

The Factors That Influence the Causes of the Revocation of Parental Authority on Children Are Reviewed By Marriage Law Number 1 of 1974 (Case Study of Verdict No. 78 / PDT.G / 2017 / PA.PP)

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The Factors That Influence the Causes of the Revocation of Parental Authority on
Children Are Reviewed By Marriage Law Number 1 of 1974 (Case Study of
Verdict No. 78 / PDT.G / 2017 / PA.PP)

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Abstract

A child is a really special gift for parents from God, Allah SWT. Parents have an absolute right to educate, to nurture, to take care, and to fulfill child's need until the child grows to become an adult. Before growing up, the child is under his parent power. However, sometimes power of parents is revoked by religious court because of negligence of parents in caring the child. It is stated in Article 49 of Act Number 1 Year 1974 that power of mother or father or both of them could be revoked in certain time based on the will of other people or child's relatives or child's sibling or authorized officials by referring to court decision. The power is revoked because parents are negligence in fulfilling their responsibility or they do the bad things. Although the power is revoked, the parents still have responsibility to give financial support to the child. Based on the explanation above, problems to be discussed in this thesis are factors which cause the revocation of parent power on children reviewed from Act Number 1 Year 1974 (a case study of Verdict No. 78/Pdt.G/2017/PA.PP), and law consideration of panel of judges in giving judgement about revoking parent power on a child (a case study of Verdict No. 78/Pdt.G/2017/PA.PP).

Method of approach in this research is empirical, which means that secondary data was investigated first before primary data in the field was researched. Specification in this research is descriptive. Method of data collection are field research (interview) and library research. Result of the research shows that among factors which influence the cause of revoking parent power are: it occurs on children under 18 years and they are not married yet, parents are prosecuted because of their negligence in fulfilling their responsibility and doing really bad thing, and prosecutor meets criteria to be a guardian based on applicable provision. Judge consideration in giving judgement is that parents has broken the elements of marriage which is stated in Article 47 and Article 49, Act Number 1 Year 1974.

Keywords: Revocation; Power; Right; Children

Introduction

In its function, the family is to protect the child so that all his rights in the framework are guaranteed to develop optimally in accordance with human dignity and to receive protection from violence and crime.

In its development the child needs protection and guidance for his life, this concerns the rights and obligations of the child. The task of providing protection and guidance is the duty of the state, the community and the parents of the child itself¹.

In that sense, child protection can be divided into 2 things, namely:

1. Juridical protection, including; in the field of public law and civil law.
2. Non-legal protection includes; social, health and education fields².

Then what if the power of parents to children can be revoked, of course there are fundamentals. For this reason, it is necessary to know the reasons for the revocation of parental authority over children, as for the reasons as follows:

1. Using the power possessed by parents to the limits of feasibility or always neglecting their obligations in terms of maintaining or educating children.
2. Acting is not appropriate or bad.
3. In law due to a crime committed together with the child.
4. In law due to a criminal offense committed against the child.
5. Imprisoned as a punishment as a result of crimes committed for 2 years.

It is very important for parents to collaborate and help each other in caring for children until they are adults, which is the responsibility of parents to their children. Regarding child care also explained in the Compilation of Islamic Law (KHI) in article 98 paragraph 1 and 2 which reads:

1. The age limit of a child who is able to stand alone or is an adult is 21 years old, as long as the child is not physically or mentally flawed or has never been married.
2. His parents represent the child regarding all legal acts inside and outside the court³.

Between parents and children in a family there will be mutual relations. Where children have rights and obligations to their parents, so parents also have rights and obligations to their children. This is as regulated by the Marriage Law Number 1 Year 1974 Article 45 paragraph (1) and Article 46 paragraph (1).

Article 45 paragraph (1): "both parents must maintain and educate their children as well as possible"⁴.

Article 46 paragraph (1): "children must respect their parents and obey their good will"⁵.

¹ Unit Kerja Hukum Forum Komunikasi Pembinaan dan Pengembangan Anak Indonesia, *Panduan Penyuluhan Hukum Tentang Anak*, FK-PPAI, Jakarta, 1993, hlm. 4.

² *Ibid*

³ Direktorat Pembinaan Badan Peradilan Agama Islam, *Kompilasi Hukum Islam*, Direktorat Jenderal Pembinaan Kelembagaan Agama Islam Departemen Agama R.I, Jakarta, 1984, hlm. 17.

⁴ Direktorat Penyuluhan Hukum, Direktorat Jenderal Hukum dan Perundang-Undangan, Departemen Kehakiman, *Undang-undang Perkawinan*, (Jakarta : TP, 1984), hlm. 17.

⁵ *Ibid*.

However, if one or both parents neglect their obligations to the child, the court with its decision can revoke the parent's power towards their child. The above statement is regulated in Law Number 4 of 1979 which regulates how parents are responsible for the welfare of their children.

1. Article 9: "Parents are the first to be responsible for the realization of children's welfare both spiritually, physically and socially".

2. Article 10 paragraph 1: "Parents who are proven to have neglected their responsibilities as referred to in Article 9, thus resulting in obstacles in the growth of child development, can be revoked their foster power as parents to their children. In this case the person or body is appointed as guardian "⁶.

In this case, there has been a civil case in the Padang Panjang Religious Court, with the position of the case as follows:

The Plaintiff who is the biological father of the Defendant, has filed a lawsuit on February 23, 2017 which has been registered in the Registrar's Office of the Padang Panjang Religious Court in the register Number 78 / Pdt.G / 2017 / PA.PP. While the Defendant who is the legitimate husband of the Plaintiff's son named Sandra Dewi (Alm.) Who was married on December 14, 2006 in Padang Panjang Barat District, Padang Panjang City, West Sumatra Province in accordance with the Marriage Certificate Number 189/07 / XII / 2006 issued by the Marriage Registration Officer Office of Religious Affairs Padang Panjang Barat District, Padang Panjang City, West Sumatra Province. The results of the marriage they have been blessed with 3 children. The first child is a male who is 7 years old, the second child with a male type who is 5 years old and a third child with a female sex who is 2 years old. At that time around 2011, during the life of Sandra Dewi (Alm) had filed for divorce in the Padang Panjang Religious Court, but the divorce was revoked by Sandra Dewi (Alm) because Sandra Dewi (Alm) was reconciled with the Defendant. Sandra Dewi (Alm.) Is the biological child of the Plaintiff who passed away on November 18, 2016, due to falling ill. As long as Sandra Dewi (Alm) is sick of taking care of the children of Sandra Dewi (Alm) with the Defendant is the Plaintiff as the grandfather of the children. The defendant who was the biological father of the children never took care of it, sent a living for the children and his wife even visited the hospital and was not there. According to one witness, when the witness visited Sandra Dewi (the late) to the Hospital saw the Plaintiff was weak and some parts of her body were swollen due to fatigue in guarding Sandra Dewi (Alm) so that the witness replaced the Plaintiff to guard Sandra Dewi (Alm) until the Plaintiff's son others came to replace him.

Based on the background of the problem above, the author is interested in conducting research in the form of a Thesis entitled "Revocation of Parental Power to Children Viewed From Law Number 1 of 1974 concerning Marriage (Case Study of Decision Number 78 / Pdt.G / 2017 / PA / PP).

Formulation of The Problem

From the background of the problem above, the authors can state the formulation of the problem as follows:

1 Are the factors that influence the causes of the revocation of parental power to children in terms of Law Number 1 of 1974 (case study Decision No. 78 / Pdt.G / 2017 / PA.PP)?

⁶ Darwan Prinst, *Hukum Anak Indonesia*, PT. Citra Aditya Bakti, Bandung, 2003, hlm. 82.

Research Methods

The research used in this research is empirical juridical legal research, namely the problems studied in the legal or regulatory material that are associated with the library research material to obtain secondary data and field research to obtain primary data.

Research Results and Discussion

Factors Affecting the Cause of the Revocation of Parents' Power on Children

1. Underage children

The adult age limit according to law is:

1) KUHperdata Article 330: "those who have not reached the age of even twenty-one years, and have already been married first. If it is not yet twenty-one years old but has been married, it is still said to be an adult. "

2) In the Compilation of Islamic Law Article 98 paragraph 1 "the age limit for children who are able to stand or mature is 21 (twenty one years), as long as the child is not physically or mentally disabled or has never done a marriage.

3) In Article 47 paragraph (1) of Law Number 1 Year 1974 "children who have not reached the age of 18 (eighteen) years or have never held a marriage are under the control of their parents as long as they are not revoked". Furthermore, it is also regulated in Article 50 paragraph (1) of Law Number 1 Year 1974 which reads; "Children who have not reached the age of 18 (eighteen) years and have never made a marriage, which are not under the authority of parents, are under the authority of the guardian".

4) In Law Number 23 of 2002 concerning Child Protection Article 1 paragraph (1) which reads: "a child is a person who is not 18 (eighteen) years old, including a child who is still in the womb".

Based on the case above, the outcome of the Defendant's marriage with Sandra Dewi (late) who was blessed with 3 children including underage children, in the sense that they are not capable of carrying out legal actions. Regarding the actions taken by the child, it is an obligation for parents to protect and protect the children until he grows up.

2. Parents neglect obligations

The rights and obligations of parents are contained in Article 45 of Act Number 1 of 1974 concerning marriage which explains that:

1. Both parents must maintain and educate their children as well as possible.
2. Parental obligations referred to in paragraph (1) of this article are valid until the child marries or can stand alone which obligations apply even though the marriage between the two parents breaks up.

In Article 307 of the Civil Code, it is explained that each parent's authority on an immature child must take care of the child's assets.

In Law Number 23 Year 2002, Law Number 35 Year 2014 concerning Child Protection contained in Article 26 explains that:

Parents are obliged and responsible for:

- a. Parenting, nurturing, educating and protecting children
- b. Growing children according to their abilities, talents and interests.
- c. Preventing marriage at the age of the child.

d. Providing character education and planting values for children.

In the event that a parent does not exist, or is not known to exist or because of a reason that he cannot carry out his obligations and responsibilities, the obligations and responsibilities referred to in paragraph (1) can be transferred to the family, which is carried out in accordance with the provisions of the legislation.

Parents who have been freed from the power of their parents can then be able and capable again to care for and educate their children, for example he has recovered and has left the mental hospital because of madness, because of bad behavior, and now has become good again. It should be noted that the revocation of parental authority in this case does not include power as a marriage guardian. As explained in Article 49 of Law Number 1 Year 1974 concerning Marriage "what is meant by power in this article does not include power as guardian of marriage".

Parental authority over children can be revoked as parents to their children, where dismissal or revocation of the parent's power can only be carried out by the court⁷.

In Article 14 of Law Number 23 of 2002 concerning Child Protection, states: "Every child has the right to be cared for by his own parents, unless there are reasons and / or legal rules indicating that the separation is in the best interest of the child and is the last consideration. " So even though there are legal provisions stating that one of the parents as the holder of the preservation of the child remains, there is no reason to prohibit other parents from meeting their children⁸.

So in principle, the boundary of the obligation of parents to care for and educate children is not determined to the age limit, certain, but seen from the condition of the child, if the child is considered to be independent and married, then the obligation of the parents to maintain and educate them even though the new child has 17 years of age, on the other hand the child who is 25 years old but has not been able to stand alone, parents are still obliged to care for and educate these children.

3. Submitting a claim is a guardian

Child care or hadnanah, as explained in the Compilation of Islamic Law (KHI) is an activity of nurturing, nurturing and educating children to adulthood or being able to be independent. In Article 156 of the Compilation of Islamic Law, it is explained that children who have not yet had the right to get hadhanah from their mother. If the mother dies her position is replaced by:

- a. Women in a straight line from mother
- b. Father
- c. Women in a straight up line from father.
- d. The sister of the child in question
- e. Relative women according to the side line of the mother
- f. Relative women according to the father's side line.

Based on the decision Number 78 / Pdt. G / 2017 / PA.PP, by sitting in a case; a lawsuit has been submitted to the Padang Panjang Religious Court regarding the revocation of parental authority on February 23, 2017 and has been registered in the Registrar's Office of the Padang Panjang Religious Court in the register Number 78 / Pdt.G / 2017 / PA.PP, which is the argument on this case is as follows:

⁷ Soedharyo Soimin, *Hukum Orang dan Keluarga Perspektif Hukum Perdata/BW Hukum Islam dan Hukum Adat*, Sinar Grafika, Jakarta, 2002, Hlm. 51.

⁸ Adib Bahari, *Prosedur Gugatan Cerai+Pembagian Harta Gono Gini+ Hak Asuh Anak*, Pustaka Yustisia, Yogyakarta, 2012, hlm. 166.

The Defendant was the legal husband of the Plaintiff's son named Sandra Dewi bint Syahrial who married on December 14, 2006 in Padang Panjang Barat Sub-District, Padang Panjang City, West Sumatra Province in accordance with the Quotation of Marriage Certificate Number 189/07 / XII / 2006 issued by the Registrar Marriage Office of Religious Affairs in Padang Panjang Barat District, Padang Panjang City, West Sumatra Province, December 14, 2006.

During the wedding Sandra Dewi (late) with the Defendant has been blessed with 3 children. The Plaintiff is the biological father of Sandra Dewi and now Sandra Dewi has passed away on November 18, 2016 in accordance with the death certificate issued by the Head Office of Rantang Koto Nan IV Trench West Payakumbuh District, Payakumbuh City with Number 76 / SKM / PRT / XI /-2016. After Sandra Dewi (late) passed away the children of Sandra Dewi (late) with the Defendant were in the care of the Plaintiff and the Plaintiff's Family.

During Sandra Dewi's (late) life until her death, the Defendant was very negligent of the Defendant's obligations towards her children. For example: The Defendant never provided Defendant's children with Sandra Dewi (late) from November 2016 until now, the Defendant paid little attention and affection to the Defendant's children with Sandra Dewi (late). With the attitude and behavior of the Defendant, the Plaintiff requested the Padang Panjang Religious Court to revoke the Defendant's power against the Defendant's children with Sandra Dewi (late).

Sandra Dewi (late) is a Civil Servant and one of the conditions for taking retired Sandra Dewi (late) is the guardian of the son of Sandra Dewi (late) with the Defendant. Because of the Plaintiff's posita argument on points 7 and 8, the Plaintiff requested the Padang Panjang Religious Court to assign the Plaintiff as guardian to the Defendant's child with Sandra Dewi (late).

From the description of the above arguments and the results of the author's interview on December 7, 2017 with the Chair of the Panel of Judges named Sri Fortuna Dewi, S.Ag. MH, on a predetermined day we have appropriately summoned the Defendant by the Substitute Judge of the Padang Panjang Religious Court to attend the first hearing in this case but the Defendant did not come nor sent another person as a legal representative or proxy. A week after that the Defendant was called back appropriately but did not come too. Then the judge could proceed to the next stage by bringing witnesses and other valid evidence. This case verdict is carried out by *verstek*⁹.

As for the results of the interviews of the Author with the Chair of the Assembly, several factors causing the revocation of the power of parents in this case are:

1. Based on the evidence and consideration of conscience, the judge may decide the revocation of the power of the parent to the Defendant for fear that children's rights will be neglected while they are underage. In other words, children of their age still need attention, caring, care and affection from their parents. When Sandra Dewi (late) was still alive, it was seen how the attitude of the Defendant as the father of the children was inappropriate for her, especially after Sandra Dewi (late) died more than that.

2. For more than a year, during Sandra Dewi's (late) life even to the point of death, the Defendant never gave birth or physical support. Sometimes the inner life is there but not enough for daily needs.

3. As long as Sandra Dewi (late) was treated at the hospital and she learned that Sandra Dewi (late) was being treated, the Defendant and her family never visited her or even helped her with medical expenses.

⁹ Processed from the results of interviews with the Panel of Judges of the Padang Panjang Religious Court, Mrs. Sri Fortuna Dewi, MH.

4. The Defendant has never had any gratitude (good will) to the Plaintiff because thanks to his generosity, the children of Sandra Dewi (late) with the Defendant were in good health and fine.

5. Ever rebuked the child, often saying harsh words to Sandra Dewi (late), making Sandra Dewi hurt and crying.

6. There is a third person who takes the happiness of their family.

7. If at any time the Defendant is aware and becomes a good person, the father has the right to take care of the rights of the child, but all that depends on the choice of each child if they have become children who have high intelligence without coercion.

The Religious Court can determine revoking the power of the child's parent who is not known to exist and appoint a guardian based on a bloodline straight up or siblings and relatives of the sianak parents at the request of the relative¹⁰.

The consideration of the Religious Courts in deciding cases regarding child care and / or guardianship is based on Islamic jurisprudence provisions that apply in Indonesia, which can be elaborated in regulations that have permanent legal force such as Law Number 1 of 1974 and Compilation of Islamic Law. In addition, there is also Law Number 23 Year 2002 of Law Number 35 Year 2014 concerning Child Protection which can be used as a basis for judges in deciding child care cases or establishing child guardianship in the Religious Courts, because of the provisions of the provisions of the Law. Number 23 of 2002 concerning Child Protection does not contradict the provisions of Islamic law¹¹.

Based on the conscience of the panel of judges and supported by other considerations the judge's decision goes as desired. Judge decides the Plaintiff or grandfather of the Defendant's son and Sandra Dewi (late) is the right guardian for the children of the Defendant and Sandra Dewi (late). including legal guardians in this case and are responsible for the survival of their grandchildren later.

Conclusion

1

The factors that influence the causes of the revocation of parental power are:

a. **Children** who **are** left underage, in other words are not capable of carrying out legal actions. an immature child has the right to be under the supervision of his parents.

b. Parents neglect their obligations.

Based on Article Article 45 of Act Number 1 of 1974, parents are obliged to maintain and educate their children as well as possible, this article is valid until the child is married or can stand alone which obligations apply even if the marriage between the parents breaks.

c. Filing a lawsuit is a guardian

The Religious Court can determine revoking the power of the child's parents who are not known to exist and appoint a guardian based on a lineage straight up or siblings and the family of the sianak parents at the request of relatives.

¹⁰ Ko Tjay Sing, *Op. Cit.* Hlm. 481-482.

¹¹ Scientific Papers by Ikatan Pendidikan Luar Sekolah Se-Indonesia, *Pemahaman Hak Asuh Anak dan Dasar Pertimbangan Hakim Dalam Memutuskan Perkara Anak Di Pengadilan*, Arsip PLSUM, 2016

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