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Legal Certainty Holders of Child Rights are not *Mumayyiz* Post-Divorce after Their Mother Married in Indonesia

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ABSTRACT

The provisions of Article 105 letter (a) of the Compilation of Islamic Law (KHI) state the mother's right to maintain a child who is not yet *mumayyiz* or under 12 years of age. However, the regulations do not state explicitly whether the mother's custody rights remain or transfer to another party when the mother remarries another man. This paper aims to examine the custody of children who are not yet *mumayyiz* after the mother re-marries in a normative juridical manner using a descriptive approach. The results of the study concluded that the mother as the holder of child custody has not been *mumayyiz* after her divorce, but still has the right to continue parenting rights. With note, her marriage to another man did not cause any negligence and she was still able to carry out her obligations and responsibilities to care for, nurture, and educate her. If the best interests of the child can no longer be realized and cause disputes related to child care and to obtain legal certainty, then through a court process, custody rights can be transferred to other parties which consist sequentially of the biological father, adoptive parents who get a court decision, the child's family. in a straight line upwards and adult siblings, their guardians who have received a stipulation from the court and the competent authority.

Keywords: Child Custody, Legal Certainty, Mother Remarried, Not Yet *Mumayyiz*

ABSTRAK

Ketentuan Pasal 105 huruf (a) Kompilasi Hukum Islam (KHI) menyatakan pemeliharaan anak yang belum *mumayyiz* atau belum berumur 12 tahun adalah hak ibunya. Namun di aturan tersebut belum menyatakan secara tegas apakah hak pengasuhan ibu tetap atau beralih kepada pihak lain saat ibu menikah lagi dengan laki-laki lain. Tulisan ini bertujuan mengkaji hak asuh anak belum *mumayyiz* pasca ibu kembali menikah secara yuridis normatif dengan pendekatan deskriptif. Hasil kajian menyimpulkan bahwa ibu selaku pemegang hak asuh anak belum *mumayyiz* pasca perceraian, tetap berhak melanjutkan hak pengasuhan. Dengan catatan, pernikahannya dengan laki-laki lain tersebut tidak menyebabkan terjadi kelalaian dan tetap dapat melaksanakan kewajiban serta tanggung jawabnya mengasuh, memelihara, dan mendidiknya. Bila kepentingan terbaik bagi anak tidak dapat terwujud lagi dan menimbulkan perselisihan terkait pengasuhan anak serta untuk mendapatkan kepastian hukum maka melalui proses pengadilan, hak asuh dapat dialihkan kepada pihak lain yang secara berurutan terdiri

dari ayah kandung, orang tua angkat yang mendapatkan putusan pengadilan, keluarga anak secara garis lurus ke atas dan saudara kandung yang telah dewasa, walinya yang mendapat penetapan dari pengadilan serta pejabat yang berwenang.

Kata Kunci: Belum Mumayyiz, Hak Asuh Anak, Ibu Menikah Lagi, Kepastian Hukum

Introduction

Children born from a legal marriage are a mandate as well as a gift from Allah SWT. which is very valuable when compared to wealth in the form of property. Children as a mandate from Allah SWT. It must always be maintained and protected because in the child inherent dignity and rights as human beings which must be upheld (Jamadi, 2018).

Children's rights have been properly regulated as stipulated in Article 52 paragraph (1) of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights in conjunction with Article 20 of Law Number 23 of 2002 concerning Child Protection, as amended by Law Number 35 of 2002. 2014, has mandated that every child has the right to protection by parents, family, society, government and the state. Likewise based on the spirit of the Proclamation contained in the Preamble to the Constitution of the 1945 Constitution that the protection of the entire Indonesian nation including every Indonesian child by the state is a general duty of state government (Jamadi, 2018).

The Compilation of Islamic Law (KHI) is material law within the Religious Courts in addition to Law Number 1 of 1974 concerning Marriage, Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts which was later amended again by Law Number 50 of 2009, as well as Law Number 23 of 2002 concerning Child Protection, which have undergone changes through Law Number 35 of 2014. These regulations still do not provide a complete answer to various legal problems in determining child custody when there was a divorce between his parents (Nurhadi, 2021).

The law on child custody (child custody) has been expressly stated in Law Number 1 of 1974 concerning Marriage as a series of marriage laws in Indonesia, but related matters have not been regulated extensively and in detail in that law. Then with

the enactment of the Compilation of Islamic Law through the Presidential Instruction in 1991, the law regarding child custody got a point of light.

In the Compilation of Islamic Law, there is CHAPTER XIV concerning Child Care, through Article 98 to Article 106 and Article 156. Specifically, child care in the event of a divorce is regulated in the provisions of Article 105 letters (a), (b), and (c) and Article 156 letters (a) to letters (f). The provisions of Article 105 letter (a) state that the care of a child who is not yet mumayyiz or who is not yet 12 years old is the right of the mother, and in letter (b) states that the care of a child who is already mumayyiz is left to the child to choose between the father or mother as the holder of the right to maintenance. And the right of children who have been mumayyiz to vote is reinforced in Article 156 letter (b).

One thing that has not been clearly regulated is who has (more) rights to care for a child who is not yet mumayyiz, who was initially under the control of the mother since she divorced the child's father, then the mother remarried to another man? And what about the provisions for transferring custody of a child who has not been mumayyiz if the mother is no longer entitled to be a hadhin (caregiver)?

Research Method

The study in this paper is a normative juridical study, namely an in-depth study of normative rules, namely viewing law as a norm that must be enforced in Indonesian society. This paper also uses a normative descriptive approach, namely in the form of descriptions and descriptions of legal norms that apply as an objective description of an object of study. And it is also a form of library research (library research) in the form of an effort to explore data originating from written works related to the focus of the study.

The primary data used is Law Number 1 of 1974 concerning Marriage, Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2002 concerning Child Protection, as amended by Law Number 35 of 2014, Law Number 3 of 2006 concerning Amendment to Law Number 7 of 1989 concerning Religious Courts which was later

amended again by Law Number 50 of 2009, and Law Number 23 of 2002 concerning Child Protection, which has been amended through Law Number 35 of 2014 and the Compilation of Islamic Law (KHI) which came into force based on the Presidential Instruction in 1991. And secondary data, namely in the form of books, journals, scientific articles and the hadith of the Prophet Muhammad SAW. which are closely related to the theme of this study.

Result and Discussion

The Meaning of Legal Certainty

Natsir Asnawi interprets legal certainty as the certainty of law enforcement in society. The law in question must meet three general criteria, namely *ius constituendum* which means law which is the ideal of society, *ius constitutum* which means law which is codified in the form of a law and *ius operatum* which means law which is implemented or carried out by the community and juries. Based on these three criteria, it can be understood that legal certainty is certainty regarding the implementation and enforcement of legal principles, norms and rules that apply in society so that they can become the basis for creating a just and prosperous society (Asnawi, 2014).

Legal certainty is the goal of law that wants strict law enforcement and implementation and can provide legal protection to justice from the arbitrary actions of other parties and is also related to efforts to maintain order in society (Rifa'i, 2011).

The concept of legal certainty contains two meanings, namely (1) the existence of general rules that make individuals aware of what is permissible and what is not permissible and (2) the existence of legal security for individuals from the arbitrary attitude of the government because each individual has knowledge of the existence of rules that that general. Legal certainty is not just articles in the form of laws, but also consistency in the decisions of one judge and other judges for a similar case that has been decided (Mansari & Maulana, 2018).

Children's Rights

Details of children's rights can be found in Articles 4 to 18 of the Child Protection Act. In short, namely the right of the child to be able to live, grow, develop and participate fairly in accordance with human dignity and dignity, and to receive protection from violence and discrimination (Article 4); the child's right to a name as self-identity and citizenship status (Article 5); the right of children to worship according to their religion, think and express according to their level of intelligence and age, under the guidance of their parents or guardians (Article 6); the right of children to know their parents, to be raised and cared for by their own parents or to be cared for by other parties according to statutory provisions if it is because the parents cannot guarantee the child's growth and development or the child is in a neglected state (Article 7); the child's right to obtain health services and social security in accordance with physical, mental, spiritual and social needs (Article 8); children's rights to education and teaching, the right to protection in educational units from sexual crimes and violence perpetrated by educators, educational staff, fellow students, and/or other parties as well as for those with disabilities to receive special education and those who have the advantage of obtaining special education (Article 9); the right of children to have their opinions heard, receive, seek and provide information according to their level of intelligence and age for the sake of self-development according to the values of decency and decency (Article 10); the right of the child to rest and take advantage of free time, associate with children of the same age, play, have recreation and be creative according to their interests, talents and level of intelligence (Article 11); as well as the right of every child with disabilities to obtain rehabilitation, social assistance, and maintenance of social welfare levels (Article 12).

Child protection in its implementation based on the provisions of Article 2 of Law Number 23 of 2002 as amended by Law Number 35 of 2014 refers to 4 basic principles which include (1) non-discrimination, (2) the best interests of the child, (3) the right to life, survival and development, and (4) respect for children's opinions. Among the explanations of this article, it requires that the state, government, society, legislature and judiciary make the best interests of the child the main consideration in all actions concerning children (Zamzami, 2014). Furthermore, with the amendment to Law

Number 35 of 2014, the obligations and responsibilities for implementing child protection are added to the obligations of the state, government, local government, community, family, and parents or guardians.

Article 13 paragraph (1) of Law Number 23 of 2002 also states that children are also entitled while in their care to receive protection from discrimination, exploitation, both economic and sexual, neglect, cruelty, violence and abuse, injustice and other mistreatment. And in Article 14, the child's right to be cared for by their own parents unless there is a legal rule that abolishes it (Jamadi, 2018).

In order to protect the public from various types of cosmetics that do not meet safety, efficacy and quality requirements, the government has actually provided regulations regarding guidelines for registration, application and issuance of cosmetic notifications which are contained in BPOM Regulation Number 21 of 2022 concerning Procedures for Submitting Cosmetic Notifications. According to Article 1 point (2) of this regulation, it is stated that what is meant by cosmetic notifications is approval given by the head of the agency for notifications from business actors to distribute cosmetics in the territory of Indonesia after the business actors fulfill the requirements for submitting an application for a cosmetics distribution permit.

The Meaning and Limitations of Mumayyiz

The word mumayyiz in fiqh studies is used for a child who is in one of several periods that he has lived since he was in his mother's womb. The period in question is the fetal period, the period before mumayyiz, the mumayyiz period, the baligh/reason period and the rushd period (Nurhadi, 2021).

The limits of mumayyiz (*haddu al-tamyiz*) differ among jurists. There are those who argue 7 or 8 years, there are also those who distinguish between boys and the limit of *itsghar*, namely the period of new teeth growing after the baby teeth run out (between 6 to 14 years) and for girls the limit is until they get married and have been interfered with by their husbands, there are also who assessed up to puberty for women and *istighna'* (able to be independent from mother's care) for men (Nurhadi, 2021).

In Indonesia, based on the provisions in Article 105 letter (a) the Compilation of Islamic Law (KHI) takes a middle way and gives the meaning that mumayyiz is a child who is not yet 12 years old. Strictly speaking in Article 105 letter (a) states that the position of a child who is not yet mumayyiz (12 years old) is under the custody of his mother. And in letter (b) it provides a choice for children who are already mumayyiz to choose between going with their mother or father.

Pillars of Parenting (*Hadhanah*) and Conditions

There are 2 pillars of parenting, namely hadhin (caregiver) and mahdhun (cared for). Hadhin is a party determined by the Court to carry out the duties and obligations of caring for and caring for a child who is not yet mumayyiz. While mahdhun is a child who needs to be cared for by hadhin after the divorce of his parents or because his parents died and at the same time the child who has not been mumayyiz has not been able to fulfill his life needs independently (Asnawi, 2022).

In the laws and regulations in Indonesia, especially in the provisions of Articles 105 and 156 KHI, it has not been stated in detail or regulated the conditions for a mother/hadhin who has the right to child custody (Zamzami, 2014), in contrast to fiqh rules which detail the requirements and criteria. Nurhadi cited the requirements of a hadhin (caregiver) put forward by Sayyid Sabiq, namely having sound mind, being mature, being able to educate, being trustworthy and having noble morals, being Muslim, if she is a woman (her mother) then she has not remarried, and is independent.

Child Custody Not Mumayyiz After Mother Remarries

Childcare is expressly stipulated for both parents after a divorce and solely for the benefit of the child as stipulated in Article 41 letter (a) of Law no. 1 of 1974 concerning Marriage. Specifically, Article 105 (a) and Article 156 (a) of the Compilation of Islamic Law states that if a child is not yet mumayyiz, then he will be placed in the care of his mother unless the mother dies.

The position of the mother as the holder of custody of children who have not yet been mumayyiz will be replaced by women in a straight line upwards from the mother,

father, women in a straight line upwards from the father, sisters of the child concerned and women who are blood relatives according to side line from the father if the mother dies (Nurhadi, 2021; Jamadi, 2018). However, KHI has not yet confirmed whether there has been a change in caregivers for the child who has not been *mumayyiz* - as stated in the terms of the mother's death - when her mother remarried to another man.

A woman who holds child custody after her divorce has a high potential to remarry with another man. We can find this fact in the midst of society. Provisions and regulations in Indonesia regarding the time limit for raising a child who has not yet been *mumayyiz* set for the mother still do not state whether there is an explicit transfer of custody if the mother remarries.

As previously mentioned, the Compilation of Islamic Law (KHI) is part of the material law that exists within the Religious Courts in addition to other statutory regulations. Warkum Sumitro stated that KHI is a product of *ijtihad* towards the future of Islamic law in Indonesia. The establishment of written Islamic law (family law) has been a need and desire of the Muslim community in Indonesia for a long time. Religious courts that are given the authority to resolve family law issues require a written law that can be used as a reference for judges so that there is uniformity in decisions in order to achieve legal certainty (Sumitro, 2005).

Sumitro emphasized that the position of Islamic law in the legal system in Indonesia is the same and equal to the applicable Western law and customary law. So that Islamic law becomes a source in the formation of future national laws in addition to other laws that grow and develop in this country. Fields of Islamic law whose implementation does not require the assistance of government power can be directly applied by relying on the constitution, while those whose implementation requires the assistance of state power can be applied by relying on statutory regulations under the constitution (Sumitro, 2005).

In a review of Islamic law (becoming material law in Indonesia in the form of KHI), based on its second legal source after the Al-Qur'an, namely the hadith of the Prophet Muhammad (later becoming a construction of understanding by scholars commonly called *fiqh*), it provides instructions regarding custody rights a child who is

not yet *mumayyiz* when his mother remarries. In the condition that the mother is still single and has not remarried, then child custody can be said to be absolutely her right. Meanwhile, when they remarry, their marriage becomes a *mani'* (obstacle) of *hadhanah* for their children. That is the opinion of Imam Shafi'i and Imam Malik. In another sense, if the mother divorces again and is no longer a wife (no longer bound by marriage), then the barrier disappears, and custody of her child returns to her (Abdullah, 2017).

In a hadith narrated by Abu Daud and Ahmad it is stated that Abdullah bin 'Amr narrated that a woman came to complain to Rasulullah about her small child, where her ex-husband wanted to take their child after divorcing her. Rasulullah then said (Asnawi, 2022):

"You (as the mother) have more rights to the child as long as you are not remarried (to another man)"

The hadith *matans* are parts that cannot be separated from one another. It can be freely translated as part of the sentence that means "you (O mother) have the most rights over the child as long as you are not/are not remarried" (Abdullah, 2017).

Departing from this, according to the basic rules, every child who has not been *mumayyiz* whose parents are divorced, the right to care falls on the mother. The existence of a hadith clause of the Prophet Muhammad in the form of a sentence stating "you (O mother) have the most rights over the child as long as you are not/are not remarried" needs to be considered in resolving the problem if the mother who originally held custody of the child has not yet been *mumayyiz* remarried to another man so that her rights can be annulled and taken over by other parties who are also entitled to carry out the duties and responsibilities of parenting.

Among the understandings of the hadith it is excluded that if the mother or woman remarries another man who is still a close relative of the child who has not yet been *mumayyiz*, such as his uncle from the father's side, then the custody of the child remains the right of the mother and does not become aborted, because the uncle also still has the right to be the *hadhin* (caretaker) of the child so that in that way he will be able to be compassionate and pay attention to his rights. This will create a harmonious

relationship in caring for the child when the mother has a new husband who was previously her own uncle (Nurhadi, 2021).

Transfer of Custody of Children Not Yet Mumayyiz after Mother Remarries

Based on the provisions of Article 13 paragraph (1) of Law Number 23 of 2002 which has been amended through Law Number 35 of 2014 it can be understood that child care is not only carried out by the parents but there are guardians or other parties who can be responsible for the care even if parents, guardians or caregivers of children carry out all forms of treatment as referred to in paragraph (1), then the perpetrators are subject to increased punishment. And Article 14 confirms that basically, every child has the right to be cared for by his own parents, but if there are valid reasons and/or legal rules then it can be transferred and charged to other people who are also entitled. This separation and transfer of custody is in the best interests of the child and is the final consideration.

Article 30 paragraph (1) of Law Number 23 of 2002 juncto Law Number 35 of 2014 states that in the case of parents as referred to in Article 26, neglecting their obligations, supervisory action can be taken against them or the parental guardianship can be revoked and the parental authority revoked carried out by way of a court order. Reaffirmed in Article 33 paragraph (1) if the parents and the child's family cannot carry out the obligations and responsibilities as referred to in Article 26, a person or legal entity that meets the requirements can be appointed as the guardian of the child concerned and in paragraph (2) it is stated must go through a court order.

In the event of separation, the child still has the right to (a) meet directly and have personal contact face-to-face with both parents, has the right (b) to receive care, maintenance, education and protection for the process of growth and development from both parents according to their abilities, talents, and interests; has the right (c) to obtain living expenses from both parents, and has the right (d) to obtain other children's rights.

Existing provisions do not explicitly describe if there is a dispute or struggle for child custody being given to the father or mother, but provides criteria based on the best interests of the child (Nurhadi, 2021).

Child custody aside from being the right of the mother who becomes the caregiver, it is also the obligation of a caregiver (mother) towards the child in her care. By calling it a right, it means that the holder of that right can relinquish his rights at any time or use his rights carelessly, children tend to be neglected, are reluctant to be cared for properly, are not loved by the mother to the fullest, so caring for a mother is not only labeled as a right but more to the burden of obligation upon him, because in this situation the welfare of the child is neglected, where the child should have the right to receive maximum care from his mother. Thus, actually caring for children is an obligation for holders of child custody who have not been mumayyiz.

This is what is formulated in the provisions of Article 41 letter (a) and Article 45 paragraph (1) of Law Number 1 of 1974 concerning Marriage and Article 77 paragraph (3) KHI which states that the upbringing and maintenance of children is the obligation of the parents or the rights of the child. to be raised and cared for by their parents. Then the obligations and responsibilities of child care to their parents are also reaffirmed in Article 26 paragraph (1) of Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014.

Starting from this understanding, the right of a child who has not been mumayyiz after the divorce of his parents to receive maximum care and maintenance, is the main responsibility of the mother as caregiver. If a mother is no longer able to provide full care due to remarriage, child custody must be transferred and transferred to the party most likely to replace the mother's role by first declaring the biological mother's parental rights or obligations to be void. So that the mother who has remarried can carry out the maximum role as a wife for her husband without worrying and share her focus if she continues to care for her congenital children from her previous husband. Caring for their children can be handed over or transferred to other parties who are willing to take care of them optimally.

This is what can be constructed from the hadith clause of the Prophet above, when the mother remarries, her custody rights are lost which can then be transferred to another party who is more entitled and worthy.

The provisions in the hadith gave birth to a legal rule that the priority of a mother to care for her child is determined by two conditions, namely her biological mother has not remarried to another man and her biological mother fulfills the requirements for raising children. If one or both of these conditions are not met, then the biological mother's position in caring for the child is not more important than the child's father. And in such circumstances, parental rights (can) move to the closest sequence, namely the father (Asnawi, 2022).

Adapted from a book by Zakaria Ahmad al-Barry, it states that the person most entitled to care for a child is the biological mother, whether she is still the wife of the child's father or has been divorced with one, two or three divorces, whether she is still in her iddah period or has finished her iddah period. . The mother's rights remain because she is the one who loves the child the most and takes the most pain before the child is born and is the most patient in caring for the child. Furthermore, if the mother is no longer there (passed away) or remarried to another man then her position is replaced by the grandmother (mother's mother) and so on up. If they are not there, replaced by paternal grandmother (father's mother) and so on up.

The next sequence can be replaced by siblings, then mother, then father. If the sister is not present, she is replaced by a niece (daughter of a sibling), then a mother, then a father. If the niece is not available, then the mother's sister is replaced, then the mother's, then the father's. If the mother's sister is not present, she is replaced by a niece (daughter of a biological brother), then a mother, then a father. If the niece is not there, then the sister of the biological father is replaced, then the mother, then the father. If the father does not have a sister, he is replaced by his grandmother's sibling (mother's mother), then his mother's brother, then his father's brother, and so on (Al-Barry, 2004).

Switching and transferring custody of children who have not been mumayyiz from their biological mother after the mother remarries does not automatically or

immediately occur. The current regulations do not explicitly state if a mother's remarriage to another man results in the transfer of child custody to another party. It has not been explicitly stated that the position of the mother as the holder of custody of children who have not been *mumayyiz* will be replaced by women in a straight line up from mother, father, women in a straight line up from father, sisters of the child concerned and women -Women who are blood relatives according to the father's side if the mother remarries according to the provisions if the mother dies as referred to in Article 156 letter (a) KHI. And the mother's remarriage in Indonesia has not been an obstacle (*mani'*) to the upbringing of her child who is not yet *mumayyiz*, as understood by the *fuqaha'* (jurists) based on the hadith of the Prophet.

Provisions for the transfer of custody or custody that exist must be preceded by negligence in caring for and caring for the child. The provisions of Article 77 paragraph (5) KHI also require filing a lawsuit with the religious court. In another sense, if there is a dispute and there is no agreement or consent from other parties who also have custody rights, due to the negligence of the mother as the holder of custody of the child who has not yet been *mumayyiz*, then as the other party who also has custody rights, she can submit a transfer or transfer of rights. fostering children who have not been *mumayyiz* through the religious court as an effort to obtain legal certainty about parenting.

The Parties Applying for the Transfer of Child Custody are not Mumayyiz after the Mother Remarries

In Article 41 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is expressly stated that if there is a dispute regarding the right to care or control of a child, then the court will decide it. Likewise, in Article 49 paragraph (1) it reaffirms if one or both parents can have their power over a child or more revoked for a certain time at the request of the other parent, the child's family in a straight line upwards and adult siblings or authorized official. This can be decided by the court on the grounds that the custody holder is very negligent in his obligations to his child and he has very bad behavior.

The provisions of Article 26 paragraph (2) of Law Number 35 of 2014 as a change from Law Number 23 of 2002 concerning Child Protection also reinforces that for some reason, parents who cannot carry out their obligations and responsibilities to care for, nurture, educate and protect children as the provisions in Article 26 paragraph (1) then this obligation can be transferred to the family, which is carried out in accordance with the provisions of the legislation.

Biological parents are obliged to care for and educate children as well as possible. When there is a divorce and each of them is in disagreement about who is taking care of the child, it is the court that has the authority to decide on it according to the provisions of Article 41 letter (a) of Law Number 1 of 1974 concerning Marriage. It's just that the law does not explicitly state the norms in determining child custody. Courts are given the authority to determine child custody based on the principles of justice, certainty and legal benefits. Nonetheless, the provisions of Article 14 of Law Number 35 of 2014 which is an amendment to Law Number 23 of 2002 concerning Child Protection can serve as a guideline that one of the references for courts in deciding child custody cases is the best interest for the child (Asnawi, 2022).

As for the understanding of parents based on Article 1 paragraph (4) of Law Number 35 of 2014 which is an amendment to Law Number 23 of 2002 concerning Child Protection and Article 1 paragraph (2) Government Regulation Number 29 of 2019 concerning Requirements and Procedures for Appointing Guardians, not only consists of biological father and mother, but also includes father and stepmother, or adoptive father and mother. Whereas in the KHI rules the parents referred to are not mentioned other than only biological father and mother.

The definition of adoptive parents when connected with Chapter I Article 171 letter (h) of Book II of the KHI regarding inheritance law in general provisions states that the transfer of responsibilities of the original parents to the adoptive parents must be based on a court decision. This legal norm means that if in terms of inheritance, to be called adoptive parents requires a court decision and can also be elaborated with the right to care for a child, legally, legally and formally in Indonesia, it should also require a court decision. With this court decision, adoptive parents have the right to be

babysitters, especially those who are not yet mumayyiz. And the child gets legal certainty about the person who has the right to be his caregiver (hadhin) if the mother remarries another man.

Article 31 paragraph (1) and (2) of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 states unequivocally if one of the parents, siblings or family up to the third degree, can submit an application to the court to obtain a court decision regarding revocation parental custody or take oversight if there is a strong reason for this and if one of the parents, siblings, or family up to the third degree, is unable to carry out its functions, then the revocation of the parent's custody can also be submitted by the official authorities or other institutions that have the authority to do so.

From the existing provisions mentioned above, it can be concluded that the existing rules state that if there is negligence by a mother as the holder of child custody who is not yet mumayyiz who remarries to another man, and cannot carry out her obligations and responsibilities to care for, nurture, educate and protect the child well and also has very bad behavior, giving rise to disputes related to child care and for legal certainty of care, the parties who can request the transfer and transfer of custody of children who have not been mumayyiz to accommodate the best interests of the main child is his biological father. Then, if the father's parental rights are terminated based on reasons stipulated in the law, it can also be transferred to other legal parties, namely the adoptive parents who get a court decision, then the child's family - in this case - in a straight line up and adult siblings, then the guardian determined by the court and the competent authority.

In addition, other parties consisting of women in a straight line up from the mother, father, women in a straight line up from the father, the sister of the child concerned, and women who are blood relatives according to the line side of the father as stipulated in Article 158 letter (a) KHI, it should be necessary and can also be expressly stated as another party who will replace the position of the mother to obtain custody rights when the mother remarries as stipulated if the mother dies, with the main note that the mother is the When remarried can no longer provide full care and has been negligent and has behaved badly in his care, child custody must be transferred

and transferred to the party most likely to replace the mother's role by first declaring the parental rights or obligations of the natural mother through the court. This is in order to provide legal certainty for the care of children who have not been mumayyiz after their mothers remarry.

Conclusion

From the explanation above, it can be concluded that the mother as the holder of child custody has not been mumayyiz after her divorce, but still has the right to continue custody if she remarries another man. With a note, if after remarrying with another man there is negligence and he is unable to carry out his obligations and responsibilities to care for, nurture, educate and protect the child properly and also has very bad behavior, so that the best interests of the child cannot be realized and cause disputes related to child care and to obtain legal certainty of care, custody rights can be transferred to other parties.

Other parties who can request the transition and transfer of child custody have not been mumayyiz after the mother remarries and for the sake of accommodating the best interests of the child, the main one is the biological father. Then, if the father's parental rights are terminated based on reasons stipulated in the law, it can also be transferred to other legal parties, namely the adoptive parents who get a court decision, then the child's family - in this case - in a straight line up and adult siblings, then the guardian determined by the court and the competent authority.

In addition, the provisions of Article 158 letter (a) KHI which states other parties consisting of women in a straight line up from mother, father, women in a straight line up from father, sisters of children who concerned, and women who are blood relatives according to the father's sideline, as necessary and can also be expressly stated as other parties who will replace their mother's position, get care rights when the mother remarries as stipulated if the mother dies through changes in KHI or amendments to laws existing invitations.

The transition and transfer of child custody to the party most likely to replace the mother's role must first declare the loss of parental rights or parental obligations by

the biological mother through the court (for Muslims in the Religious Courts). This is in order to provide legal certainty for the care of children who have not been mumayyiz after their mothers remarry.

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