
Judge's Consideration In Deciding The Amount Of Child -Deported Child Caring Costs In Decision Number 266/PDT.G/2023/MS.BNA AND 267/PDT.G/2023/MS.BNA

Zahrul Fatahillah

Sekolah Tinggi Ilmu Syari'ah (STIS) Nahdlatul Ulama Aceh
Email: zfatahillah1@gmail.com

Abstract

Children have the right to get a living after the divorce from their parents, but the Marriage Law does not determine the amount. As a result, the panel of judges in decision Number 266/Pdt.G/2023/MS.Bna determined Rp. 1,000,000 and in decision Number 267/Pdt.G/2023/MS.Bna the amount was Rp. 1,500,000. This study aims to analyze the basis for the judge's considerations in determining the amount of post-divorce child support and a juridical review of the two decisions. This research includes juridical research. The primary legal material is the Marriage Law, decision Number 266/Pdt.G/2023/MS.Bna and decision Number 267/Pdt.G/2023/MS.Bna. data analysis was carried out qualitatively based on primary legal materials and secondary legal materials. The results of the study show that the judge's consideration in determining the amount of post-divorce child rearing costs is based on the father's ability. Father's ability is obtained based on the witnesses presented to the trial. In addition, the basis for the judge's consideration was based on the petitum of the plaintiff's lawsuit which asked the panel of judges to order the defendant to pay post-divorce childcare costs. Legally, it is justifiable to provide post-divorce childcare costs that vary from one decision to another. Article 41 of the Marriage Law, Article 105 letter b and Article 156 KHI do not limit the amount of fees that must be given, so that the decision of the panel of judges giving the total cost of raising children post-divorce amounted to IDR 1,000,000 in decision Number 266/Pdt.G/2023/MS .Bna and decision Number 267/Pdt.G/2023/MS.Bna amounting to Rp. 1,500,000 is something that is justified according to law.

Keywords: *Child Care Costs; Decision; Judge; Sharia Court*

Introduction

Marriage, which aims to create a family that is happy, full of love, and love each other does not always end well. During life together, conflict and voltage often appear among couples who have differences. This ongoing opposition can lead to divorce, which is very worrying for children because they have to part with one of their loved ones.¹

¹ Meita Djohan OE, Hak Asuh Anak Akibat Perceraian (Studi Perkara Nomor 0679/Pdt.G/2014/PA TnK), *Pranata Hukum Volume 11 Nomor 1 Januari 2016*, hlm. 62.

Divorce, both through the lawsuit process,² namely divorce and divorce, brings new consequences such as child custody, financial support for children and wives, living during the iddah period and the distribution of mutual assets.³ To get these rights, both husband and wife can submit their requests to the Religious Court or the Syar'iyah Court in their respective regions.

In Islamic family law, requests regarding child custody, child livelihood, wife's living, and distribution of assets can be submitted in conjunction with divorce requests or after divorce decisions are issued.⁴ This rule shows flexibility in efforts to seek justice through legal processes. The ability to combine the cost of a child's living with a divorce suit is regulated in Article 66 paragraph (5) jo Article 86 paragraph (1) of Law Number 7 of 1989 Article 66 paragraph (5) states the request for the mastery of the child, the living of the child, the living of the wife, and the joint property of husband and wife can be submitted together with the request for divorce divorce or after the divorce pledge is pronounced. Then Article 86 paragraph (1) states the lawsuit about the mastery of the child, the child's living, the living of the wife, and the joint property of husband and wife can be filed together with the divorce suit or after the divorce decision obtains permanent legal force.

Children are entitled to a living or living expenses, even though the marriage relationship between his parents broke up. The child's right to get the cost of living from his father has been recognized by the positive law of Indonesia as regulated in Article 41 of the Marriage Law. According to Article 41 of the Marriage Law due to the breakup of marriage due to divorce is:

1. Both the mother or father remains obliged to maintain and educate their children, solely based on the interests of children; When there is a dispute regarding the mastery of children, the court gives his decision.
2. The father is responsible for all the caring and education costs needed by the child; When the father cannot fulfill these obligations, the court can determine that the mother takes the cost 2. The father is responsible for all the caring and education costs needed by the child; When the father cannot fulfill these obligations, the court can determine that the mother takes the cost.
3. The court can require the former husband to provide livelihood costs and/or determine an obligation for the former wife.

In addition to Article 41 of the Marriage Law, relating to child caring is also regulated in Article 105 KHI. Article 105 KHI states that; Caring of children who have not

² Perceraian, baik melalui proses gugatan maupun talak, membawa konsekuensi baru seperti hak asuh anak, dukungan finansial untuk anak dan istri, nafkah selama masa penantian (iddah), serta pembagian harta bersama. Untuk mendapatkan hak-hak ini, baik suami maupun istri dapat mengajukan permohonan mereka ke pengadilan agama atau mahkamah syariah yang berwenang di wilayah masing-masing.

³ Abdul Manan, *Aneka Masalah Hukum Perdata Islam Indonesia*, (Jakarta: Kencana Prenada Media Group, 2006), hlm. 21.

⁴ *Ibid.*, hlm. 21.

been mumayyiz or not 12 years old is the right of his mother; It was further stated that the caring of children who had been mumayyiz were handed over to children to vote between their fathers or mothers as holders of their caring rights; and costCaring is borne by his father.

In addition, the provisions regarding the obligation of the father to pay for their child are regulated in Article 156 letter (d) KHI jo Article 41 letter b of Law Number 1 of 1974 concerning Marriage. Article 156 Letter (d) states "All the costs of hadtihan and the child's living are the responsibility of the father according to their abilities, at least until the child can take care of himself (21 years). Then Article 41 letter (b) states that the father responsible for all the caring and education costs needed by the child; When the father cannot fulfill these obligations, the court can determine that the mother takes part in carrying out these costs. Thus, the husband is a person who is obliged to provide a living to his children in the event of divorce in accordance with his abilities. If the husband does not pay for a living to his children, then the mother has the right to sue the court so that the ex-husband gives a living and living expenses and all the costs of their children's education.

According to the provisions of the laws and regulations in force in Indonesia, related to the authority of the institution authorized to prosecute the marriage cases of Muslims in Indonesia become the absolute authority of the Religious Court or the Shariah Court.⁵ The authority is explicitly explained in Law Number 7 of 1989 as amended by Law Number 3 of 2006 and the second amendment to Law Number 50 of 2009 concerning Religious Courts (hereinafter abbreviated as the LoGA). In this provision it is explained that the Religious Court is tasked with examining, deciding, and completing cases at the first level between people who are Muslim in the fields of marriage, inheritance, will, and grants, which are carried out based on Islamic law, waqf and shadaqah. This provision is the basis for the Syar'iyah Court to try marriage cases, including related to trying the case of child caring costs after divorce. In the context of Indonesia's positive law, every divorce must be carried out before the court. According to Article 39 paragraph 1 of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Perkwinan states that divorce can only be carried out before the court hearing after the relevant court is trying and failed to reconcile both parties. Then it is regulated again in Article 115 of the Compilation of Islamic Law (hereinafter abbreviated as KHI) which states that divorce can only be done before the Religious Courts after the Religious Court tries and is not successful in reconciling both parties or husband and wife. This provision gives

⁵ Kewenangan absolut adalah berkaitan dengan wewenang suatu badan pengadilan dalam memeriksa jenis perkara tertentu yang secara mutlak tidak dapat diperiksa oleh badan pengadilan lain atau menyangkut pembagian kekuasaan antar badan-badan peradilan. Lebih lanjut lihat juga Retnowulan Sutantio dan Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek*, (Bandung: Mandar Maju, 2005), hlm. 11.

instructions to the people who want to do the divorce must submit their cases to the court in their jurisdiction.

In connection with the cost of caring of children is also regulated to be the authority of the Syar'iyah Court. The child is represented by his mother to ask the panel of judges to decide on the cost of caring of children after divorce. The panel of judges in prosecuting and deciding on the cost of caring of children after divorce has often provided a child's living in his decision. For example, in the decision number 266/Pdt.G/2023/MS.BNA which provides child caring costs as well as in Decision Number 267/Pdt.G/2023/MS.BNA.

In decision number 266/Pdt.G/2023/MS.BNA the panel of judges gave a living to the post -divorce child amounted to Rp 1,000,000. Point 5 The judge's decision stated that he sentenced the Defendant to provide spending/cost of children every month at least Rp. 1,000,000. - (one million rupiah) until the child is an adult or independent outside the cost of education and health with an additional 10% each year. Unlike the case with Judge's decision number 267/Pdt.G/2023/MS.BNA who provides a child's living amounting to Rp 1,500,000, - this is emphasized in point 8 Diktum Decision is to punish the Defendant to pay the child's hadnah fee as referred to in the number 7 above the amount of Rp. 1,500,000(one million five hundred thousand rupiah) every month given through the plaintiff as of the ruling was dropped until the child was mature/independent with an increase of 10% every year outside the cost of education and health

Both decisions become interesting things to study, this is due to the disparity between the judge's decision in determining the amount of child caring costs. One decision gives a child's livelihood after divorce amounting to Rp. 1,000,000 and another decision provides a child caring cost after divorce amounting to Rp. 1,500,000. Even though the two decisions are both divorce decisions in which there are demands for children's caring costs and in the same court. Based on the problem as described above, this study becomes a problem that should be examined comprehensively in order to get a concrete answer to the problem. The author wants to know in detail the judge's consideration in determining the amount of childbirth after the divorce of parents in decision number 266/Pdt.G/2023/MS.BNA and Decision Number 267/Pdt.G/2023/MS.BNA. and a juridical review of determining the amount of livelihood after divorce.

Methode

To discuss the above problems in this study, normative juridical research methods will be used. Normative legal research (normative juridical), namely legal research

conducted by examining library materials or secondary data.⁶ Legal research conducted by examining library materials or secondary data.⁷ In this case the researcher will review the rules and principles of law contained in the science of law. The approach used to analyze the problems in this study is descriptive analysis, namely research that aims to clarify data about a symptom, then analyzed using the legal approach contained in the Koran and hadith as a source of Islamic law and positive laws that apply in Indonesia.⁸

Discussion

1. Chronological Case Decision Number 266/Pdt.G/2023/MS.BNA and Decision Number 267/Pdt.G/2023/MS.BNA

Each judge's decision certainly has its own considerations which are then outlined in the judge's decision. Included in the Decision of Child Caring Costs after divorce case Decision Number 266/Pdt.G/2023/MS.BNA and Decision Number 267/Pdt.G/2023/MS.BNA. Both decisions have a chronological formulated by the panel of judges in the court's decision. To clarify sitting cases from the two cases, the following writer will describe comprehensively about the actual problems in the case.

a. Decision Number 266/Pdt.G/2023/MS.BNA

Decision Number 266/Pdt.G/2023/MS.BNA is a decision that started from submitting a divorce suit to the Banda Aceh Syar'iyah Court. The reason the plaintiff filed the lawsuit was because there had been a dispute and a dispute between a married couple. In addition, domestic violence (domestic violence) often occurs between the two. The legal relationship between the Plaintiff and Defendant was established because of a marriage in 2017. After marriage between the Petitioner and the Respondent was born a child. In this case the plaintiff's demands in addition to demanding divorce from her husband also asked the panel of judges to provide child caring costs after divorce. The cost by the Plaintiff is Rp. 1,000,000, - with details of Rp. 300,000, - For caring costs, education costs Rp. 500,000 and health costs of Rp. 200,000, - So the total demand is Rp. 1,000,000.

Based on the examination at the trial, the panel of judges dropped the decision with his amar set the spending of one child named A, a woman was born on B, a minimum of Rp. 1,000,000. - (one million rupiah) outside the cost of education and health with an additional 10% each year.

⁶ Soerjono Soekanto, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, cet. 4, (Jakarta: Raja Grafindo Persada, 1995), hlm. 13.

⁷ *Ibid.*, hlm. 13

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cet. 3, (Jakarta: Universitas Indonesia, 1986), hlm. 11

b. Decision Number 267/Pdt.G/2023/MS.BNA

This decision began with a divorce claim submitted by a wife against her husband. The basis for submitting a lawsuit because the household has begun to occur disputes between the two, the Defendant pays less attention to his responsibilities to his wife and is often light-handed towards his wife. From the marriage has been blessed with one child who still needs love from both parents. In this case the Plaintiff in his lawsuit demanded that the Panel of Judges sentenced the Defendant to pay the child's caring fee of Rp. 3,000,000, - to adult children with an increase of 5 % to 10 % every year outside the cost of education and health.

Based on the examination at the trial, the Panel of Judges dropped the decision with his amar to sentence the Defendant to pay the child's hadnah fee as referred to in the Dictum number 7 above the amount of Rp. 1,500,000 (one million five hundred thousand rupiah) every month given through the Plaintiff as of the decisions of the decision was dropped until the child was mature/independent with an increase of 10% every year beyond the cost of education and health.

2. Judge's consideration in determining the cost of caring of the child decision Number 266/Pdt.G/2023/MS.Bna and Decision Number 267/Pdt.G/2023/MS.Bna

As has been understood that every judge's decision has legal considerations both granting and rejecting a demand for rights. Likewise with Decision Number 266/Pdt.G/2023/MS.BNA and Decision Number 267/Pdt.G/2023/MS.BNA in which the Panel of Judges considers in relation to receiving demands for child caring costs after divorce. Even the balance of the panel of judges accepts the demands of the cost is as follows:

a. Consideration in Decision Number 266/Pdt.G/2023/MS.Bna

In accordance with the explanation described in the chronological section of the case, where the Plaintiff demands the panel of judges who prosecute the case to punish the Defendant as the child's father to pay the child's caring fee of Rp. 1,000,000. As for the consideration of the Panel of Judges are as follows: that in the plaintiff's claim also demanded child custody and child expenditure and based on the mediation report the Defendant did not mind the custody of the child is determined to the Plaintiff as the holder of the rights of hadtihan on behalf of the child, date B and the child's expenditure or living of the child in the amount of Rp. 1,000,000. - (one million rupiah) which is in line with the purpose of article 105 (a) and letter (b) Islamic law compilation that the caring of children who have not been mumayyiz or not aged 12 years are the rights of their mother and letter (c) the caring costs are borne by his father;

Considering, that the panel of judges considers the need to express the opinions of fiqh experts in the book of Al-Bajuri Juz II page 195 which reads:

وَإِذَا فَارَقَ الرَّجُلُ زَوْجَتَهُ وَلَهُ مِنْهَا وَلَدٌ فَهِيَ أَحَقُّ بِحَضَانَتِهِ

Meaning: "If a husband divorces his wife, and he has a child from marriage with his wife, then his wife has the right to maintain it".

Considering, that based on the considerations mentioned above the plaintiff's lawsuit against the child custody and the child's living should be accepted to be granted.

Considering, that even though the rights of hadtihan are fixed in the plaintiff as their biological mothers, for the psychological development of the child naturally, in certain times the plaintiff as the holder of the rights of hadhanah to be able to provide an opportunity for the Defendant as his biological father to give the affection for the child, this is in line with the provisions of Article 45 paragraph (1) of Law Number 1 of 1974 which reads "Both parents are required to maintain and educate their children as well as possible" and the provisions of Article 26 letter a and letter b of Law Number 23 of 2002 About child protection that reads: Parents are obliged and responsible for: a. Care, maintain, educate and protect children b. Developing children according to their abilities, talents and interests";

b. Consideration in Decision Number 267/Pdt.G/2023/MS.Bna

As described above, that the plaintiff in his lawsuit demands the cost of caring of children to his father. The Plaintiff demanded as much as Rp. 3,000,000, - and increase 5 % to 10 % each year. In accordance with the facts at the trial, the panel of judges decided as follows:

Considering, that the lawsuit regarding the child's living has fulfilled the provisions of Article 149 (d) and Article 105 letters (a) and (c) Compilation of Islamic Law in Indonesia Children who are under his biological father, therefore the Defendant should be punished to pay the living to the Plaintiff

Considering, that the child has the right to receive a living from his father and father is obliged to provide a living to his child according to his ability as the word of Allah SWT Q.S. Al-Thalaq verse 7 which means "should be people who have the breadth of giving a living according to their abilities and people Limited sustenance should provide a living from the property given by God to him. "The text is intended in general related to people who are obliged to provide for other people.

Considering, that the Plaintiff and Defendant's son is 16 years old or is Mumayyiz. then in accordance with the above considerations the Defendant is responsible

for the livelihood of the Plaintiff and Defendant's child until the age of 21 years or adults because it is an obligation that is attached to the Defendant as the child's biological father

Considering, that because of the absence of evidence that can strengthen the amount of the defendant's income and income each month, the panel of judges will consider based on proper and feasibility

Considering, that based on the considerations mentioned above and pay attention to the plaintiff's statement and witnesses, it is proven that the plaintiff is a mother who is worthy to take care of the plaintiff and the defendant with a living cost consisting of the cost of eating, health and overall clothing charged to the Defendant based on the feasibility of Rp.1,500,000 (one million five hundred thousand rupiah) every month outside the cost of education and health

3. Juridical Review of the Determination of Child Caring Costs in Decision Number 266/Pdt.G/2023/MS.Bna and Decision Number 267/Pdt.G/2023/MS.Bna

As explained above, that in Decision Number 266/Pdt.G/2023/MS.BNA the Panel of Judges provides a child caring fee of Rp. 1,000,000, - while in the decision number 267/Pdt.G/2023/MS.BNA the Panel of Judges punished the Defendant (father) paid Rp. 1,500,000, - In this section the author will examine whether the gift with a variety of varying amounts between one decision with another decision is appropriate or not with the provisions of the legislation.

First, legally, the provisions of the child's livelihood are determined in Article 41 of the Marriage Law, Article 105 letter b and Article 156 letter d KHI. Article 41 letter (a) in the marriage law aims to ensure that children still get the attention and support needed from both parents after divorce, to meet their physical needs and support their welfare. The compilation of Islamic law which is imposed through Presidential Instruction No. 1 of 1991, as there is Article 105 letter (c) which states that the responsibility for supporting children, which includes the fulfillment of children's life needs, is in the father of the child.. **Secondly**, this provision explicitly outlines that the father has the obligation to provide for his children.

Thirdly, this provision does not limit the amount that a father must give to his child.. Providing children's living costs in accordance with the ability of a father. The affirmation of the cost of caring of children is emphasized in Article 156 letter d KHI which states that all the costs of hadtihan and the child's living are the responsibility of the father according to their abilities, at least until the child can take care of themselves (21 years). This specific affirmation has a difference with the provisions stipulated in Article 41 of the Marriage Law and Article 105 KHI which only says the father's responsibility after divorce provides the cost of caring of children to adults

The size or amount of living that is required to have a reference in several Supreme Court decisions, including the Supreme Court Jurisprudence Number 608 K/AG/2003 dated March 23, 2005.⁹ In the jurisprudence, one of the principles is that the amount of children's living must be sufficient to meet the minimum life needs, based on reasonable considerations and in accordance with the principles of social justice. That is, fathers are required to provide sufficient living to ensure that children have adequate living standards. Thus, within the framework of the compilation of Islamic law and the Supreme Court's decision, the father has an obligation to support children and meet their needs. However, the size of the living must be adequate and in accordance with the principles of propriety and social justice. This shows the importance of providing adequate financial support for children's welfare in the divorce situation or post-division.

The development of thought in determining the amount of child livelihoods borne by the father has undergone changes to the emphasis on the accuracy of the amount of living in accordance with the factual conditions of the father and the real needs of the child. In this context, the determination of the right amount of living must consider the two main factors, namely the real needs of the child and the factual ability of the father. That is, in determining the amount of living that must be given by the father,¹⁰ it is important to consider these two things:

First, the real needs of children, namely the caring and living of the child must be based on the real needs of the child in accordance with the actual living conditions. This includes the cost of education, health, clothing, food, residence, and other aspects needed for the development and welfare of children. By considering the real needs of children, the amount of living that is set will be better able to meet adequate living standards for children. **Secondly**, the factual ability of the father, namely the determination of the amount of living must also pay attention to the economic ability of the father's real. This includes income, other financial dependents, and overall financial situations. Establishing the amount of livelihood that can be accommodated by the father factually will ensure that the father can fulfill his living obligation without experiencing excessive burden. By combining these two factors, an accurate and fair approach in determining the amount of children's living can be produced. This aims to maintain a balance between the interests of the child in getting adequate living and the obligation of the father in providing a living in accordance with his abilities. This development reflects a more realistic policy and in accordance with the principles of justice in maintaining the welfare of children in the context of divorce or post-divorce.

⁹ Asnawi, M. Natsir. "Implementasi Jurimetri Dalam Penentuan Jumlah Nafkah Anak." *Jurnal Hukum dan Peradilan* 5, No. 3 (2016): 331-350.

¹⁰ Asnawi, M. Natsir. "Implementasi Jurimetri Dalam Penentuan Jumlah Nafkah Anak." *Jurnal Hukum dan Peradilan* 5, No. 3 (2016): 331-350.

If you pay attention to the provisions contained in the statutory provisions, then associated with the case contained in the decision number 266/Pdt.G/2023/MS.BNA and Decision Number 267/Pdt.G/2023/MS.BNA it can be said that the provision of child caring costs after divorce is appropriate with the provisions of the legislation. This is said that the two provisions do not limit the amount that must be given, but what must be considered is the ability of a father to give it.

The panel of judges has considered the ability of a father in providing child caring costs. Determination of the amount of Rp. 1,000,000, - in decision number 266/Pdt.G/2023/MS.BNA because the panel of judges has considered the ability of the father to work as an honorarium in an agency whose income is not so large. While in the verdict number 266/Pdt.G/2023/MS.BNA the panel of judges considering the ability of the father's father where the father worked in the car rental site in accordance with the statement delivered by the witness at the trial. Based on these two considerations, the panel of judges gave a decision of Rp. 1,000,000 for the first case and Rp. 1,500,000, - for the second case. Giving different portions in each of these decisions is in accordance with statutory regulations, because the panel of judges has considered the ability of a father to provide costs to children

In the context of the size of the child's caring costs that must be given by the husband to their children, there are differences of opinion between two different schools of schools, namely Ash-Shafi'i and Abu Hanifah. This difference is related to the size or amount that should be given by the husband for the caring of children in certain situations. Ash-Shafi'i argues that for people who are poor and face economic difficulties, the size of the cost of caring of children is one "mud" (a type of capacity size).¹¹ For those who are in a better condition, the size is two "mud". As for those who are in the middle, the size remains two "mud".¹² Meanwhile, according to Abu Hanifah, for those who are in an economically better condition, they should give seven to eight "dirhams" in a month as the cost of caring of children. For those who experience economic difficulties, they should give four to five "dirhams" every month. Some friends of Abu Hanifah also stated that this size applies to food needs, while for needs other than food, adequate size must be applied.¹³ However, the view of most of scholars believes that there is no fixed size for the cost of caring of children except sufficient size. This is due to differences in the conditions of time, place, circumstances, and needs of everyone. These differences make it difficult to set a definite measure, so it is wiser to assess the needs contextually.

In the case of divorce between parents, there are three parties who have an important role in determining whether the child's caring rights are guaranteed or not. The

¹¹ Muhammad Rizal, "Analisis Pertimbangan Hakim Dalam Penetapan Biaya Pemeliharaan Anak Pasca Perceraian." *Al-Ahkam: Jurnal Syariah dan Peradilan Islam* 1, No. 2 (2021): 70-87.

¹² *Ibid.*, hlm. 70-87

¹³ *Ibid.*, hlm. 70-87

three parties are judges in court, the kindness of parents (father), and the involvement of the wife/mother during the divorce process.¹⁴ The role of judges in court is crucial. This can be seen in the provisions of Article 66 paragraph (5) in Law Number 7 of 1989 concerning Religious Courts. The article states that in the case of divorce through divorce, the mastery and living of the child can be submitted together with the request for divorce divorce or after the divorce is spoken. In other words, the judge has the authority to decide about the control (custody) of the child and the child's living in the context of divorce. This judge's decision will affect how the roles and obligations of both parents towards children after divorce.

Then the role of parents' goodness, especially father, is also very important. Father's goodness in providing financial, emotional, and attention to children greatly affects the condition and development of children after divorce. This support can include caring, education and welfare of children.¹⁵ Finally, the involvement of the wife or mother during the divorce process also plays a significant role. Communication and cooperation between parents, even though they separate, can help create a stable and harmonious environment for children. The involvement of the wife or mother in the process of negotiations or mediation can help achieve a profitable agreement for children. A very important thing is that all three of these three parties have responsibilities and roles in ensuring the child's caring rights are guaranteed as well as possible in the divorce situation. According to an explanation from a legal expert, Article 41 letter (a) in the Marriage Law reflects the normative effort of the state in protecting the rights of children after parents divorced. This article is a form of effort to ensure that children remain protected in the context of parental divorce.¹⁶

Divorce between husband and wife brings changes in status for both, such as being a widow or widower. However, the term ex-wife or ex-husband does not apply to children and parents. Children and parents still have the same status as before, especially in terms of the obligation to care for and educate children until they are adults or independent. The child's right to get caring is more focused on meeting physical needs. Children are entitled to receive support from both parents in terms of clothing, food, residence, and education needs, all of which are basic needs. The role of parents in caring for children includes aspects of fulfilling these physical needs, ranging from essential to more complex needs, if possible. It is very important for parents to continuously give love to their children, even though their lives have separated. Children have the right to get the attention of parents,

¹⁴ Khoiruddin Nasution, "Perlindungan Terhadap Anak dalam Hukum Keluarga Islam Indonesia." *Al-Adalah* 13, No. 1 (2016): 1-10.

¹⁵ Ibid., hlm. 1-10

¹⁶ Soraya Devy, and Doni Muliadi. "Pertimbangan Hakim dalam Menetapkan Nafkah Anak Pasca Perceraian (Studi Putusan Hakim Nomor 0233/Pdt. G/2017/MS-MBO)." *El-Ussrah: Jurnal Hukum Keluarga* 2, No. 1 (2019): 123-138.

and one of the parents who have been determined as the caregiver is not entitled to forbid other parties to visit him. That is why, in every judge's decision the judge always included the verdict which prohibits one of the parties to meet with his children.

Conclusion

The basis of the judge's consideration provides child caring costs after the divorce of parents in decision number 266/Pdt.G/2023/MS.BNA is because the Panel of Judges considers the petitum proposed by the Plaintiff in the lawsuit letter asking the panel of judges to decide the caring costs Children amounted to Rp.1,000,000,- as well as the decision number 267/Pdt.G/2023/MS.BNA where the Plaintiff in his lawsuit demanded that the Panel of Judges decided Rp. 1,500,000. Based on the petitum, the panel of judges concluded that they were appropriate to grant the suit of child caring costs. Other considerations are because the panel of judges has considered the ability of the defendant or the child's father.

Juridically the provision of post -divorce caring costs as stated in the decision number 266/Pdt.G/2023/MS.BNA and Decision Number 267/Pdt.G/2023/MS.BNA is a justified thing. Although in terms of nominal number of decisions one is higher than the other, namely decision number 266/Pdt.G/2023/MS.BNA is given a total of Rp. 1,000,000, - while decision number 267/Pdt.G/2023/MS.BNA was given a total of Rp. 1,500,000, - The provisions contained in the Marriage Law and KHI only determine the obligation of the father to provide a living, but the nominal depends on the wisdom of the judge and the ability of the child's parents

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