

Divorce and Its Impact on Custody of Minors Using Islamic Law Perspectives

*Siti Nurjanah

Institut Agama Islam Negeri Metro

*siti.nurjanah@metrouniv.ac.id

DOI: <http://dx.doi.org/10.29240/jhi.v7i1.4156>

Received: 14-12-2021

Revised: 10-03-2022

Published: 03-05-2022

Cite this article:

Nurjanah, S. (2022). Divorce and Its Impact on Custody of Minors Using Islamic Law Perspectives. *Al-Istinbath: Jurnal Hukum Islam*, 7(1 May), 119-140. doi:<http://dx.doi.org/10.29240/jhi.v7i1.4156>

Abstract

This study aims to examine the factors that cause divorce in an Islamic country and how that affects the custody minors shares between parents from an Islamic perspective. This study focus on three main causes, adultery, economy, and the occupance gap. Furthermore, this research used interviews of 718 married couples 140 pairs are divorced in Kota Metro, a high rate of divorce region with a Muslim majority in an Islamic country (Indonesia). The results of this study show that Couples sometimes have to face problems in their domestic life, the emergence of problems in the household can be caused by many things including economic factors, and no sense of responsibility, differences in life outlook that can lead to household crises. The woman who will become a widow does not think about other people's views of her because she thinks this is her life and she is the one who goes through it all, it's just that there is guilt in her child when she has to divorce. He thinks about the impact of divorce that will arise on the psychological development of his child, he tries so that his child does not lose the love of a father.

Keywords: Divorce; custody of minors; marriage in Islamic law; psychology-sociology

Introduction

Having a happy household ark is everyone's dream to reach. Giving birth to the offspring and educating them to be pious children who will be

useful for Nation and Religion. To be an ideal in facing real-life with its various kinds of problems will never be as that simple as what has been described in many theories and concepts of marriage. Problems of life will continue to emerge as a trial in the household. Starting from economic hardship that affects relations become out of harmony and then it will ignite infidelity caused the divorce.

These problems will often arise in the community and they will be the main cause of the breakdown and destruction of a household. The result of divorce hurt the relationship between husband and wife as well as psychological effects on children. The child custody will become a complicated issue that should be solved. Under-age, children will always be the victims due to the divorce that occurred. The rules that have been set regarding this case are that the custody of minors is the responsibility of the mother until she can determine whom he will be with.

The facts that occurred in society are different because the minor is taken care of by his father. In case that occurred in the Mulyojati area of the West Metro sub-district, for example, a father had to take care of his young child because his mother returned to her parents. As a result, the responsibility for taking care will also be faced by his grandparents because the child's father does not have sufficient income.¹ Another case also occurs in married couples who have to divorce because the wife turns to another man precisely when he goes to college again with her husband's blessing. This is very painful because the trust of the husband who has been given was betrayed. While the husband's income only relied on his salary as an employee of an educational institution at the time. Until finally, his father had to bear the consequences of the actions of the mothers of their children. Fathers must educate and raise their children².

The issue of custody of minors is an important thing that must be explored in depth so as not to be neglected. Moreover, the government is always trying to protect the existence of children to avoid interference both from inside and outside the environment. By law, children will also have "special features". Children are the main object as well as the main subject in a process of legitimacy, generalization, and systematic rules governing children. This legal protection will provide the basis and strength of legal protection for the existence and rights of children³. The results of Ridwan's research in Manado show that updating considerations in deciding child custody is not only seen from a legal perspective, but also must be viewed using other domains such as

¹ Observation done in Mulyojati kecamatan Metro Barat Kota Metro, tanggal 15 Agustus 2017

² Interview with the victims, 20 Agustus 2017 di kelurahan Purwosari kecamatan Metro Utara

³ Maulana Hassan Wadong and R Masri Sareb Putra, *Pengantar Advokasi Dan Hukum Perlindungan Anak* (Gramedia Widiasarana Indonesia (Grasindo), 2000).

psychology, society, and the environment where the case occurred.⁴ The study of law cannot be generalized entirely to different areas. The existence of studies that start from the roots, such as the causes of divorce, to the issue of child custody needs to be carried out in each region. This is because every region in Indonesia has a diversity of cultures and levels of society. The results of this study are expected to be a material consideration for judges in deciding cases that are within the scope of divorce and child custody.

To answer the above problems, a study was conducted on the factors that caused the divorce and its impact on the custody of minors by examining cases in Metro City. To obtain an accurate interpretation of the content and content of the concept of justice for children, both in positive law and Islamic law, researchers used interviews, observation, and documentation methods. After that, it will be analyzed and concluded to maintain the validity and reliability of the research, all data will be confirmed with the source through the crosscheck technique (retest).

Discussion

Divorce in Law Perspective

The word "divorce" according to dictionary means separation, breakup as husband and wife, divorce. Then, the word "divorce" means separation, divorce (between husband and wife), and division. The word "divorced" means: no mixing (related, united) anymore, stop practicing (husband and wife).⁵ The term of divorce according to Law No. 1 of 1974 as a positive law rule regarding divorce shows the existence of 1. Legal action that can be done by husband or wife to break the marital relationship between them; 2. Legal events that break the relationship between husband and wife, namely the death of the husband or wife in question, which is a definite and direct stipulation by Almighty God; 3. Legal verdicts declared by the court result in the termination of marital relations between husband and wife⁶.

Whereas the term fiqh it is called Talaq which means to break the bonds and cancel the agreement. Divorce in terms of fiqh is also often called *furqah*, which mean divorce, which is the opposite of gathering. Then the two terms are

⁴ Ridwan Jamal, Rosdalina Bukido, and Y Yasin, "Pertimbangan Perkara Pemeliharaan Anak Di Pengadilan Agama Manado," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (2021): 204–22.

⁵ Mohammad Reza Marandi and Zeynab Farzizadeh, "A Comparative Study of Divorce Laws in Islamic Jurisprudence and Iranian Law," *Journal of Social Sciences and Humanities Research* 5, no. 01 (2017): 15–17.

⁶ Heniyatun Heniyatun and Siti Anisah, "Pemberian Mut'ah Dan Nafkah Iddah Dalam Perkara Cerai Gugat," *Profetika: Jurnal Studi Islam* 21, no. 1 (2020): 39–59.

used by fiqh experts as a term that means "husband and wife divorce".⁷ Divorce is a part of marriage. Therefore divorce is always governed by marriage law. Marriage law in Indonesia is not only focused only to one affair but applies a variety of marriage law regulations to various classes of citizens and various regions. This is caused by the provisions mentioned in Article 163 IS (Indische Staatsregeling) which have divided the Indonesian population into three groups, namely: the European group, the Eastern group, and the Original Indonesian group (Bumiputera).⁸

Legality of Divorce

Divorce can only occur if it is done in front of the court, whether it is the husband because the husband has dropped the divorce (talaq), or because the wife is suing for divorce or invoking divorce rights because sighthat talak. Even though in the teachings of Islam, divorce is considered valid if it is spoken immediately by the husband, it must still be done before the court. The aim is to protect all rights and obligations arising as a result of the law or divorce.

When it is seen from the law perspective, divorce cannot happen without reasonable reasons. It means that there must be reasons that are justified by law to make a divorce. It is very fundamental, especially for the court which incidentally has the authority to decide whether a divorce is feasible or not to be carried out. Including all decisions related to the consequences of divorce and also determined by the reason for divorce.⁹ For example child custody, and the distribution of assets. Divorce is not permissible both in the view of religion and within the scope of positive law. Religion considers that divorce is the worst thing that happens in domestic relations. However, Religion still gives flexibility to each adherent of Religion to determine the reconciliation or the best way for anyone who has problems in the household, until divorce finally happens. Positive law considers that divorce is a legitimate case if it fulfills the elements of divorce, including because of a dispute that causes a dispute that is difficult to stop, or because the husband is powerless to carry out his responsibilities as head of the household.

Divorce (divorce) is an event of official separation between husband and wife and they are determined not to carry out their duties and obligations as husband and wife. They no longer live in the same house, because there is no official bond. For those who have divorced but do not have children, separation does not have a psychological traumatic effect on children. But for those who

⁷ Soemiyati, *Hukum Perkawinan Islam Dan Undang-Undang Perkawinan (Undang-Undang No. 1, Tahun 1974, Tentang Perkawinan)* (Liberty, 1982).

⁸ M Djamil Latif, *Aneka Hukum Perceraian Di Indonesia* (Ghalia Indonesia, 1982).

⁹ Fika Burlian, "Eksistensi Perkawinan Dan Perceraian Menurut Hukum Islam Dan Pasca Berlakunya UU NO. 1 Tahun 1974," *MIZAN, Jurnal Ilmu Hukum* 8, no. 2 (December 26, 2019): 77, <https://doi.org/10.32503/mizan.v8i2.669>.

already have children, of course, divorce, creates psycho-emotional problems for children. On the other hand, it is possible for children born as long as they live as husband and wife to be included with one of their parents whether they follow their father or mother.¹⁰

Divorce is a problem that needs to be considered at the regional and national levels. Many families are affected by the problem of divorce. Undesirable consequences arise from divorce cases. Ranging from minor violence to severe violence that results in a person being sentenced to prison. Hostility and strife between families. Children abandoned by divorce. In the household, problems always exist and if they cannot be resolved, it will result in divorce. Everyone always yearns for a conducive environment, full of peace, coolness, and inner and outer tranquility in the environment in which they live.¹¹ But the thing that is always forgotten to create such conditions is how to maintain and preserve the climate so that it remains harmonious, even though we are faced with various trials of life. Peace will always be obtained if we prioritize clear thinking while maintaining, protecting, and understanding human rights and obligations. as social beings in a homogeneous environment.

The role of the family is needed to form a child's positive personality. Family conditions that are not harmonious will make children lose their way. Especially if the condition of the divorced family is accompanied by acts of violence. Divorce itself is a dynamic legal and permanent breaking of marriage bonds that can affect a person's psychological growth. Divorce is often seen as a safety valve that restores the autonomy of the ex-husband's or ex-wife's individuality. Many cases occur in divorced families, namely the impact of divorce on the psychological and economic conditions of children.

Some teenagers whose parents are divorced and have not been able to accept their parents' divorce will have a very big desire to bring the family back to normal by persuading the parents to reconcile.¹² In some teenagers, there may be ways that lead to self-harm because they feel they have failed to reunite their parents. The existence of various reactions in adolescents to parental divorce is closely related to individual acceptance of divorce.

Some of the teenagers who are being cared for and living with one of their parents experience some unpleasant events, this makes the teenagers moody and unable to accept the fact that their parents are divorced, teenagers

¹⁰ Putri Erika Ramadhani and Hetty Krisnani, "Analisis Dampak Perceraian Orang Tua Terhadap Anak Remaja," *Focus: Jurnal Pekerjaan Sosial* 2, no. 1 (2019): 109–19.

¹¹ Uswatun Hasanah, "Pengaruh Perceraian Orangtua Bagi Psikologis Anak," *Agenda: Jurnal Analisis Gender Dan Agama* 2, no. 1 (2020): 18–24.

¹² Febriyani Jenz and Nurliana Cipta Apsari, "Dampak Perceraian Orang Tua Pada Prestasi Anak Remaja," *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)* 2, no. 1 (May 22, 2021): 1, <https://doi.org/10.24198/jppm.v2i1.33430>.

are also less confident when expressing opinions and feel ashamed of their situation, This makes it difficult for teenagers to get along with other people, the inability of teenagers to control emotions when venting anger makes it difficult for teenagers to adjust to their surroundings.¹³ Social work with children is a service carried out to help children improve their social functioning. Social workers strive to be able to improve the child's ability to meet the needs of his life, be able to increase the child's ability to carry out roles according to their status and stage of development, and be able to improve the child's ability to solve problems. In working with children, a social worker should base his or her intervention on the best interests of the child.

Real Condition of Marriage Implementation in Metro

Based on the results of an interview with the chairman of KUA Metro Timur, Mr. Ahmat Subandi, the divorce that occurs does not usually report to the KUA first directly to the Religious Court, so that the divorce process can be resolved immediately. As for the factors causing divorce due to economic conditions, and custody of children by their grandmothers, this is due to parents preferring to look at the economy rather than taking care of their children. KUA Metro marriage data are as follows;

Table 1. Numbers of divorces due to economic conditions¹⁴

No	Year	Metro Barat	Metro Selatan	Metro Timur	Metro Pusat
1	2015	178	98	270	366
2	2016	165	105	277	351
3	Per October 2017	174	90	201	253

The data obtained from marriage data in 2015-2017, there was an increase in marriages in KUA Metro Timur, and Metro Barat, Metro Selatan. In Metro Pusat, there were decreasing in marriages in 2015 until of October 2017, this shows that marriage is a necessity for those who are ready to build a happy family.

Factors Causing Divorce in Metro

The marriage that occurs can not be separated from environmental and cultural conditions in fostering family relations between husband and wife. If the lack of unity of purpose arises, it will cause more obstacles to family life, which will eventually lead to disputes and cracks in the family bond. The more new problems, the more challenges faced. As the result, it will become a

¹³ Interview with the child of victims, 28 Agustus 2017 di kelurahan Purwosari kecamatan Metro Utara

¹⁴ KUA Metro data source.

problem in the family, and it will lead to divorce if there is no settlement between the husband and wife.

The result of interviewing Religious Court employees and court judges show that Husband and wife couples who divorce have a high school education (high school), at a young age, employment of male workers and employment of female workers as well, causes of divorce due to the economy, so children become victims of their divorce were not maintained and abandoned.¹⁵ the causes of divorce that occurred in Metro based on cases that were decided in the Metro City Court in 2016 are as follows;

Table 2. Factors of Divorce in The Metro City at 2016¹⁶

Types of Divorce causes	Month											
	1	2	3	4	5	6	7	8	9	10	11	12
1	2	3	4	5	6	7	8	9	10	11	12	13
I. Moral												
1. Unhealthy Polygamy												
2. Crisis of Moral	2	14	9	11	10	14	12	21	8	16	11	10
3. Jealous				1			1					
II. Abandoned Obligations												
1. Forced Marriages												
2. Economy	6	8	6	5	4	4	4	4	5	2	4	3
3. No Liability	2	2	1	2	3	3	11	4	5	8	5	2
III. Continuing Dispute												
1. Political												
		1										
2. Third Party Interference												
3. No Harmony												
		2	2									
IV. Others												
1. Under age marriage												
2. Physical Cruelty												
	2		1	2	1							
3. Biological Defects												
4. Mental Cruelty												
				2								
A Total	12	27	19	24	18	21	28	29	18	26	20	15

¹⁵ Interview with Ibu Rosamanah, Pegawai Pengadilan Agama Kota Metro, Pada tanggal 17 Oktober 2017

¹⁶ Metro Religious Court

From the data above, it can be seen that the factors causing divorce in 2016 were due to the morality crisis with the total number of 140 people, jealousy of 2 people, forced marriage of 1 person, the economy of 51 people, no responsibility for 48 people, politics of 1 person, no harmony totaling 4 people, physical cruelty totaling 6 people, and mental cruelty totaling 1 person. Factors causing divorce cases decided at the Religious Courts appear that the causes of divorce that often occur in Metro City due to the moral crisis numbered 140 people, this is all due to cultural and environmental factors that triggered the divorce. One the husband and wife who does not obey the commands of Allah SWT, fostering the family will have an impact on children's aklaq. Children who are not built with a religious foundation will influence their psychology in dealing with the surrounding community¹⁷.

One factor of the continuity and happiness of a marriage is greatly influenced by economic life, the necessities of life will be fulfilled properly if a married couple has adequate economic resources. In his role the husband has the responsibility for fulfilling the needs of life, so inevitably the husband must work to have more income and be able to meet the needs of his family. Conversely, the existence of economic problems will have a bad impact on meeting the needs of families that can not be met properly. This is evident from the above data that there are 51 pairs of divorced couples due to divorce in Metro. Another thing with husband and wife who are divorced because there is no responsibility of the husband to the wife, from the data in the Metro City Religious Court divorce factor that occurred there were 48 pairs of husband and wife.

While the case was decided according to the cause of divorce in the city of Metro in the 2017 City Metro Court are as follows:

Table 3. Factors of Divorce in The Metro City at 2017¹⁸

Types of Divorce causing	Month											
	1	2	3	4	5	6	7	8	9	10	11	12
1	2	3	4	5	6	7	8	9	10	11	12	13
I. Moral												
1. unhealthy												
Polygamy												
2Crisis of Moral	7	5	11	7	6	8	5	5	4			
3. Jealous	1											
II. Abandoned												
Obligations												

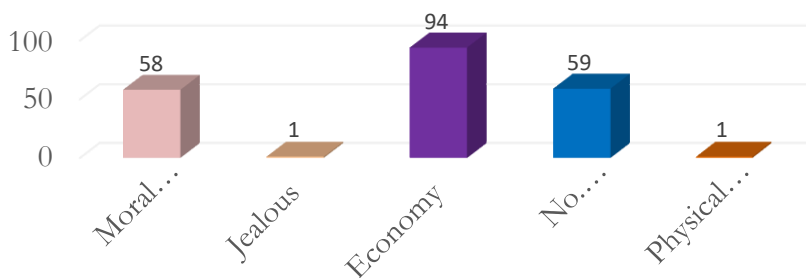
¹⁷ Wawancara dengan Pak Hudan, Tokoh Agama Metro, Pada Tanggal 16 Oktober 2017

¹⁸ Metro Religious Court

Types of Divorce	Month											
1. forced Marriage												
2. Economy	11	11	6	4	9	9	14	13	18			
3. No Liability	12	5	10	5	6	5	4	6	6			
III. Continuing Dispute												
1. Political												
2. Third Party Interference												
3. No Harmony												
IV. Others												
1. Under age marriage												
2. Physical Cruelty	1											
3. Biological Defects												
4. Mental Cruelty												
Total	30	22	28	16	21	22	23	24	28	0	0	0

From the data above, the factors causing divorce that occurred in Metro City in 2017 were due to the moral crisis with a total number of 58 people, jealousy of 1 person, the economy of 94 people, no responsibility of 59 people, the physical violence of 1 person. Regarding the data for 2016-2017 in October, there was an increase in divorce in Metro. Couples sometimes have to face problems in their domestic life, the emergence of problems in the household can be caused by many things including economic factors, and no sense of responsibility, differences in life outlook that can lead to household crises. The size of the problem faced depends on their views and the way they resolve the problem, not a few the married couples feel that their marriage can no longer be maintained and then they decide to end their domestic problems by to divorce.

Picture 1. Numbers of Victims According Divorce Factors

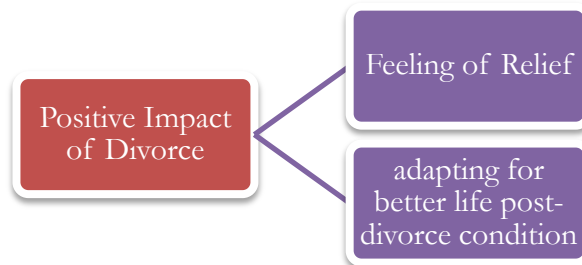


The Impact of Divorce Against Child Custody of Minors

Divorce which is the end of marital instability that is fostered and then lives apart is an action taken by a particular couple is not merely a decision in a moment, but a long process that requires the contribution of the thoughts of various parties, especially from family and close relatives. This divorce decision is a long thought that requires a lot of consideration. Although the decision to divorce is absolutely in the hands a couple husband and wife, in the process, they can discuss their decision with the family. Divorce certainly has an unfavorable impact on the wife, husband, and children. The impact can also be felt by people around the family who has more experience with divorce. Things that can be felt by them after having a divorce with from their partner are as follows:

1. Positive impact

Picture 2. Positive Impact of Divorce Against Child Custody of Minors



a. There is a feeling of relief

Feelings of relief after having a divorce is because a conflict that triggers divorce is solved. Divorce is considered a way to solve the household problems that have been happening all the time before. The feeling of relief and hurt was felt by the interviewee. Besides that, the divorce perpetrators no longer have to maintain their feelings about their partner's behavior which triggers disputes or conflicts in the household,¹⁹ so that divorce is the final way so that couples in the family no longer hurt each other.

Every human being certainly has the hope of building a family, which is the goal of the law of marriage, namely building a *sakinah* family. This is in tune

¹⁹ Interview with the victims, 27 Agustus 2017 di kelurahan Purwosari kecamatan Metro Utara

with maqasid al-Shari'ah as an effort to obey religious orders, by carrying out religious rules means keeping religion itself (hifdzu al-din). Because the essence of a marriage is to realize the benefit of husband and wife. On the other hand, if the rights and obligations in the household between husband and wife are not fulfilled, it will often lead to the breakdown of the household, namely divorce. If the reality is that divorce occurs, then there will be child custody, in fact divorce is something that God hates, even though it is allowed as an emergency exit. However, children are often victims of the divorce of their parents, even though they need love from both of them. Fulfilling all the needs and needs of children which is a right that they must get is part of the goal of Shari'ah, namely maintaining nasab (hifdzu al-nasl).

Likewise, with an unequal role in the division of household tasks, all tasks related to taking care of the house and children are their responsibility. Even if her child is sick she has to take her to the doctor after work and her husband doesn't care about her at all, and her husband will scold her if she sees him resting or not doing any activities.²⁰ In terms of priority in fulfilling household needs, husbands spend more of their income on themselves and with their friends, even if they pay their husband's credit card bills. Some of the women have to sell their jewelry to meet their daily food needs and milk for their children because their husbands only provide limited spending money.²¹ Based on the reasons they have stated, the three respondents took a decision to file for divorce from their husbands, when viewed from the background of the respondents.

They consider individual happiness more important than having to live a domestic life that makes them feel tormented. Before a woman decides to divorce, she thinks about the widow status that will be carried because this status still has a negative connotation according to the view of society in general. Some worries arose that arose in her but then she reconsidered rather than her household problems which would cause her to have a mental disorder, for her she should choose to be a widow,²² after all, she has been the one making a living for the family, especially the children. The woman who will become a widow does not think about other people's views of her because she thinks this is her life and she is the one who goes through it all, it's just that there is guilt in

²⁰ Nibras Syafriani Manna, Shinta Doriza, and Maya Oktaviani, "Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga Di Indonesia," *Jurnal Al-Azhar Indonesia Seri Humaniora* 6, no. 1 (2021): 11–21.

²¹ Nasaiy Aziz and Nor Syahida Binti Ahmad Ramlan, "Ketidakadilan Suami Yang Berpoligami Dalam Memberi Nafkah Sebagai Alasan Cerai Gugat (Analisa Putusan Mahkamah Syariah Bentong Pahang Nomor Kasus Mal No. 04300-076-0217)," *El-USRAH: Jurnal Hukum Keluarga* 1, no. 2 (2018): 261–78.

²² Silfia Yanasti, "Status Cerai Tidak Penting: Analisis Sosiologis Perempuan Yang Tidak Menggugat Suaminya Ke Pengadilan Agama," *Jurnal Sosiologi Andalas* 7, no. 2 (2021): 104–11.

her child when she has to divorce.²³ He thinks about the impact of divorce that will arise on the psychological development of his child, he tries so that his child does not lose the love of a father.²⁴

2) Divorced Parties Attempt To Adjust for Post-Divorce Conditions

Other impacts felt by divorced couples include those who are experiencing divorce trying to adjust to their circumstances after divorce, with differences in status before and after divorce requiring these parties to be able to place themselves. In this case, they must be accustomed to living without the figure of a husband for his wife, a wife for the husband, and father, and mother for their children and carrying out their functions so that still exist and be able to maintain and sustain their lives as members of their community, how to defend their lives by working to meet their own needs and for their children. Adjustment to the new status is a very important impact on a person's survival after his divorce, those who can easily adjust themselves after divorce will be more receptive.

A woman as a single parent is a situation where a woman will occupy two positions at once, namely as a mother which is a natural position, and a father. He will have two forms of attitude, a woman and a mother must be gentle with her children, an father who is manly and is in charge of controlling the rules and regulations, well as acting as an enforcer of justice in domestic life. A mother has a dual role, namely as a father as well as a mother for her children after a divorce. Divorce caused by infidelity causes feelings of hurt in single mothers after divorce.²⁵ The stressful behavior raised by single mothers is crying, depression, and feeling inferior to their status.

Stress in single mothers is the pressure experienced by mothers as a result of sources of stress that occur in divorced families. Stress is a condition caused by a mismatch between the desired situation and the individual's biological, psychological or social system. Changes in individuals due to stress can be grouped into three general categories, namely physical symptoms, psychological symptoms, and behavioral symptoms. The initial effects of stress are usually physical symptoms. Stress can cause changes in metabolism, increase heart rate, raise blood pressure, cause headaches, and trigger heart attacks. Psychological symptoms of stress can cause self-dissatisfaction with work, tension, anxiety, irritability, boredom, and procrastination. Subsequent

²³ Indah Fajrotuz Zahro and Alifatuz Zahrotul Uyun, "Konsep Diri Janda Cerai Usia Dewasa Madya Ditinjau Dari Teori Person Centered Counseling," *Attanwir: Jurnal Keislaman Dan Pendidikan* 11, no. 2 (2020): 109–24.

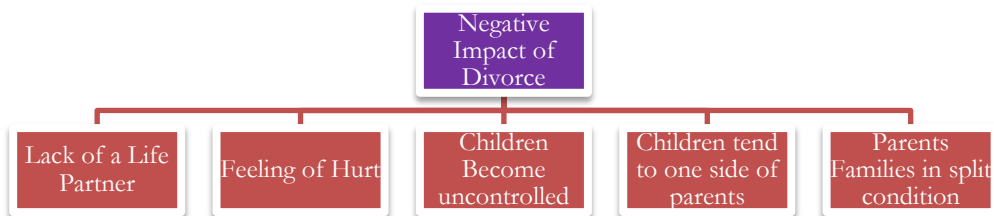
²⁴ Anwar Hafidzi, Rusdiyah Rusdiyah, and Nurdin Nurdin, "Arranged Marriage: Adjusting Kafa'ah Can Reduce Trafficking of Women," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 (November 30, 2020): 177, <https://doi.org/10.29240/jhi.v5i2.1991>.

²⁵ Interview with the victims, 27 Agustus 2017 di kelurahan Purwosari kecamatan Metro Utara

symptoms of stress-related behavior include changes in productivity, absenteeism, and employee turnover, changes in eating habits, smoking patterns, alcohol consumption, rapid speech, restlessness, and sleep disturbances. Sources of stress that have the potential to cause stress are conflict, life changes, and everyday fights.

2. Negative impact

Picture 3. Negative Impact of Divorce Against Child Custody of Minors



a. Lack of a Life Partner

Living in a household means someone will not live alone. There will be another family to be with, and of course there will be a husband or wife that can be invited to share about everything. But when the family experiences divorce, the couple who used to live together must surely get used to living without their partner. The loss of a spouse requires that a divorced person adjusts to his new status as a widow/widower and as a single parent for his children (for those who already have children).²⁶ The situation is not easy because solitude requires them to think about problems in their lives without the help of a spouse who had always accompanied them under any circumstances. This makes the divorced partner will feel the need for his life partner.

Loneliness is a condition that is felt by a person where a negative emotion arises because of a gap in a person's life, where something happens that is not as expected. Individuals who experience loneliness feel that no one can understand them well, so there is a feeling that something is still not right in their life so they feel isolated and feel that they have no one to run from when needed.²⁷ Loneliness is a condition that is almost the same as where a person feels he has no friends in the community. In addition, loneliness is felt by someone feeling useless, and unable to build close relationships with relatives and friends. So he feels unable to be creative and produce something.

²⁶ Nuram Mubina and Ayu Anisatuzzulfi, "Kepuasan Pernikahan Pada Wanita Dewasa Awal Yang Melakukan Pernikahan Kembali," *Jurnal Ilmiah Penelitian Psikologi: Kajian Empiris & Non-Empiris* 6, no. 1 (2020): 1–14.

²⁷ Reny Firsty Oktasari and Elly Yuliandari Gunatirin, "Kecemasan, Kesepian Dan Persepsi Terhadap Perkawinan Siri," *KELUWTH: Jurnal Sosial Dan Humaniora* 1, no. 2 (2020): 93–101.

The many problems and considerations of women who have failed once in a marriage made her have to lose happy moments with her small family. There is remorse in women for behaving like in the past. Women feel that with their present life, which considers themselves to be enjoying their lost youth, they can provide their satisfaction. Divorced women realize that now they are not supposed to act like young people, but also have not been able to direct themselves to a better life after their divorce.²⁸ Loneliness makes him lonely and feels alone. Building love and relationships with the opposite sex after a divorce is a difficult thing to do, because not necessarily a new partner can accept the status of someone who has failed in his first marriage.

Loneliness is defined as a gap between expectations and reality that is felt by someone about the level of social relations they have. An individual experiences loneliness if he is not able to build closeness in interpersonal relationships as expected. In other words, loneliness arises when individuals feel that their current social relationships are unsatisfactory. Loneliness is a mental suffering that comes from being separated from other people due to the uniqueness and specificity of a person.²⁹ Loneliness is felt subjectively, depending on the individual who feels it. Because someone can feel lonely in a crowded atmosphere. Loneliness is subjective anxiety that a person feels when social relationships lose their important characteristics. This loss situation can occur quantitatively or qualitatively. Quantitatively in the sense, if a person has only a few friends, not even at all. Loneliness occurs qualitatively when a person feels the relationship he has with other people is too shallow, and less satisfying than expected.

b. There are feelings of hurt

In addition to the loss of a spouse, some feel hurt, hurt feelings also felt by some divorce perpetrators. Feelings of hurt arise because divorced couples still have the same feelings, it will have a hurt effect on them. The female head of the household who works to meet the needs of her family life is not a foreign phenomenon. Seeing economic competition and increasingly advanced social life, they do not want to be left behind and do not want to be underestimated. From an economic perspective, female heads of households tend to be in a low economic condition. This can be seen in the post-divorce economic conditions. The economic condition of women domestic workers before divorce tended to depend more on their husband's income.

²⁸ Santi Muardini, Alia Azmi, and Fatmariza Fatmariza, "Dampak Perceraian Pada Perempuan Usia Muda Di Kecamatan Pondok Tinggi Kota Sungai Penuh," *Journal of Civic Education* 2, no. 1 (2019): 1–11.

²⁹ Interview with the victims, 27 Agustus 2017 di kelurahan Purwosari kecamatan Metro Utara

Divorce is a social phenomenon where husband and wife no longer find the same solution in solving a problem. Divorce can also be caused by several factors such as infidelity and also one of the partners dying. This of course has its impact, especially on women's lives, one of which is post-divorce, women have to bear more burdens than they usually only do domestic work and now have to become the head of the family in the household.³⁰ A family headed by a woman tends to be in poor condition and women themselves are often gender-biased and disadvantaged in terms of decision making. Socially, household women also often get a bad stigma for being a widow.

Divorce problems for female heads of families, both in cases of divorce and divorce, tend to make their lives so turbulent, starting with a decrease in income levels to labels in society. Faced with these conditions, as a woman who inevitably has to be the head of the family in her household, she must bear the burden of providing for the living needs of her family members.³¹ This situation will be difficult for women who previously had the status of housewives. Seeing this condition, the female heads of the household did not remain silent.³² After being faced with limited conditions, they are determined to make changes to improve their lives. The phenomenon of divorce experienced by them is not an easy thing to go through. The impacts also vary, ranging from declining financial conditions, and family conditions that tend to experience conflict, to psychological and mental disorders in women. There needs to be an adaptation for them to restore their life circumstances so that things don't happen that are not desirable.

c. Children Become uncontrolled.

In addition, to having an impact on those who experience divorce, it also impacts children in another family. Psychologically, the impact of divorce will cause mental stress such as depression, indeterminate anger, and inaction, even experience the opposite ie too mature (even before their time is ripe), blaming (always blaming others and circumstances) or the peak they escape toward the association that receives them.³³

The impact of a divorce is the breakdown of the relationship between the two family factions of husband and wife which were originally united because of kinship ties, and even more heartbreaking is that children are victims

³⁰ Darmawati Darmawati, "Perceraian Dalam Perspektif Sosiologi," *Sulesana: Jurnal Wawasan Keislaman* 11, no. 1 (2017): 64–78.

³¹ Nawawi Maimun, Toha Muhammad Toha, and Arifin Misbahul Arifin, "Fenomena Tingginya Angka Cerai-Gugat Dan Faktor Penyebabnya: Analisis Reflektif Atas Kasus-Kasus Perceraian Di Madura," *Islamuna, Jurnal Studi Islam* 5, no. 2 (2018): 157–67.

³² Interview with the victims, 27 Agustus 2017 di kelurahan Purwosari kecamatan Metro Utara

³³ Interview with the victims, 27 Agustus 2017 di kelurahan Purwosari kecamatan Metro Utara

of the direct impact of divorce. This can be seen from the occurrence of bickering between his parents which will be able to damage his psyche and soul, even though in *maqasid al-syari'ah*, reason must be protected (*hifdzu al-aql*). Children will experience mental stress such as depression, anger for which there is no clear cause and immaturity in thinking, or vice versa, namely being too mature (even before their time is ripe), blaming (always blaming other people and their surroundings) or finally they run away towards bad relationships. accept them, this is due to the broken home that happened to his parents which he had seen and listened to.

The impact of divorce is also felt by children in the family as children of other divorce victims also have the impact of their parents' divorce. Impacts arising after the divorce of parents in the family, among others, children become difficult to set, children become as they wish.³⁴ They behave as if they like themselves and do not care about the circumstances. Most the children feel that their parents no longer care about them because what they get is only the fulfillment of economic needs but for the needs in the form of a lack of affection they get.

The impact of parental divorce on adolescents can be demonstrated by internalizing or externalizing behavior. Internalizing behaviors include fear, shame, depression, low self-esteem, sadness, anxiety, confusion, anxiety, pain, and low self-esteem. Active behavior external behavior, difficulty in building relationships with others, inability to adapt to authoritative people, behavior problems at school, misbehavior, drinking behavior, dangerous sexual activity, theft, smoking, including drug intervention due to the divorce of the two parent's, ³⁵ the child acts as an independent person, the subject has low self-esteem and loses interest in continuing his studies and the child still consumes alcohol, the subject also smokes, and most importantly the seriousness of the child dares to steal.

The impact of divorce is, Feeling neglected by the parents who left him, having difficulty in accepting the reality of the changes due to divorce, Withdrawing from old friends and favorite activities, losing interest in learning, and committing actions that cannot be done or are unacceptable acts such as stealing, truancy, besides starting to use abusive language, becomes aggressive or rebellious, feels angry and unsure of his own beliefs regarding love, marriage and family, begins to worry about adult issues, such as and family economic security, feels obliged to bear more responsibilities adults in the family other effects of

³⁴ Rina Nur Azizah, "Dampak Perceraian Orang Tua Terhadap Perkembanganpsikologis Anak," *AL-IBRAH* 2, no. 2 (2017): 152–72.

³⁵ Ria Juliana and Ridwan Arifin, "Anak Dan Kejahatan (Faktor Penyebab Dan Perlindungan Hukum)," *Jurnal Selat* 6, no. 2 (2019): 225–34.

divorce felt by children.³⁶ Children find it difficult to accept happened, but after a long time can accept what happened. The children have also been involved in a theft case that was caught by the village apparatus. The children became aggressive and once hit his friend.

When the parents divorced, the child finally decided to no longer continue his studies, and this made the child's knowledge limited, and the subject's belief in his parents faded after both parents separated and no longer hoped for his parents. Based on the cognitive approach, the conditions experienced by children can be explained as a result of misconceptions and understandings. Rapid physical and intellectual development in adolescence needs to be accompanied by intellectual adjustments in the formation of new attitudes, values, and interests to be able to undergo the development process properly. When the subject loses the role of both parents, this makes the physical and mental development of the child somewhat disturbed, which should get a good development the contrary. attention and affection from parents and people around are very important and becomes something that is coveted by children and adolescents, including the subject in this study. Because he lost the role of his parents, the subject became naughty to cover his disappointment towards his parents.³⁷

Families of children who have been divorced so that the affection needs children are not met. This directs the subject to perform destructive and non-destructive behaviors. The existence of labeling from the community about himself because he has committed theft makes the subject never shunned by the community. Parents need to instill values and positive thinking in their children from an early age. This does not mean that children who are victims of divorce will experience juvenile delinquency in this case. This can be traced back to the role of parents in the education and upbringing of children, as well as parenting patterns. One of them is the love and self-understanding of children.

d. Children are only close to one of their parents

Another impact that can be seen in post-divorce children is that they are only close to one of the parents of their divorced parents. Children must choose to live together with their mother or with his their father. This situation will make the children of divorce victims closer to one of the parents. Having to choose to live with their father or mother is a difficult choice for children after their parents' divorce, not infrequently they will choose to live with their grandparents. Most divorced children will choose to live with a party that feels comfortable for them when they are in the environment they choose. Affection

³⁶ Hendra Cipta, "Dampak Perceraian Terhadap Kenakalan Remaja," *Edugama: Jurnal Kependidikan Dan Sosial Keagamaan* 3, no. 2 (2017): 88–103.

³⁷ Interview with the child victims, 27 Agustus 2017 di kelurahan Purwosari kecamatan Metro Utara

and meeting economic needs become a benchmark with whom they choose to stay. This will make them only close to only one party.

Divorce is also a big problem for children, especially those who are still sitting on the bench in elementary school because children at this age need love and full attention from both parents. This also has an impact on their education, a learning atmosphere that is not comfortable, which has hurt on the child's development. Children who are cared for by lower-middle-class mothers often experience difficulties with financially.³⁸ Family integrity is very important in fostering psychological and emotional development education of a child.

Children at the age of teenagers whose parents experience divorce tend to show attitudes in the form of naughty behavior, have active sexual relations, depression, and drug abuse. This can happen because children feel less attention from parents which will affect their mental development of children. The way parents behave before, during, and after a divorce greatly influences a child's reaction to the divorce.³⁹ The impact of divorce can also occur on divorce actors, namely the emergence of new problems that must be faced by divorce actors. These problems can be in the form of re-adaptation to roles and relationships in the social environment. In addition, divorce also brings juridical consequences that have a relationship to the status of husband, wife, and children, even to their assets.

e. Relationship Between the Two Families

The impact of divorce can also be felt by people around the couple who experienced a divorce. The impact was especially felt by the families of the two divorced parties. The impact was related to family relations that had been established between the two families. Family relationships that have been well established through marriage ties will be different after the divorce. The Decision of divorce which is considered the best way may not be well received by both families of the parties, some of them cannot accept it because they feel that family members (involved in the divorce) will only get more disadvantages.⁴⁰ The problems mentioned above can lead to disputes or conflicts for both, especially the children.

They still really need love, attention, guidance, education, and education about morals to become human beings who can be useful for family, religion, homeland and nation. So when they grow adults, they will be ready, and have

³⁸ Nancy Dela Oktora, "Dampak Perceraian Orang Tua Bagi Psikologis Anak," *SETARA: Jurnal Studi Gender Dan Anak* 3, no. 2 (2021): 24–34.

³⁹ bukharu Bukhari, "Harta Bersama Akibat Perceraian Dalam Perspektif Uu No 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam," *At-Tasyri: Jurnal Ilmiah Prodi Muamalah*, 2021, 127–36.

⁴⁰ Interview with the victims, 27 Agustus 2017 di kelurahan Purwosari kecamatan Metro Utara

the provision of noble morals and adequate education to deal with their lives. Thus the role of parents is very influential in the development of the child's personality. Parents who are separated certainly have a big impact in realizing the dreams of children to be strong and capable of acting. Furthermore, a child who has grown up will determine the course of his life by relying on the parent he is paired with, whether his father or mother or grandfather, and grandmother. The provision of knowledge and morals in his life is very important so that children are not easily eroded by the global world which is very dangerous if they do not have strong provisions

Conclusion

The factors causing divorce due to economic factors, moral crisis, no responsibility, no harmony, and physical, and mental cruelty. There are positive and negative effects of divorce on the custody of minors. The positive impact is the existence of a sense of relief because it is free from conflict and Parties Divorced Trying to Adjust to a Post-Divorce Situation. While the negative impact of divorce on child custody begins with the loss of a life partner, that love for children is not complete. Then the feeling of hurt arises because the divorced spouse still has feelings and also for those whose divorce is due to a third party. The direct impact is related to the future of children. They will find it difficult to Manage, Children to Become Their Desires because even though economic needs are fulfilled, They need love from their parents. Suggestions for further research are to make policies regarding marriage and divorce law based on the results of this study and further research by further researchers. The important thing for the development of law in Indonesia is to pay attention to any research results to be taken into consideration in formulating policies or making decisions.

References

- Aziz, Nasaiy, and Nor Syahida Binti Ahmad Ramlan. "Ketidakadilan Suami Yang Berpoligami Dalam Memberi Nafkah Sebagai Alasan Cerai Gugat (Analisa Putusan Mahkamah Syariah Bentong Pahang Nomor Kasus Mal No. 04300-076-0217)." *El-Ussrah: Jurnal Hukum Keluarga* 1, no. 2 (2018): 261–78.
- Azizah, Rina Nur. "Dampak Perceraian Orang Tua Terhadap Perkembanganpsikologis Anak." *Al-Ibrah* 2, no. 2 (2017): 152–72.
- Bukhari, Bukhari. "Harta Bersama Akibat Perceraian Dalam Perspektif Uu No 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam." *AT-TASYRI: Jurnal Ilmiah Prodi Muamalah*, 2021, 127–36.
- Burlian, Fika. "Eksistensi Perkawinan Dan Perceraian Menurut Hukum Islam Dan Pasca Berlakunya UU NO. 1 Tahun 1974." *MIZAN, Jurnal Ilmu*

- Hukum 8, no. 2 (December 26, 2019): 77.
<https://doi.org/10.32503/mizan.v8i2.669>.
- Cipta, Hendra. "Dampak Perceraian Terhadap Kenakalan Remaja." *Edugama: Jurnal Kependidikan Dan Sosial Keagamaan* 3, no. 2 (2017): 88–103.
- Darmawati, Darmawati. "Perceraian Dalam Perspektif Sosiologi." *Sulesana: Jurnal Wawasan Keislaman* 11, no. 1 (2017): 64–78.
- Hafidzi, Anwar, Rusdiah Rusdiah, and Nurdin Nurdin. "Arranged Marriage: Adjusting Kafa'ah Can Reduce Trafficking of Women." *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 (November 30, 2020): 177.
<https://doi.org/10.29240/jhi.v5i2.1991>.
- Hasanah, Uswatun. "Pengaruh Perceraian Orangtua Bagi Psikologis Anak." *Agenda: Jurnal Analisis Gender Dan Agama* 2, no. 1 (2020): 18–24.
- Heniyatun, Heniyatun, and Siti Anisah. "Pemberian Mut'ah Dan Nafkah Iddah Dalam Perkara Cerai Gugat." *Profetika: Jurnal Studi Islam* 21, no. 1 (2020): 39–59.
- Jamal, Ridwan, Rosdalina Bukido, and Y Yasin. "Pertimbangan Perkara Pemeliharaan Anak Di Pengadilan Agama Manado." *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (2021): 204–22.
- Jenz, Febriyani, and Nurliana Cipta Apsari. "Dampak Perceraian Orang Tua Pada Prestasi Anak Remaja." *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)* 2, no. 1 (May 22, 2021): 1.
<https://doi.org/10.24198/jppm.v2i1.33430>.
- Juliana, Ria, and Ridwan Arifin. "Anak Dan Kejahatan (Faktor Penyebab Dan Perlindungan Hukum)." *Jurnal Selat* 6, no. 2 (2019): 225–34.
- Latif, M Djamil. *Aneka Hukum Perceraian Di Indonesia*. Ghalia Indonesia, 1982.
- Maimun, Nawawi, Toha Muhammad Toha, and Arifin Misbahul Arifin. "Fenomena Tingginya Angka Cerai-Gugat Dan Faktor Penyebabnya: Analisis Reflektif Atas Kasus-Kasus Perceraian Di Madura." *Islamuna, Jurnal Studi Islam* 5, no. 2 (2018): 157–67.
- Manna, Nibras Syafriani, Shinta Doriza, and Maya Oktaviani. "Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga Di Indonesia." *Jurnal Al-Azhar Indonesia Seri HumaniorA* 6, no. 1 (2021): 11–21.
- Marandi, Mohammad Reza, and Zeynab Farzizadeh. "A Comparative Study of Divorce Laws in Islamic Jurisprudence and Iranian Law." *Journal of Social Sciences and Humanities Research* 5, no. 01 (2017): 15–17.

- Muardini, Santi, Alia Azmi, and Fatmariza Fatmariza. "Dampak Perceraian Pada Perempuan Usia Muda Di Kecamatan Pondok Tinggi Kota Sungai Penuh." *Journal of Civic Education* 2, no. 1 (2019): 1–11.
- Mubina, Nuram, and Ayu Anisatuzzulfi. "Kepuasan Pernikahan Pada Wanita Dewasa Awal Yang Melakukan Pernikahan Kembali." *Jurnal Ilmiah Penelitian Psikologi: Kajian Empiris & Non-Empiris* 6, no. 1 (2020): 1–14.
- Oktasari, Reny Firsty, and Elly Yuliandari Gunatirin. "Kecemasan, Kesepian Dan Persepsi Terhadap Perkawinan Siri." *Keluwih: Jurnal Sosial Dan Humaniora* 1, no. 2 (2020): 93–101.
- Oktora, Nancy Dela. "Dampak Perceraian Orang Tua Bagi Psikologis Anak." *SETARA: Jurnal Studi Gender Dan Anak* 3, no. 2 (2021): 24–34.
- Ramadhani, Putri Erika, and Hetty Krisnani. "Analisis Dampak Perceraian Orang Tua Terhadap Anak Remaja." *Focus: Jurnal Pekerjaan Sosial* 2, no. 1 (2019): 109–19.
- Soemiyati. *Hukum Perkawinan Islam Dan Undang-Undang Perkawinan (Undang-Undang No. 1, Tahun 1974, Tentang Perkawinan)*. Liberty, 1982.
- Wadong, Maulana Hassan, and R Masri Sareb Putra. *Pengantar Advokasi Dan Hukum Perlindungan Anak*. Gramedia Widiasarana Indonesia (Grasindo), 2000.
- Yanasti, Silfia. "Status Cerai Tidak Penting: Analisis Sosiologis Perempuan Yang Tidak Menggugat Suaminya Ke Pengadilan Agama." *Jurnal Sosiologi Andalas* 7, no. 2 (2021): 104–11.
- Zahro, Indah Fajrotuz, and Alifatuz Zahrotul Uyun. "Konsep Diri Janda Cerai Usia Dewasa Madya Ditinjau Dari Teori Person Centered Counseling." *Attanwir: Jurnal Keislaman Dan Pendidikan* 11, no. 2 (2020): 109–24.

This page belongs to the Al-Istinbath: Jurnal Hukum Islam