

The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective

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Submission date: 16-Apr-2023 08:05PM (UTC+0700)

Submission ID: 2065845897

File name: Salman_The_Protection_of_Women_and_Children.pdf (301.52K)

Word count: 8289

Character count: 43563



1 THE PROTECTION OF WOMEN AND CHILDREN POST-DIVORCE IN SHARIA COURTS IN ACEH: A SOCIOLOGICAL PERSPECTIVE

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Abstrak: Kajian ini membahas perlindungan perempuan dan anak setelah perceraian pada Mahkamah Syar'iyah di Aceh. Dengan pendekatan sosiologi hukum, studi ini bersumber pada putusan-putusan Mahkamah Syar'iyah Banda Aceh, Aceh Besar, Pidie, Bireuen, and Lhokseumawe dan wawancara kepada hakim, tokoh masyarakat, kepala desa, kepala Kantor Urusan Agama (KUA), akademisi, tokoh adat dan aktivis Lembaga Swadaya Masyarakat (LSM). Kajian ini menyimpulkan bahwa Mahkamah Syar'iyah di Aceh dalam putusannya telah memastikan hak-hak perempuan dan anak. Mahkamah Syar'iyah di Aceh menetapkan pemberian nafkah 'iddah, nafkah *mu'ah*, harta bersama dan hak pengasuhan anak kepada perempuan; dan anak mendapatkan biaya hidup, perwalian dari keluarga dan pengasuhan dari ibu. Secara sosiologis, hukum telah berfungsi sebagai alat kontrol sosial melalui Mahkamah Syar'iyah dan hakim sebagai bagian utama dari struktur hukum yang didukung oleh elemen masyarakat lainnya sehingga perlindungan terhadap perempuan dan anak dapat terwujud secara adil.

Kata kunci: perlindungan perempuan dan anak; perceraian; sosiologi hukum; Mahkamah Syar'iyah

¹ **Abstract:** This study discusses the protection of women and children after divorce at the Syar'iyah Court in Aceh. A legal sociology approach is used to draw the decisions of the Banda Aceh, Aceh Besar, Pidie, Bireuen, and Lhokseumawe Syar'iyah Courts. The interviews were conducted with judges, community leaders, village heads, heads of the Office of Religious Affairs (KUA), academics, traditional figures, and non-governmental organizations (NGO) activists. This study concludes that the Syar'iyah Court in Aceh, in its decision, has ensured the rights of women and children. The Syar'iyah Court in Aceh determined the provision of 'iddah, muṭ'ah maintenance, joint assets, and childcare rights to women. Children get living expenses, guardianship from the family, and care from the mother. Sociologically, the law has functioned as a means of social control through the Syar'iyah Court and judges as the main part of the legal structure supported by other elements of society so that the protection of women and children can be realized fairly.

Keywords: protection of women and children; divorce; legal sociology; sharia court

Introduction

The protection of women and children in family law in Muslim countries has progressed in a better direction, as evidenced in some regions such as the Middle East, North Africa, South Asia, and Southeast Asia. In Malaysia, legal efforts have been made to protect women and children through marriage registration since the 1980s. Marriages that are not legally registered by the state are considered illegitimate and are against the law, in which perpetrators can be fined as much as RM 1000 (approximately IDR 3,390,000) and sentenced to a maximum imprisonment of six months (Harisudin & Choriri, 2021; 471–495).

In addition, Brunei Darussalam has promulgated the Islamic Family Law Act, which regulates the registration of marriages. According to the law, a married couple who does not register their Marriage can be fined DB\$ 1,000-DB\$ 2,000 (approximately IDR 2,400,000-4,800,000) and sentenced to 3-6 months imprisonment. As a government policy in Indonesia, the 1974 Marriage Law and the 1991 Islamic Law Compilation (Kompilasi Hukum Islam/KHI) aim to protect women and children by registering marriages. According to Government Regulation No. 9 of 1975, registrars are jailed for three months and fined IDR 7,500, while married couples are fined IDR 7,500. The case of illegal registration of marriages also triggered the issuance of a 2012 Constitutional Court ruling on the status of children who have a civil relationship with their biological father (Heaton & Cammack, 2011; Nurlaelawati & Van Huis, 2019: 356–382). The Constitutional Court's decision principally aims to protect children rights.

Nevertheless, violence against women and children continues to increase yearly in urban and rural communities (Hafsah, 2021:119–130). Therefore, as a law-based country, Indonesia protects women and children through the 1974 Marriage Law, the 1991 Islamic Law Compilation, and the 2017 Supreme Court Regulation. The stipulation of such rules and regulations has led to legal certainty in protecting women and children. This can be seen from the rights of women to *'iddah* (waiting period) alimony, *muṭ'ah* (amenity) alimony, inheritance, and joint property (Djawas et al., 2021:163–188; Hammad, 2014:17). Furthermore, children can be prevented from having early marriages,

and they can earn living costs and education costs after their parents divorce, and obtain the right to be cared for as long as they are not yet independent (Musawwamah, 2020:67–92; Salenda, 2016:95–122).

An interesting study by Salim (Arskal Salim, Wahdi Sayuti, Euis Nurlaelawati, 2009) discussed the judges' *ijtihad* (independent reasoning) in the religious courts regarding aligning with women and children in deciding cases in three regions, Aceh, West Sumatra, and South Sulawesi. After the judges were given training on gender sensitivity in deciding cases, they could protect women's and children's rights in their decisions. For example, women's rights to earn *'iddah* expenses, *mu'ah* expenses, joint assets, child care, and inheritance.

Nurlaelawati and Salim (2013: 273) state that Indonesia has yet to optimize the state's support toward protecting women despite already being a Muslim country that has been at the forefront of appointing women as judges in the Religious Courts since the 1960s. Among the female judges are those still fixated on legal texts that may not properly reflect gender justice. In the context of divorce, the impact is certainly not small. Divorce may have a personal impact on, at least, children and women or mothers, and then the impact extends to families, affecting the nation's resilience. There are various reasons for divorce, including lack of religious understanding, use of social media, early Marriage, and lack of attention between spouses. Therefore, the government continues to reduce the divorce rate, and if divorce is inevitable, then at least the victims of divorce can be minimized. The government's efforts consist of ⁷ holding pre-marital courses, giving marriage sermons as a provision to prevent divorce, organizing happy family contests, and designing a marriage guide module for prospective brides and grooms (Djawas et al., 2021:163, 2022: 299; Kharlie et al., 2021: 255–286). The government ⁵ has also attempted to reduce the divorce rate by enacting the 1974 Marriage Law and the 1991 Islamic Law Compilation (Cammack et al., 1997).

Women and children are the ones who are adversely affected by divorce. Yet, the divorce rate in almost all of Indonesia continues to rise, including Aceh. Various measures have been taken by at least three groups, the government, community, and non-governmental organizations (NGOs), for women and children to feel less burdened after divorce. In this present study, however, the focus is on the

protection of women and children³ carried out by the government through the judicial institution of the Sharia Courts in Aceh and also on the role of *gampong* (village) and the Office of Religious Affairs (*Kantor Urusan Agama/KUA*).

This study highlights protecting women and children in a matter of legal institutions and a common issue. Therefore, all elements, especially the government, *gampong*, and community leaders, need to bring forth this issue so that the negative impact of divorce can be reduced when it is inevitable.

Method

This empirical legal study used the theory of legal sociology. In the study of legal sociology, the law is known as a control tool to regulate and make society better (Ali & Heryani, 2012; Fuady, 2018; Rahardjo, 1980). This field study was conducted in Aceh Province between 2015-2018, particularly in Banda Aceh, Aceh Besar, Pidie, Bireuen, and Lhokseumawe. Data were collected through in-depth interviews with judges, academics, the Head of the Office of Religious Affairs, *keuchik* (village head), community leaders, NGO activists, and the Board of the Aceh Adat Council (*Majelis Adat Aceh/MAA*). In addition, a literature review was conducted on the judge's decision regarding divorce in the context of protecting women and children, as well as other relevant references.

Protection of Women and Children from the Perspective of Islamic Law

Islamic law has firm and clear provisions regarding women's and children's protection. Islam has eradicated the *Jāhiliyah* (ignorance) Arab teachings that harmed women and positioned women with honor and dignity. Women are also given a share in inheritance and² her rights they previously did not earn. Allah says in Q.S. al-Nisā (4: 7), "For men, there is a share in what their parents and close relatives leave, and for women, there is a share in what their parents and close relatives leave, whether it is little or much. (These are) obligatory shares."

The Islamic law will provide a believing woman who is steadfast in her obedience the reward of goodness as is provided for a believing

man. Allah does not distinguish between men and women in this matter, as read in Q.S. Āli' Imrān (3: 195): "So their Lord responded to them: "I will never deny any of you, male or female, the reward of your deeds. Both are equal in reward. Those who migrated or were expelled from homes, persecuted for My sake and fought, and (some) were martyred, I will certainly forgive their sins and admit them into Gardens under which rivers flow as a reward from Allah. And with Allah is the finest reward!"

Women's rights are protected by inheritance. Islamic inheritance law stipulates that there are three reasons for a person to obtain inheritance rights, namely kinship (*nasab* ties), Marriage (*semenda*/affinal kin), and *al-walā* (kinship due ³ a legal cause for being instrumental in liberating slaves). There are three categories of heirs based on the Islamic inheritance law (al-Ṣābūnī, 1979: 34–36; Ash-Shiddieqy, 2010: 28; Hasballah et al., 2021) including female heirs who are referred to as grandmothers, mothers, daughters, and granddaughters.

In addition, based on the 1975 Marriage Law and Presidential Instruction No. 1 of 1991 or KHI, it is explained that efforts to protect women and children include registering marriages. This is intended to protect the rights of women and children with a marriage certificate. On the other hand, if the Marriage is not recorded or *nikāḥ sirrī*, there will be legal and social problems for women and children (Khoiriyah, 2017: 397–408). When the wedding occurs, the prospective husband must give the prospective wife a dowry. A dowry is a form of respect and appreciation for women because the dowry is a symbol of women's dignity and self-esteem. When a divorce occurs, the wife will obtain *'iddah* alimony, *muṣ'ah* alimony, *kiswah* (clothing), *māḍiyah* (past/ indebted) alimony, and joint property (Law of the Republic of Indonesia No. 1 of 1974 of Marriage., n.d.).

In general, Islamic law protects women fairly well. The formal Islamic law practiced in the Sharia Court, which refers to the KHI, for example, states: that the heir who dies before ⁷ the testator, then his/her position can be replaced by his/her son (Presidential Instruction No. 1 of 1991 of the Compilation of Islamic Law., n.d.). This is related to the substitute heirs, in which inheritance is referred to as grants or gifts.

In the Acehnese customary law, the protection of women by giving assets is called *peunulang*. Acehnese custom, for example, recognizes the term *peunulang* property, which can be referred to as a gift from parents to daughters, usually in the forms of houses and land, among others. *Peunulang* property protects women in the Acehnese society since parents help provide some living capital for their daughters within their households. Hence, there is a reason why Acehnese wives are also called *peurumoh*, which means people who own the house. In the *peunulang* case litigated in the Sharia Court, the judge still decided to protect the property given to women. This indicates that the Sharia Court makes the custom and culture of the community a legal consideration (Hasballah et al., 2021; Ilyas, 2016; Sari et al., 2021).

On the other hand, the protection of children in the perspective of Islamic law is implemented through education costs, living costs, health costs, and the right to be cared for (*hadānah*) if the children have not yet reached maturity. Islamic law has a more comprehensive perspective on protecting children's rights. The guarantee of protection starts from when children are still a fetus until after they grow up, e.g., the legal prohibition against abortion and providing relief for pregnant women not to fast during Ramadan. The Islamic law also provides the right to live, the right to an *aqiqah* (*sacrifice of an animal on the occasion of a child's birth*), the right to a good name, and the right to breastfeed for two years (Law of the Republic of Indonesia No. 1 of 1974 on Marriage, n.d.; Nurjanah, 2017: 391–432).

Further, the verse of the Quran explains the right of children to receive care by being breastfed and provided with food and clothing by their fathers. Allah says in Surah al-Baqarah (2:233), "Mothers will breastfeed their offspring for two whole years, for those who wish to complete the nursing (of their child). The child's father will provide reasonable maintenance and clothing for the mother (during that period). No one will be charged with more than they can bear. No mother or father should be made to suffer for their child." Likewise, during an *'aqiqah*, a child should be given a good name as a form of prayer. Hasan of Samurah reported that the Messenger of Allah (saw) said, "The boy is mortgaged with his *'aqiqah*; slaughtering should be done for him on the seventh day (of his birth), he should be given a name, and his head should be shaved" (Narrated by Turmūdhi). Thus,

breastfeeding, *'aqiqah*, giving a good name, and nurturing a child well and lovingly prove that Islamic law provides child protection.

In this case, the 1974 Marriage Law, 1991 Compilation of Islamic Law, and related legal regulations are products of Islamic law created by the Indonesian government to protect women and children in obtaining their rights in a fair and dignified manner (Bedner & Van Huis, 2010; Nasution & Nasution, 2021). This shows that Islamic law offers protection for women and ⁵ children, both in the form of sharia law and formalized into law on **Marriage Law and Compilation of Islamic Law**.

Measures Taken **in** Protecting Women

The protection of women in the legal realm can be carried out through legal rules, law enforcement, and legal culture. According to the legal rules, the decision cannot be stated or decided by the judge if it is not submitted in the petition of the wife (plaintiff). However, if it is filed or submitted by the wife, then the judge must decide and include it in the decision. However, in 2013, the judge decided on a litigation divorce case in which the wife initially applied for *'iddah* and *muṭ'ah* allowances, which were granted and outlined in a court decision.

The reason for the decision was the wife had the right to alimony during the *'iddah* period, and there was no one to bear any expenses ³ for her unless she had her property. The decision was based on the **Supreme Court** Jurisprudence through **the** previous **decision of the Religious Court and** ratified by **the** Supreme Court. This step was taken to protect and fight for women's rights in court institutions. Therefore, in the future, judges should have progressive and advanced thinking, not only based on what is written in the juridical and written rules. Sometimes juridical rules only consider the issue of legal justice without considering the sense of justice (Salwa, personal communication, 23 December 2015).

Likewise, the decision ³ **of the Sharia Court of Meulaboh, West Aceh,** stated **that the** wife could get an *'iddah* alimony of IDR 3,000,000 and a *muṭ'ah* alimony of one *mayam* of gold (approximately IDR 2,000,000) and also the custody of two minor children. The husband's occupation

was an entrepreneur, while the wife was a housewife (Decision of the Sharia Court of Meulaboh, 0034/Pdt.G/2013/MS.MBO). Similarly, the case of divorce by *talāq* at the Lhokseumawe Sharia Court also granted the wife an *'iddah* alimony of IDR 1,500,000 and the right to custody of minor children. The husband was an entrepreneur, and the wife was a housewife (Decision of Lhokseumawe Sharia Court, 215/Pdt.G/2015/MS.Lsm, n.d.). Although the wife was a housewife, and the husband was a trader, all these assets were joint assets that had to be divided in two according to the Compilation of Islamic Law (Decision of Sigli Sharia Court, 071/Pdt.G/2014/MS.Sgi, n.d.).

In terms of the issue of marital property or *seuharkat* assets (joint assets), the judges at the Sharia Court have made decisions based on the Compilation of Islamic Law, which is 50: 50 or a ratio of 1: 1, i.e., each party gets a 50% share of the joint property. However, a judge believed this should not always be the case; for example, if the woman is the breadwinner and the husband has no income, the share maybe 70: 30, where the wife gets 70 and the husband 30. This is because, in terms of responsibilities and work, the wife has heavier ones. Therefore, women without income will get 50% of the joint property stipulated in the Compilation of Islamic Law (Salwa, 2015). At the Sharia Court, the judges' considerations in deciding the joint property are based on how much each party contributes to the joint property. However, it needs to point out that the judges are also concerned about protecting women's rights and gender equality (Nurdin, 2019: 139–152).

Further, the protection of women through judges' *ijtihad* is carried out with decisions that provide *muṭ'ah*, *'iddah*, and even *māḍiyah* support (if there are demands from the wife) (Devy & Suci, 2020: 416–422). Regarding this assessment, a judge of the Aceh Sharia Court revealed that the gender sensitivity of a judge in examining divorce cases could be seen from the extent to which the judge guarantees the availability of *'iddah* and *muṭ'ah* alimony as past living support (*māḍiyah*) for the wife. A judge believes that he will not hesitate to grant a request from a wife to confiscate her husband's property in a divorce case. This act guarantees that the husband can pay the *muṭ'ah* and *iddah* alimony properly and on time to his ex-wife. The judge understands that implementing Islamic law has always been dynamic

and adapts to the changing times. The judge generally has a broad background in *dayah* (Islamic boarding school) education and has no rigid understanding of contemporary legal issues that do not have direct references in Islamic law sources. Thus, in such a context, there is an opportunity for judges of the Sharia Court to carry out *ijtihad*, in the form of innovations that still accommodate the community's culture, customs, and local wisdom (Salim, Sayuti, Nurlaelawati, 2009:65).

One form of judge protection toward women is when the ex-husband who wanted to pronounce *ṭalāq* shall bring cash of *'iddah* and *muṭ'ah* money on the day of the *ṭalāq* pledge. If the husband fails to obtain the money stipulated in the decision as *'iddah* and *muṭ'ah* alimony, the husband will not be allowed to recite the *ṭalāq* pledge. However, another judge states that this rule depends on the couple's condition, as sometimes the husband is not financially able to pay the *'iddah* and *muṭ'ah* alimony, or the wife does not want to wait any longer for the divorce to occur. For the wife, delaying the *ṭalāq* pledge will only prolong the suffering. In such a situation, with the wife's permission, the judge will ask the husband to make a vow of divorce and ask them to agree on the technicalities of paying *'iddah* and *muṭ'ah* money. According to the judges in Aceh, this case is much better than dragging out divorce proceedings (Salim, Sayuti, Nurlaelawati, 2009: 65).

Nevertheless, efforts made by the government through the Advisory Board for the Guidance and Preservation of Marriage (*Badan Penasehat Pembinaan dan Pelestarian Pernikahan/BP4*) established by the Ministry of Religious Affairs have been ineffective for a number of reasons, one of which is due to the lack of funds provided by the government. Funds provided by the government are IDR 50,000 per case handled, yet reconciling and facilitating divorced people is not easy. At the BP4 institution in one of the sub-districts in Bireuen District, the chair is a representative of the Ulama Consultative Council (*Majelis Permusyawaratan Ulama/MPU*), the deputy is the Head of the District KUA, and the members are several community leaders. It should be noted that BP4 handles divorce issues that continue to increase over the years, while the government's funds are minimal. The reconciliation process is generally carried out three times at the KUA office. If the case cannot be resolved, it will be

brought to the Sharia Court (Hisyam, personal communication, 27 December 2015).

The role of the *BP4* (*Badan Penasihat Pembinaan dan Pelestarian Perkawinan*/ Advisory Board for the Development and Preservation of Marriage) institution in the sub-district in the effort to provide advice, guidance, and marriage maintenance has, insofar as not been optimal. Part of the lack of performance includes limited funds, overlapping tasks of members with different work backgrounds, limited human resources both in quality and quantity, a solid willingness to divorce, and difficulty in reconciliation among the disputed couples (Zuhri, 2016: 78).

The BP4 has quite a strategic function and role as it is a socio-religious organization with the legality to handle family problems such as Marriage, divorce, and reconciliation. However, the institution's performance has not been maximized. Therefore, the government must pay more attention to *BP4*, starting from organizational management, performance, and cooperation with other institutions. Hence, the optimization of work that aims to foster and preserve Marriage in society is well achieved (Fatonah, 2015: 98; Yanti, 2020: 57–70). In the context of Aceh, community leaders and traditional leaders such as the *teungku imum*, *imuem mukim*, and *teungku dayah* are quite effective in carrying out this role since they are quite close to the community in socio-religious life.

To sum up, the measures taken to protect women within the Sharia Court have been carried out in various ways, including by granting *'iddah* alimony, *muṭ'ah* alimony, *māḍiyah* support, and joint assets, as well as child custody. Judges advocate the protection of women following the purpose of Islamic law in manifesting justice and fulfilling rights.

Child Protection

Regarding child protection after divorce, there are several issues to consider, including the provision of living support or living expenses and the right to custody or care for children. However, in the case of the husband paying child support to the wife, the judge plays a significant role. The judge will grant the child support even though

the wife does not request it in the reconvention. In addition, the spouses' behavior also becomes the basis for considering the amount of support that must be paid.

Protection of children carried out by judges can be seen in the decision in the divorce by *ṭalāq* case at the Sharia Court of Meulaboh, in which the children earned a living cost of IDR 1,250,000 for two children. The two children³ were also under the mother's custody as they were not yet adults (*Decision of the Sharia Court of Meulaboh, 0034/Pdt.G/2013/MS.MBO*, n.d.). Another divorce by *ṭalāq* case at the Sharia Court in Bireuen charged the defendant (the husband) to bear the maintenance of three children until they were adults as much as IDR 1,500,000 per month (*Decision of the Bireuen Sharia Court, 0252/Pdt.G/2013/MS.Bir*, n.d.). Similarly, a divorce case by *ṭalāq* at the Lhokseumawe Sharia Court granted child protection by providing living expenses for one child as much as IDR 1,000,000. The child also received care from the mother as not yet an adult (*Decision of Lhokseumawe Sharia Court, 215/Pdt.G/2015/MS.Lsm*, n.d.).

Another example is the protection of children at the Sharia Court of Sabang, wherein a child was orphaned at age six since both the father and mother died. The aunt (the mother's sister) then requested to be the child's guardian. The judge made the aunt the child's guardian. This decision was taken based on the consideration of the 2013 Minister of Social Affairs regulation article 35, which stipulates that an application for appointment as family guardian is submitted by one of the parents, siblings, and family up to the third degree.

As both parents had died, the one who has the right to take care of the child is the aunt (of the mother's side), which corresponds to what the Prophet Muhammad (Saw.) said in deciding the custody of Hamzah's daughter. From al-Barrā' ibn Azb, the Prophet Muhammad (saw.) had decided the daughter of Hamzah to be looked after by the mother's sister. He said: "Mother's sister (aunt) has the same position as mother." (Narrated by Bukhari) (*Decision of the Sharia Court of Sabang, 048/Pdt.P/2014/MS-Sab*, n.d.).

Child care (*haḍānah*) is an important issue in divorce cases for couples blessed with children. Indonesian laws and regulations, such as the KHI, have regulated child care appropriately. In the KHI, children

are identified with two conditions: first, children under one year (*ghayr mumayyiz*), and second, children over one year (*mumayyiz*). The child-rearing regulations in the KHI do not characterize the conditions of the party entitled to care. In contrast, Islamic law stipulates that a custodian shall meet several criteria to obtain custody of the children (Salim, Sayuti, Nurlaelawati, 2009:69).

A *keuchik* in Aceh mentioned that the efforts made by *gampong* officials in protecting women and children after divorce consisted of mediation and deliberation between the two families to urge the fathers or ex-husbands to pay attention to children, especially children's education. If the fathers do not provide nor the mothers, the *gampong* will bear the cost of the children's education. However, such a case has yet to happen, still, the *gampong* is committed to protecting the residents (Puteh, 2017). Indeed, the village budget is usually provided to empower women and children, including children with social and legal problems caused by divorce. The *gampong* party is assisted by other elemental institutions (such as NGOs) to assist the child (Laili, personal communication, 4 April 2017).

Moreover, children whose parents are divorced will face a stigma or unfavorable labelling in society. They may also engage in behavior or actions that conflict with the law. According to the 2014 child protection law, children shall be protected through social advocacy, personal protection, health, and other rights according to the rules and regulations. The law also adds that children under 18 years old cannot be detained (imprisoned) (Law No. 35 of 2014 of Child Protection). This is part of protecting children according to the legal rules and is also considered by judicial institutions such as the Sharia Court.

Of the four cases that occurred in Sabang, Meulaboh, Bireuen, and Lhoksuemawe, the Sharia Court has provided several forms of child protection as follows: first, economical protection through living support and expenses; second, education protection through education costs; third, health protection; and, fourth, social and psychological protection through care by the guardian of the child and unbroken relationship between parents and the child despite a divorce.

Analysis of Legal Sociology on the Protection of Women and Children

Sociologically, the law is a tool to control society, and judges, as part of law enforcement, have carried out their duties and functions properly. As law enforcers, judges, through their decisions, protect women's and children's rights.

Soekanto (2006:13) describe that three factors show whether or not a legal rule is effective or, in other words, legal effectiveness: first, a legal substance that refers to the core of legislation itself; second, a legal structure that refers to law enforcers, or those directly involved in the field of law enforcement; and third, a legal culture which can be interpreted as the attitude of the legal community in the place where the law is carried out. If there is public awareness to comply with the predetermined regulations, the community will become a supporting factor. However, if the community does not comply with the existing regulations, the community will be the main inhibiting factor in enforcing the regulations in concern. Legal substance, core, or norms are called patterns of human behavior in society and are regulated in the legal system both materially, i.e., criminal, civil, administrative, and state laws, and formally, i.e., crime procedural, civil procedural, and administrative laws. The legal structure, in this case, law enforcers in judicial institutions, i.e., judges, also have obligations according to the 2004 Judicial Law. The obligations are attached to their profession as a judge, which includes the obligation to explore, follow, and understand the legal values and sense of justice within society. The obligations also include considering the severity of the crime, wherein a judge shall also pay attention to the good and evil nature of the defendant (Law of the Republic of Indonesia No. 4 of 2004 of Judicial Power., n.d.).

The legal structure or legal institutions, such as the Sharia Court in Aceh, also consider the sociological factors in deciding cases of protection of women and children. In addition, the judge also made legal arguments based on the Quran, Sunnah, and the opinions of the scholars in his decision. These arguments adapt to the sociological characteristics of the Acehnese people. This indicates that the Sharia Court, as part of the social system and judges as social actors, have functioned to protect children from

creating public order and peace (Kasim et al., 77, 2021b). The legal logic assumes that when a child is protected, the mother must be protected, and vice versa, especially when the child is immature and still needs his mother's care.

Furthermore, the legal culture in Acehese society suggests that the custom and culture have values to care for and protect women and children. There is a synchronization built between legal culture and legal institutions in Aceh. In the context of legal culture in society, divorce conflict resolution is resolved at the *gampong* level. The first process is handled by the head of the *jurong* (hamlet), and if it is not completed, it is later handled by *keuchik*, *teungku imum*, and *tuba puet* (traditional leaders). Problems are sometimes resolved in *meunasah* (little mosque) so that the *gampong* community is unaware of the problems to prevent trauma to the children. The settlement process is also carried out at the house of the disputed parties, and the *gampong* officials visit the home to organize deliberation. Many conflict cases can be resolved without taking the matter to a formal court. However, unresolved cases are also eventually submitted to the Sharia Court (Syam, personal communication, 27 December 2018).

There is also protection for women with the provision of *hareuta peunulang*, a custom that the Sharia Court has accommodated. Although in the KHI (*Kompilasi Hukum Islam*/The compilation of Islamic Law), there are no rules regarding *hareuta peunulang*, in practice, it is still included in grants or parental gifts to the daughters. Traditionally, the position of women is also quite strong in the *peunulang* family. So from a cultural point of view, daughters can still live within the family environment, and wives can have the position of homeowners (*peurumoh*) (Daud & Akbar, 2020).

The decision of the Sharia Court comprises *'iddah*, *mut'ah*, joint property, and custody rights when the child is not yet an adult. Things that must be met in child protection include living costs, guardianship from the father's or mother's family, inheritance from parents in the form of salaries from parents as civil servants (PNS), and being cared for by the mother if she is not yet an adult. In addition, the relationship and communication between parents and children must still be built.

Table 1. Protection of Women and Children at the Sharia Court

No	Year/ Location	Type of Case	Women Protection	Child Protection
1	215/2015 Lhokseumawe Sharia Court	Divorce by <i>ṭalāq</i>	Women earning <i>'iddah</i> as much as IDR 1,500,000 and the right to care for minors	Earning the cost of living for one child of IDR 1,000,000 and receiving care from the mother because the child is still underage
2	071/2014 Sigli Sharia Court	Distribution of Joint Property	Woman getting half of a permanent house and land, half of two-door, two-floor stores, a plot of vacant land, the sale of a motorcycle for as much as IDR 2,600,000 along with household furniture, e.g., a set of wooden beds, a television, a cupboard, and a bunch of guest chairs shared with her ex-husband	
3	048/2014/ Sabang Sharia Court	Child Custody		A 6-year-old orphaned child given custody under the aunt (mother's sister), and an inheritance in the form of salary of the PNS parents
4	0034/2013/ Meulaboh Sharia Court	Divorce by <i>ṭalāq</i>	A woman earning <i>'iddah</i> alimony of IDR 3,000,000, <i>muṣ'ab</i> alimony of one <i>mayam</i> gold (about IDR 2,000,000), and custody right of two minor children	The child living support granted as much as IDR 1,250,000 for two children, and the mother takes care of the underage children
5	0252/2013/ Bireuen Sharia Court	Divorce by Litigation	Women earning <i>'iddah</i> alimony of IDR 4,500,000, <i>muṣ'ab</i> alimony of IDR 1,000,000, and child custody	The child living support granted as much as IDR 1,500,000 (minimum amount) per month for three children, and children in the care of the mother due to not yet adults

Source: Decisions of Sharia Court in Aceh, 2013-2015.

Table 1 shows examples of protection for women and children described by the decisions of the Sharia Courts in Sabang, Meulaboh, Sigli, Bireuen, and Lhokseumawe. The protection grants rights in material assets, living expenses, and non-material issues. The non-material issues involve the affectionate relationship between mother and children, as people under custody are regulated in the KHI, especially if the children are not yet adults. Likewise, the relationship between the children and the father is not constrained despite a divorce.

Further, other than the court protection, according to the Aceh *Adat* Council (MAA), within the Acehnese society, children are given an education from a young age in the family, such as being cultivated in the aspect of *'aqidah* (creed) and introduced to cultural and social values. Afterwards, when children become teenagers, they will be escorted to the house of a *teungku gampong* (village Islamic leader) to study the Quran and at the *meunasah* with the *teungku meunasah*. Hence, the *meunasah* has become a center for religious, social, educational and cultural activities ((Ismail, personal communication, 5 May 2018; Nurdin et al., 2021: 760–779).

Thus, children will have rich religious and social values when they become teenagers and adults. When children need protection, the support system already exists. In this case, the children will possess strong characters and capital in dealing with more complex community life.

Similarly, one of the Heads of the Office of Religious Affairs in Aceh argued that the Acehnese should strengthen the understanding of Aceh's religion, culture, and customs. Understanding religion can be obtained by increasing religious education through formal and informal education, Islamic study gatherings, Quranic recitation, and *dhikr* (remembrance of Allah). Throughout this educational process, one will truly discover the main purpose of Marriage. Additionally, Acehnese used to study religion and Quran at *meunasah* or the house of the *dara baro* (bride) after the wedding. They hope the spouse can deepen religious values, introduce *linto baro* (groom) to the community, and strengthen the friendship between people (Musa, personal communication, 30 December 2015).

It is essential to protect children and ensure that the Sharia Court is assisted by the Office of Religious Affairs and the *gampong* as legal institutions and social institutions that provide a sense of justice by

granting the rights of women and children. The granting of rights to women and children suggests that legal sociology protects and realizes order and peace in society. This indicates the function of the judiciary institutions at the forefront of the legal structure and the judges as social actors to create a just legal culture that protects the community. Thus, the social function of legal control to create order and peace in society can be achieved. The function of Sharia Court as a legal and legal institution, in general, is sociologically important enough to ensure that justice and equality and the fulfilment of the rights of women and children and all elements of society are appropriately applied.

Conclusion

Divorce undoubtedly raises complex issues, one of which is the emergence of legal consequences for the divorced couple. The Sharia Court in Aceh, through judges as the main part of the legal structure and social actors, have tried to protect women and children as reflected in their decisions. Protecting women includes obtaining the rights after divorce, such as *'iddah* alimony, *muṭ'ah* alimony, *māḍiyah* support, joint property, and child custody. Protecting children consists of the rights to living expenses, guardianship, and care from parents. In addition, the Head of Religious Affairs and community leaders have also tried to prevent divorce so that women and children can still get their rights through a complete family. The theory of legal sociology, in the context of legal substance and structure, emphasizes law as a means of community control, as it can create peace and order. Such purposes can be achieved because the substance of the law or statutory rules can be applied by the Sharia Court to protect women and children. Thus, as vulnerable groups, women and children can feel justice and obtain their rights with dignity.

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