforcement are also a significant obstacle. The court may have established custody and child support in its decision, but there are often difficulties in enforcing the decision. Some parents who do not obtain custody may refuse to pay child support, while parents who do obtain custody may face difficulties in ensuring that their ex-spouse complies with the court's decision. This non-compliance reflects weaknesses in the law enforcement system, where sanctions for parties not complying with court decisions are often not strict enough to ensure compliance.

2. Social and Psychological Impact on Children After Divorce

Divorce not only affects the relationship between husband and wife but also has a huge impact on the children involved. Children from divorced families often experience a variety of social and psychological problems that can affect their development in the long run. One of the main impacts of divorce is emotional instability, where children may feel lost, confused, and stressed due to sudden changes in their family structure.

In addition, divorce can also affect a child's academic achievement. Children who are involved in parental divorce often experience decreased motivation and concentration in school, which can lead to a decline in their academic performance. This may be due to a lack of emotional support at home or the presence of psychological pressure that interferes with their focus on studying.

Furthermore, divorce can affect a child's social relationships. Changes in family dynamics may cause children to feel isolated from their peers, and they may also face social stigma as a result of their parents' divorce. This can lead to difficulties in building healthy social relationships and affect their ability to interact with others in the future.

In addition to the social and psychological impacts, divorce often causes economic problems for children. When parents divorce, the family's financial resources are usually divided, which can lead to a decrease in the children's living standards. In some cases, the child support set by the court is not enough to meet the child's basic needs, which can affect their overall quality of life.

3. Analysis of Weaknesses in the Legal and Supervisory System

Weaknesses in the legal system related to the application of Article 45 are not only limited to a lack of understanding of the law and weak enforcement. There are also problems in the legal structure itself that need to be fixed. For example, existing laws may not fully respond to children's needs in divorce situations, especially in the ever-changing modern context.

One of the main drawbacks is the lack of effective monitoring mechanisms to ensure that children's rights are fulfilled after divorce. Currently, no unified system monitors whether parents fulfill their obligations according to court decisions. This creates a gap where children can easily be overlooked, especially if there is no oversight of fulfilling their rights.

In addition, there are also problems in the training and education of law enforcement, including judges, on specific issues related to post-divorce child rights. Many judges may not have in-depth knowledge of the psychological impact of divorce on children or are not trained enough to handle cases involving conflicts of interest between parents and children. This can lead to inadequate decisions that do not fully protect the interests of children.

4. Recommendations for Improving the Legal and Supervisory System

Based on the analysis of existing weaknesses, several steps are needed to improve the legal system and supervision to better protect children's rights after divorce. One of the main steps is to strengthen law enforcement by introducing stricter sanctions for parties who do not comply with court decisions related to custody and child support. These sanctions can be fines, restrictions on certain rights, or even criminal penalties for those deliberately neglecting their legal obligations.

In addition, it is important to improve education and training for law enforcement on issues related to children's rights. Specialized training programs for judges, lawyers, and court officers can help improve their understanding of how to protect children's rights in divorce cases. The program may also include training on the psychological impact of divorce on children and how to consider these factors in decision-making.

Another step that can be taken is to introduce a more effective monitoring mechanism to ensure the fulfillment of children's rights. For example, the government can establish an independent body tasked with monitoring and enforcing the fulfillment of court decisions related to custody and child support. The agency can work closely with courts, local authorities, and non-governmental organizations to ensure children receive the support they need.

In addition, the law must be revised to adjust to the development of the times and the needs of children in the modern era. For example, the law could be expanded to include more specific provisions on co-parenting, visitation arrangements, and child support in situations where parents live in different locations. This revision should consider the child's best interests as the top priority and ensure that the law is flexible but still provides the necessary legal certainty.

5. A Comprehensive Approach to the Protection of Children's Rights

A more comprehensive approach involving various parties, including governments, legal institutions, non-governmental organizations, and the community, is needed to improve the protection of children's rights. Public education on the importance of protecting children's rights after divorce should be improved through social campaigns, educational programs, and counseling services. The purpose of this approach is to change perceptions and attitudes towards divorce so that parents are more aware of their responsibilities towards their children.

Furthermore, the government needs to play an active role in providing support services for children involved in their parents' divorce. These services can include psychological counseling, legal help, and social support to help children cope with the negative effects of divorce. Additionally, programs designed to strengthen the bond between children and their parents, even after divorce, can help reduce any adverse effects that may arise.

More inclusive policies are also needed to ensure that all children, regardless of their social and economic background or parental status, have equal access to legal protections. This policy should include special protections for children living in vulnerable conditions, such as children with disabilities or those from low-income families.

6. Policy Conclusions and Implications

From the above discussion, it is clear that many challenges are faced in applying Article 45 of Law No. 1 of 1974 related to the protection of children's rights after divorce. Although the law is designed to protect children's interests, many loopholes often cause children's rights to be overlooked. These challenges include a lack of understanding of the law, weaknesses in law enforcement, varied interpretations, and ineffective oversight. To address these challenges, stronger measures in law enforcement, increased education and training for law enforcers, and better oversight mechanisms are needed. In addition, there is a need for a comprehensive approach involving various parties to ensure that children's rights are protected to the maximum. With these measures, it is hoped that Indonesia's legal system can provide better protection for children whose parents are divorced so that they can grow and develop in a safe and stable environment.

CONCLUSION

From the analysis that has been carried out, it can be concluded that the protection of children's rights after divorce in Indonesia still faces various significant challenges. The application of Article 45 of Law No. 1 of 1974, which regulates the obligations of parents to their children after divorce, has not fully gone well. One of the main obstacles is the lack of legal understanding among the community, especially divorced parents. This ignorance causes many children's rights to be neglected in terms of care, education, and financial needs. In addition, weaknesses in law enforcement and varying interpretations from judges also add to the law's uncertainty, so court decisions related to custody and child support are often not followed properly. The lack of an effective oversight mechanism exacerbates this situation, as no system ensures that court decisions are executed. To improve this condition, a more comprehensive and coordinated approach is needed from various parties, including the government, legal institutions, and the community. Steps that need to be taken include increasing education and legal awareness, stronger law enforcement with strict sanctions, and the development of monitoring mechanisms that ensure that children's rights after divorce are

properly fulfilled. By strengthening the legal and supervisory system, as well as involving all levels of society in efforts to protect children's rights, it is hoped that children involved in their parent's divorce can continue to get the attention and support they need to grow and develop properly.

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