

Ḥaḍānah conflict resolution through litigation: analysis of sharia court decisions in Aceh

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This research aims to analyze the resolution of *ḥaḍānah* conflicts through litigation, specifically the decisions of the Sharia Court in Aceh regarding child custody (*ḥaḍānah*) to find legal certainty. This research uses a *normative-empirical* type of research by integrating normative law and empirical law. *Normative* legal analysis is carried out by examining library archives or secondary data. This research uses laws and judges' decisions in *ḥaḍānah* cases at the Aceh Syariah Courts. The instruments used in collecting data are observation, interviews, and documents or literature studies. To obtain research data on the number of *ḥaḍānah* cases that were filed separately at the Sharia Court, the article draws on existing decisions starting from 2016-2021. In this research, 5 (five) Sharia Courts were taken as research samples with 32 *ḥaḍānah* cases, particularly the Sharia Courts in Langsa, Kuala Simpang, Idi, Jantho, and Takengon. The research applies the theory of legal objectives according to Gustav Radbruch: legal certainty, justice, and expediency. The research shows that legal certainty through the decision of the Sharia Court has been realized. However, this has not provided justice for children because many defendants have not complied with court decisions, especially the surrender of child custody according to court decisions and payment of monthly child support according to what has been decided by the court. Hence, the benefits of the court decisions on the *ḥaḍānah* case are still not maximized. The solution is to formulate a law that is capable of providing a deterrent effect for defendants unwilling to fulfill court compliance.

Penelitian ini bertujuan menganalisis penyelesaian konflik *ḥaḍānah* melalui jalur litigasi yakni putusan-putusan Mahkamah Syariah di Aceh mengenai hak asuh anak (*ḥaḍānah*) untuk menemukan kepastian hukum. Penelitian ini menggunakan jenis penelitian *normatif-empiris*, dengan mengintegrasikan hukum normatif dan hukum empiris. Penelitian hukum *normatif* dilakukan dengan meneliti arsip kepustakaan atau data sekunder. Penelitian ini menggunakan perundang-undangan dan putusan-putusan hakim dalam kasus-kasus *ḥaḍānah* di Mahkamah Syariah Aceh. Alat yang digunakan dalam mengumpulkan data yaitu observasi, wawancara, dan studi dokumen atau bahan pustaka. Untuk mendapatkan data penelitian tentang jumlah kasus *ḥaḍānah* yang diajukan terpisah di Mahkamah Syariah, penulis mengambil putusan yang ada mulai dari tahun 2016-2021. Dalam penelitian ini diambil 5 (lima) Mahkamah Syariah sebagai sampel penelitian dengan 32 kasus *ḥaḍānah* di Mahkamah Syariah di Langsa, Kuala Simpang, Idi, Jantho, dan Takengon. Teori yang digunakan dalam penelitian ini adalah teori tujuan hukum menurut Gustav Radbruch yakni kepastian hukum, keadilan, dan kemanfaatan. Hasil penelitian menunjukkan, kepastian hukum melalui putusan Mahkamah Syariah telah terwujud. Namun hal ini belum memberikan keadilan terhadap anak, karena banyak tergugat tidak memenuhi putusan pengadilan, khususnya penyerahan hak asuh anak sesuai putusan pengadilan dan pembayaran nafkah sesuai yang telah diputuskan pengadilan. Sehingga kemanfaatan putusan-putusan atas kasus *ḥaḍānah*, masih belum maksimal. Solusi yang ditawarkan adalah dirumuskannya undang-undang yang mampu memberikan efek jera bagi tergugat yang tidak bersedia memenuhi kepatuhan pengadilan.

Keywords: *Aceh sharia court; court decision; ḥaḍānah*

Introduction

Child rearing is a well-thought-out topic in Islam. The government involves in providing protection for children as well through Law No. 23 of 2002 concerning Child Protection (Saepullah, 2016). Another proof is the number of fiqh books that discuss this issue. Child custody, in fiqh terms, is called *ḥaḍānah*. The problem of *ḥaḍānah* arises when a husband or wife each feels that they can benefit their children, and no one wants to give in (Djamil, 2013).

Fiqh scholars construe *ḥaḍānah* as carrying out the care of children who are still small, both boys and girls, or those who are big but not yet *mumayyiz*, providing for their daily necessities, protecting them from things that hurt and damage them, educating them physically, spiritually and sense, in order to be able to stand alone in facing life and bear responsibility (Mawarti, 2017). Thus, there is glory for those who are able to care for children at these stages and conditions. For the benefit of the child, parents should still care about the problem of *ḥaḍānah*. Failure to do this can prevent the child from growing

and developing as expected. Hence, the most important thing is the collaboration of the father and mother in carrying out this support, and this collaboration can be realized if the husband and wife are still together in the marriage bond (Abubakar, Juliana, and Hasan, 2021).

The significance of *ḥaḍānah* conflict resolution analysis is to get fair justice for children as victims of divorce and their parents, by making considerations that are in accordance with the benefit. It is expected to get justice and legal certainty for children, based on decisions through *litigation* after resolution efforts through *non-litigation*, namely through customary resolution, failed to find a solution (Islam et al., 2021).

The resolution of *ḥaḍānah* cases through litigation option in Aceh is held through the Sharia Court. Judge's decisions, including at the Sharia Court, are considered to provide legal certainty to society, in accordance with legal values. For this reason, this article intends to examine the judge's decision on the *ḥaḍānah* case at the Sharia Court which has provided legal certainty. Because with legal certainty, Muslim families feel innocent and lighten the psychological burden of religious life (Thoyib and Huda, 2022). One of the desires of people who have problems with *ḥaḍānah* is to obtain legal truth in deciding which life to live. With the hope that after the verdict is received by the husband and wife in litigation, it becomes a valuable experience in raising children (Minhar, Zainal and Malarangan, 2020).

There are many studies that try to obtain clarity on life practices after obtaining fair legal decisions from divorce events which have an effect on children's lives later (Fajrul, 2019). These researches focus more on the provisions of *ḥaḍānah* in law No. 1 of 1974 and the Compilation of Islamic Law, legal protection for children's livelihood after divorce, by examining decisions in the Religious Courts, and research on alternative dispute resolution, both criminal cases and civil. However, no research has been found that focuses on resolving *ḥaḍānah* conflicts in Aceh to obtain legal certainty through litigation (President of the Republic of Indonesia, 1974).

The location of this research is the Aceh region with the jurisdiction (jurisdiction) of the Aceh Provincial Sharia Court in general covering the entire jurisdiction of the Aceh Province with a total of 20 Sharia Courts. The Sharia Courts are under the jurisdiction of the Aceh Province Sharia Court, and the total number of *ḥaḍānah* cases of 99 cases that

were filed independently in each of these Sharia Courts from 2016-2021 is described in the table below:

Table 1.
***Ḥaḍānah* cases in Sharia Courts in Aceh from 2016 to 2021**

No	Sharia Court	Jurisdiction	Number of cases
1	Banda Aceh Sharia Court	City of Banda aceh	4 cases
2	Sabang Sharia Court	City of Sabang	1 case
3	Lhoksukun Sharia Court	Aceh Utara Regency	6 cases
4	Idi Sharia Court	Aceh Timur Regency	3 cases
5	Kuala Simpang Sharia Court	Aceh Tamiang Regency	6 cases
6	Blangkejeren Sharia Court	Gayo Lues Regency	4 cases
7	Kuta Cane Sharia Court	Aceh Tenggara Regency	10 cases
8	Sinabang Sharia Court	Simeulue Regency	2 cases
9	Meuredeu Sharia Court	Pidie Jaya Regency	4 cases
10	Calang Sharia Court	Aceh Jaya Regency	-
11	Singkil Sharia Court	Singkil Regency	2 cases
12	Tapak Tuan Sharia Court	Aceh Selatan Regency	6 cases
13	Sigli Sharia Court	Pidie Regency	6 cases
14	Bireun Sharia Court	Bireuen Regency	10 cases
15	Lhokseumawe Sharia Court	City of Lhokseumawe	6 cases
16	Takengon Sharia Court	Aceh Tengah Regency	9 cases
17	Meulaboh Sharia Court	Nagan Raya Regency	-
18	Jantho Sharia Court	Aceh Besar Regency	4 cases
19	Langsa Sharia Court	City of Langsa	14 cases
20	S Tiga Redelong Sharia Court	Bener Meriah Regency	2 cases
Total			99 cases

A part of the population is called the research sample which is considered to represent the population (Ashshof, 1996). This research used a purposive sampling method in determining the research sample (Sugiyono, 2015). The samples were 5 Sharia Courts, those are Langsa Sharia Court, Kuala Simpang Sharia Court, Idi Sharia Court, Jantho Sharia Court, and Takengon Sharia Court, with a total of 32 cases. The determination of the sample with the consideration of representing the most and the least number of *ḥaḍānah*

cases, also considering that among these cases is a father's custody decision. These data are then reviewed based on the concept of legal certainty.

Method

This research uses a *normative-empirical* type of research, by integrating normative law and empirical law. Empirical legal research is carried out by analysing the social reality that occurs or also known as the Sociological Juridical Approach (Huda, 2021). This research uses laws and judges' decisions in *ḥaḍānah* cases at the Aceh Syariah Court. The data are conducted by observation, interviews, and documents or library materials. Obtaining research data on the number of *ḥaḍānah* cases that were filed separately at the Sharia Court, the authors make decisions starting from 2016-2021. In this research, 5 (five) Sharia Courts were taken as research samples with 32 *ḥaḍānah* cases, five the Sharia Courts are in Langsa, Kuala Simpang, Idi, Jantho, and Takengon.

The data is analysed through the theory of legal objectives according to Gustav Radbruch namely legal certainty, justice, and expediency (Sieckmann, 2009). Legal certainty is read through decisions regarding *ḥaḍānah* conflict resolution at the Sharia Court in Aceh. Then the philosophy of justice is applied to analyze the various dimensions of the decision, and whether it has produced justice values (Nusa and Sasmita, 2020). Analysis of the benefits of these decisions with reference to the post-judgment sociological dimension by emphasizing the execution of decisions as a legal benefit to provide happiness to all parties, especially children as victims of divorce.

Finding legal certainty in *ḥaḍānah* conflict resolution through litigation

Apart from resolving *ḥaḍānah* conflicts according to custom, the parties also use *litigation* by submitting their cases to the Sharia Court which is expected to resolve the *ḥaḍānah* conflicts. Society chose the *litigation* route because conflicts could not be resolved through kinship and deliberation. Because the parties do not accept customary decisions and want legal certainty through the Sharia Court (Mansari et al., 2020). Legal certainty is also important to avoid anxiety (Anwar, Nurrokmah and Bagenda, 2022). As Gustav Radbruch thinks, legal certainty can prevent the arbitrariness of certain parties (Sieckmann, 2009).

Lawsuits filed with the Sharia Court regarding *ḥaḍānah*, when it was viewed from the plaintiff's interests, there are usually two possible forms of claim. First, the plaintiff's interest is only to establish that *ḥaḍānah*'s rights are in his control because the child is already under his care and control. This claim was filed on the grounds that defendant wanted to seize the child from Plaintiff's care. The case was submitted to the Sharia Court, hence there was a written guarantee that the child would remain in the plaintiff's care. Second, the Plaintiff filed a lawsuit with the Sharia Court to determine that child custody was given to him because after the divorce the child was in the care of the defendant (Nusa and Sasmita, 2020).

Determination of *ḥaḍānah* as a result of divorce is decided simultaneously with the divorce decision of the parents. There is also a separate submission to the Sharia Court after the divorce decision. Lawsuits against child custody, and there are also those that cumulate with divorce because they can be filed together with a divorce. It can also be separated. However, according to Afwan, there were only a few *ḥaḍānah* cases that were submitted to the Sharia Court, separate from divorce cases (cited in Mertokusumo, 1998).

Based on the data, the number of *ḥaḍānah* conflicts that are submitted independently to the Sharia Court is still small. According to Hendra, it is likely that at least the *ḥaḍānah* cases were submitted independently to the Sharia Court because the husband and wife themselves had resolved them or had been consulted at the *gampong* (administrative areas at the sub-district or village level in Aceh Province), and there were also some cases where *ḥaḍānah* lawsuits had been accumulated with divorce claims (cited in Hamzah, 2019).

The decisions of the *ḥaḍānah* case in Aceh

On the Langsa Sharia Court, there are 13 cases regarding *ḥaḍānah* which were filed independently from 2016-2021. There were 12 cases of *ḥaḍānah* rights submitted to plaintiff (Mother) and 1 (one) rights case *ḥaḍānah* given to defendant (father).

Table 2.

***Ḥaḍānah* cases in Langsa Sharia Court in the Year of 2016-2021**

No	Case Number	Child Custody	Child Support
1	0155/Pdt.G/2016/MS.LGS	Defendant (Father)	-
2	0056/Pdt.G/2017/MS.LGS	Plaintiff (Mother)	Rp 500,000
3	0141/Pdt.G/2017/MS.LGS	Plaintiff (Mother)	Rp 800,000
4	0156/Pdt.G/2017/MS.LGS	Plaintiff (Mother)	Rp 1,000,000
5	0231/Pdt.G/2017/MS.LGS	Plaintiff (Mother)	Rp 1,500,000
6	0237/Pdt.G/2018/MS.LGS	Plaintiff (mother)	-
7	0242/Pdt.G/2018/MS.LGS	Plaintiff (mother)	-
8	0366/Pdt.G/2018/MS.LGS	Plaintiff (Mother)	-
9	0322/Pdt.G/2018/MS.LGS	Plaintiff (Mother)	-
10	102/Pdt.G/2020/MS.LGS	Plaintiff (mother)	-
11	34/Pdt.G/2021/MS.LGS	Plaintiff (mother)	Rp 1,800,000
12	66/Pdt.G/2021/MS.LGS	Plaintiff (mother)	-
13	309/Pdt.G/2021/MS.LGS	Plaintiff (mother)	-

The decision on the *ḥaḍānah* rights handed over to the plaintiff (mother) did not determine the amount of support, in 7 cases, while in the other 5 cases. The amount of income was determined to be different based on the consideration of the judge, taking into account the needs of the child per month. Then it was determined based on income husband and some are not because the husband is not present at the trial.

At the Kuala Simpang Syariah Court, the *ḥaḍānah* cases that have been decided by the panel of judges at the Kuala Simpang Syariah Court from 2016-2021 totaled 5 cases.

Table 3.

***Ḥaḍānah* cases in Kuala Simpang Sharia Court in the year 2016-2021**

No	Case Number	Child Custody	Child Support
1	438/Pdt.G/2017/MS.KSG	Plaintiff (Mother)	Rp. 2,000,000
2	66/Pdt.G/2019/MS.KSG	Plaintiff (Mother)	Rp. 1,000,000
3	297/Pdt.G/2019/MS.KSG	Plaintiff and Defendant	Rp. 500,000
4	313/Pdt.G/2019/MS.KSG	Plaintiff (Mother)	Rp. 1,000,000
5	107/Pdt.G/2021/MS.KSG	Plaintiff (Mother)	Rp. 500,000

Based on the table, it can be explained that the decision on the *ḥaḍānah* cases from 2016-2021 at the Kuala Simpang Syariah Court which had been decided by the panel of judges was only 5 cases. The *ḥaḍānah* rights were handed over to the plaintiff (mother) in 4 cases and one case of *ḥaḍānah* rights were handed over to the plaintiff (mother) and the defendant (father). The panel of judges at the Kuala Simpang Syariah Court on the five decisions gave the arrangement to determine the income paid by the father in different amounts according to the demands of the plaintiff and adjusted to the daily needs of the child. At Idi Sharia Court, the decision regarding the *ḥaḍānah* case that was submitted independently to the Idi Sharia Court from 2016-2021 is as follows:

Table 4.
Ḥaḍānah case in Idi Sharia Court in the year 2016-2021

No	Case Number	Child Custody	Child Support
1	0032/Pdt.G/2016/MS.IDI	Plaintiff (mother)	-
2	43/Pdt.G/2018/MS.IDI	Plaintiff (grandmother)	-

Based on the table, it can be explained that there were only 2 (two) cases of *ḥaḍānah* at the Idi Sharia Court from 2016-2021, the *ḥaḍānah* rights were handed over to the Plaintiff (Mother) and the plaintiff (maternal grandmother) because the mother had died, and both In this case, the amount of support was not determined because there was no claim from the plaintiff regarding child support. At the Jantho Sharia Court, the decision regarding the *ḥaḍānah* case which was submitted independently to the Idi Sharia Court from 2016-2021 is as follows:

Table 5.
Ḥaḍānah cases in Jantho Sharia Court in the year 2016-2021

No	Case Number	Child Custody	Child Support
1	174/Pdt.G/2016/MS. Jth	Plaintiff (mother)	-
2	32/Pd tG/2018/MS.Jth	Plaintiff (father)	-
3	389/Pdt.G/2018/MS.Jth	Plaintiff (mother)	Rp. 800,000
4	168/Pdt.G/2018/Ms.Jth	Plaintiff (mother)	-

Based on the table, it can be understood that there were 4 cases of *ḥaḍānah* at the Jantho Sharia Court from 2016-2021, 3 (three) custody cases were handed over to the plaintiff (mother) and one custody case was handed over to the plaintiff (father). Determination of alimony only one case of Rp. 800,000, - (eight hundred thousand rupiah) per month excluding education and health costs. While in the other 3 cases the amount of support that must be paid by the father is not determined each month. At the Takengon Sharia Court, the decision regarding the *ḥaḍānah* case that was submitted independently to the Idi Sharia Court from 2016-2021 is as follows:

Table 6.
***Ḥaḍānah* cases in Takengon Sharia Court in the year 2016-2021**

No	Case Number	Child Custody	Child Support
1	0014/Pdt.G/2016/MS.Tkn	Defendant (father)	-
2	29/Pdt.G/2018/MS.Tkn	Plaintiff (mother)	Rp. 700.000,-
3	103/Pdt.G/2018/MS.Tkn	Plaintiff (mother)	-
4	289/Pdt.G/2018/MS.Tkn	Plaintiff (mother)	-
5	288/Pdt.G/2018/MS.Tkn	Plaintiff (Mother)	-
6	181/Pdt.G/2019/MS.Tkn	Defendant (Mother)	-
7	458/Pdt.G/2020/MS.Tkn	Plaintiff (Mother)	-
8	251/Pdt.G/2021/MS.Tkn	Plaintiff (Mother)	-

Based on the table, it can be understood that *ḥaḍānah* cases that were submitted independently have been decided at the Takengon Sharia Court from 2016-2021 there were 8 cases, one custody case handed over to the defendant (father), one custody case submitted to the defendant (mother) and 6 custody cases were handed over to the plaintiff (mother), and only one case determined the amount of support to be paid by the father because in the other 7 cases there was no demand for support by plaintiff, the panel of judges does not determine the support of children.

Legal certainty in *ḥaḍānah* case decisions

Provisions regarding the rights and obligations of parents towards children have been explained in the books of fiqh which are based on the Qoran and Hadith. Parents are

obliged to care for and educate their children as well as possible, hence they become useful children for religion, nation, and state. According to scholars, the Hadith explains that child custody is in the care of the mother. Because mothers understand and are capable of caring for and educating children, and have more patience than fathers. This consideration is made for the benefit of the children, with the condition that as long as the mother has not married another man, because if the mother remarries, the mother's attention will shift to her new husband, especially if she already has another child (Hasanah, 2018). Therefore, the ulema give the order and top priority for the custody of young children to mothers, because mothers are more understanding and able to care for children with love. After the mother, the next sequence is the grandmother, and the other mother's family.

In the opinion of Imam Hanafi and Imam Syafi'i, the mother has more right to care for children under the age of seven, if the mother and father are divorced and both are still in the same village, as long as the mother has not remarried to another man. Because children under the age of seven need a mother figure to breastfeed and look after their needs, and because mothers have an emotional bond and affection for their children. Hence, in the problem of parenting life as a result of caring, it provides comfort and leads to happiness in life after conflict resolution (Hasanah, 2018).

Haḍānah conflict resolution by way of litigation, the decision to hand over custody of children who have not been *mumayiz* is more likely to be handed over to the mother. This decision has followed the provisions described in fiqh. While legal certainty is taken through the Sharia Court. However, the age limit is different from that stipulated in fiqh, that the child under the mother's care is 7 or 8 years old. After that, the child may choose to go with the mother or the father. Meanwhile, as determined in the resolution of *ḥaḍānah* conflicts in the field, the age limit for children to vote is 12 years and over. Determining the age of a child of twelve years aims to avoid ambiguity so that legal certainty can be upheld and enforced through litigation.

The conditions that *badhin/badbinah* (child custody right owner) need to possess are sensible, mature, able to educate, trustworthy and virtuous, living in a certain place, Islam, the mother has not married another man and is independent (Asnawi, 2022). The resolution of *ḥaḍānah* conflicts through non-litigation and litigation found cases in which custody

rights were handed over to grandmothers and fathers because the mother did not meet the requirements in the *fiqh* provisions. The mother was considered unable to educate and was not trustworthy because she had a lot of time to work and study too. Her mother became a female worker and remarried another man. Even though the requirements have been met, legal certainty regarding children's rights is still considered. Legal certainty, according to Mertokusumo (cited in Danial, 1970), requires efforts to regulate law in legislation made by the authorities. Hence, these rules have a juridical aspect that can guarantee certainty that the law functions is obeyed as a rule.

The legal rules in *fiqh* regarding children's rights are regarding the obligation of support given by fathers to their children. It is the father's obligation to provide for his children's need according to his ability. Even if the parent is a divorce the obligation will run until they are adults or can take care of themselves. Because a living is needed by children for food, clothing, and continuing education as well as health.

Based on the research on legal certainty regarding the rights of children who are cared for by mothers and grandmothers, it has not been fully achieved. Because, the child has not received the right to support from his father in accordance with the provisions in *fiqh*. According to the custom, the mother is responsible for her living expenses. Meanwhile, fathers no longer pay attention to the lives of their children, especially if fathers are married and have a new family. Of course, this is a violation, both from a state and religious perspective (Raudhatunnur, 2016). The *ḥaḍānah* cases that have been decided in the Sharia Court, especially regarding fixed income, are born by the father. However, the implementation of the decision has not been carried out optimally, many post-divorce children's livelihood rights have been ignored. Even if there are those who implement it is still not fully implemented or do not cover the living expenses needed by the child and is not in accordance with the contents of the decision. In this case, although legal certainty has been realized, the dimensions of justice and benefit have not been realized. Because the law seeks to provide justice and satisfaction to troubled families. However, the law also cannot provide fully and totally up to a 100% percentage of justice and satisfaction which is considered the hope of legal certainty (Hendra, 2019b).

The father's negligence in giving support rights to his children causes the children not

to get justice. According to Mutahhari the concept of justice is one of which is granting rights to those who are entitled, maintains individual rights, and gives rights to people who are entitled to receive them, deprivation of rights from people who should get them is tyranny. Hence, in this case it is the right case for children's rights that must be given by fathers and mothers in resolving divorce cases (Osanloo, 2009). Even though a divorce is happen, parents still have the obligation to care for their children and give them the best education to maintain their benefit in this world and the hereafter. Benefit can be realized if it can maintain the five main elements as mentioned in Imam Asy-Syatibi's *maqāsid syari'ah*; maintaining religion (*hifẓ ad-dīn*), protecting the soul (*hifẓ an-nafsi*), maintaining the mind (*hifẓ al-'aql*), maintaining offspring (*hifẓ al-nasl*), and maintaining property (*hifẓ al-māl*) (Arifin and Mahmudi, 2022, p. 36). In this case, it appears that the legal certainty that has been implemented through the Sharia Court, although it has created legal certainty, has not produced the best solution for children. Children have not got justice and benefit. Justice for children has not been realized even though legal certainty has been realized. Thus, legal certainty is apparently not enough to resolve the *ḥaḍānah* case in Aceh. This is in accordance with legal thinking by Gustav Radbruch, that legal certainty is not yet the main goal of the law. It takes justice and the expediency of law (Chroust, 1944).

After legal certainty: finding justice

After the decision of the Syariah Court judge regarding the case of determining the rights of *ḥaḍānah* was stipulated, legal certainty has actually been realized. However, conflicts arise occasionally again because the losing party in the trial does not want to give up the child according to the decision. Because, as legal thought by Gustav Radbruch, another perspective is needed, justice (Paulson, 1995). After a decision that has provided legal certainty, to realize justice and legal objectives, execution needs to be carried out. However, this *ḥaḍānah* case is related to children, it is difficult to carry out executions. The execution of *ḥaḍānah* rights is still disputed because some jurists say that children cannot be executed. While some say that the decision regarding the rights of *ḥaḍānah* can be executed.

The execution of children should not be carried out because so far in existing judicial practices regarding executions, everything is only a matter of objects, not people. The

forms of execution known in civil procedural law are (1) Execution as stipulated in article 196 HIR (Herzien Inlandsch Reglement), where a person is punished to pay money; (2) Execution as regulated in article 225 HIR, where a person is punished for carrying out an act; (3) Real execution, which is carried out a lot but is not regulated in the HIR. The three types of execution are related to goods and money. If someone intends to seek execution, the money issue is not a problem, but if what is desired is purely the right of the *ḥaḍānah*, then it is difficult to carry out because in the execution arrangements there is nothing related to humans. If it is done on *ḥaḍānah* related to children, it will become a psychological burden on the child, and will likely experience trauma and will become a bitter memory for the rest of his life (Zulkarnain, 2021).

The law allows the execution of *ḥaḍānah* rights to be carried out and explains that stipulates that *ḥaḍānah* matters whose decisions are punitive (*condemnatoir*) if they have permanent legal force, then the decision can be executed. Opinions that allow, on the grounds that in the HIR or the law can be found, among others, in Article 259 paragraph (1) R. Bg and Article 319h BW (Burgerlijk Wetboek). Execution of child control is justified in the interest of the child (Arifin, 2018).

The following conflict that occurred after the stipulation of decisions regarding those having the right of *ḥaḍānah* by the Sharia Court was a problem of support. The Sharia Court has determined the rights of the child that must be fulfilled by the father, but the application of the Sharia Court's decision does not always go as expected. The ex-husband did not provide alimony to his children as decided by the panel of judges at the Sharia Court. Based on a statement from Sinta (2019), that her divorce from her husband was decided at the Langsa Sharia Court, and during the trial she asked for a living for her child of Rp. 500,000 per month, and also asked for *mut'ah* and *iddah*. In their decision, the panel of judges granted the husband to pronounce a divorce pledge and determine the support for his child in the amount of the request. But since the decision was issued in 2016, her ex-husband has never provided a living allowance for his child. It seems to be only a decision on paper. In this case, it appears that justice has not been accepted by Sinta.

The same thing was also stated by Ayu (2019), that she and her husband divorced before the panel of judges at the Langsa Sharia Court at the request of her husband. The panel

of judges determined that the support of his two children was Rp.1.000.000,00 which must be paid monthly by her ex-husband. But her ex-husband only provided her with child support for the first of four months after that never again, and this, according to Ayu, has not gotten justice for her. Raudhatunnur (2016) states, the Idi Syariah Court in ruling on divorce applications and demands for child support imposed the obligation to provide support for children to the father. However, the implementation of the judge's decision was not carried out optimally, there were still many post-divorce child support rights that were ignored by fathers, although some provided but did not fully or did not cover the living expenses needed by the child.

The father's non-compliance with carrying out the decision of the Sharia Court is beyond the power of the judge. Because the judge, in this case, is passive unless the ex-wife makes a new lawsuit to the Sharia Court. After the judge decides on the cases submitted, there is no relationship between the judge and the case that has been decided. Whether the decision is implemented or not, that is not the responsibility of the judge, but it is the duty of the bailiff even if the winning party requests that the execution of the decision be carried out. In fact, this situation will result in injustice to women because apart from caring for and educating their children, women must also be responsible for their child's support needs (Saadah, 2020). The data obtained from the decisions of the judges of the Sharia Court, there are several decisions that are not decided on the amount of income because the plaintiff did not mention it in his lawsuit. The determination of the judge's decision is based on legal considerations for each case filed by the Plaintiff. In judicial practice, before the judge makes a decision, these cases are proven by the witnesses present in court. Based on the witnesses, the judge will look for the facts that emerged during the trial, and make decisions that reflect the values of justice (Setiyanto, 2018).

Based on the cases used as research samples, out of 32 *ḥaḍānah* cases submitted independently to the Sharia Court in Aceh. Twenty seven custody cases were handed over to the mother, one custody case was handed over to grandmother from the mother's side, and 3 custody cases were handed over to the father. This proves that the panel of judges at the Aceh Sharia Court has placed the mother as the main custody holder of children who has not yet been *mumayiz*. Based on Article 105 KHI, it stipulates that the care of children

who have not yet been *mumayiz* is handed over to the mother. In this case, it has also been seen that the establishment of legal certainty by the Sharia Court in Aceh (Hendra, 2019a).

The mother's priority as the main caregiver does not last forever. There are certain conditions that cause custody rights cannot to be given to the mother. Based on the cases at the Sharia Court in Aceh, because the mother was busy as a Civil Servant and was also still studying at decision No. 0155/Pdt.G/2016/MS.LGS. The mother worked as a female worker in Decision Number 32/Pdt.G/2018/MS.Jth, and the mother has remarried in Decision Number 14/Pdt.G/2016/MS.Tkn.

Even though legal certainty has been obtained, in general justice has not supported right of women and children. In some cases, the living allowance of children by the mother are not included in the lawsuit. In this case, it can be argued that people who do not get justice, do not even really understand the decision. According to Radbruch's philosophy of law, justice is based on conscience (Ward, 1992, p. 332), hence it cannot be measured by the amount of money, but by the neglect of the father in giving material responsibility to the child. It has shown that justice has not been obtained in decisions over the *ḥaḍānah* case in Aceh.

Legal benefits: *ḥaḍānah* conflict resolution in Aceh

The Aceh Regional Government pays attention to legal certainty for the children of divorce. It formulates *qanuns* of family law (local government regulation) in addition to the existing *qanuns* for *khalwat* (an act of being together in a place by two or more people of different sexes without a marriage or because of a *mabram* relationship), *maisir* (gambling), *khamar* (forbidden substances or any intoxicating beverage which are made from dates, grapes, and other similar substances) whose violations under the authority of the Sharia Court. *Qanuns* for child protection have been enacted in Aceh which contain rules including parenting, guardianship, and criminal provisions. The Aceh government has also established *qanuns* related to provide protection to children such as *Qanun* Number 8 of 2008 concerning Preservation of Adat in Aceh which contains articles concerning Child Protection and Aceh *Qanun* Number 8 of 2015 concerning the Development and Protection of Aceh's Aqidah. By the regulations, maximum protection for children will be achieved. To achieving

this, it requires the supervision and care of all parties. These rules must be applied in social life by conducting socialization as a whole, hence all parties play a role in protecting and fulfilling children's rights.

In addition to the *Qanun*, the Aceh government also supports the formulation of the fatwa of the Aceh Ulema Consultative Council which contains provisions for determining child custody to guarantee for living expenses for children. If no one can guarantee the living expenses of children, their families can be borne by *Bayt al-mal* [a financial institution responsible for the administration of zakat or taxes in Islamic states] and provide strict sanctions against fathers who do not provide support for their children. Sanctions are given by giving *ta'zir* [punishment for offenses at the discretion of the judge or ruler of the state] (Huda, et.al, 2020). Punishments imposed on people who commit sharia violations other than *hudud* and *qishbas/diat*. The *ta'zir* punishment for sharia violations in Aceh is left to the government or *ulil amri*. The *gampong* government has full authority in determining penalties for sharia violations in Aceh. The decision on *ta'zir* punishment has also become the authority of the Syariah Court, which will later be carried out by the Aceh Islamic *syari'at* service (Hendratmoko et.al., 2017).

It is also important to have the cooperation of the Supreme Court, especially the Sharia Court with other institutions. To make the power of coercion and execution of decisions related to the rights of the child effective. Because the most important matter of marriage is how firm it is to provide for children after divorce (Athief and Juwanti, 2020). The Supreme Court can cooperate with the police to encourage the punished father to pay alimony. The position of the police as a law enforcer is seen as effective enough to put pressure on the father's side to fulfill this obligation.

The *ta'zir* for several violations has been mentioned in the *qanun* including *kehalwat*, *maisir*, *kehamar*. While violations of family law, including the failure of the father to pay for the child's allowance, there is a *qanun* which states strict sanctions. The aim is to create a deterrent effect on fathers who do not carry out their obligations. If there is no action from the Aceh government, violations will happen and will harm the future of the child. Because realizing justice for children is the benefit of the law in resolving *hadānah* conflicts. Legal benefits as Radbruch thought, are the main goal of law enforcement. The benefit of the

law is the achievement of happiness for all parties. Like Radbruch's legal philosophy, the benefits of the law reach humans as a collective, individuals, and humanity itself (Isman, 2020). In this case, especially for children who are victims of parental divorce, the happiness is manifested through forcing fathers to provide for their responsibilities after the divorce.

The sanction can be in the form of handing over property owned by the father directly to pay for the expenses of his children or other punishments which in nature can force parties who are not willing to carry out their responsibilities. According to Wanto, the arena of sanctions stipulated in customary dispute resolution in the form of advice, reprimands, statements of apology, fines, compensation, ostracism by the *gampong* community. Expulsion from the *gampong* community has not had a deterrent effect on fathers, because the punishments given are not stringent.

The provisions that have been stipulated in *qanun* number 11 of 2008 concerning child protection currently do not accommodate *ḥaḍānah* practices. Because family conflicts in Aceh are also often resolved by deliberation at *gampong* officials with reference to Islamic customs and law. If the peace has not been found, only then will the case be resolved at the sharia court (Djawas and Samad, 2020). There is a need for changes and improvements, especially by adding legal sanctions to fathers who do not provide support for their children. Because if there are no regulations listed then the father will be negligent in his responsibility. If there are no sanctions, legal certainty for the livelihood of children will not materialize.

A *ḥaḍānah* conflict that has been decided by a judge at the Sharia Court for which the amount of child support has been determined. There is legal certainty, without guarantee that the father will carry out the decision to provide a living for his child, especially for *ḥaḍānah* conflicts. Because it takes the awareness of a father to provide a living. No matter how a decision is elaborately formulated by a judge, there is no function if it is not accompanied by legal awareness and a father's conscience. The solution to the reluctance of fathers to pay for their children's living expenses is formulated in a strict legal form and is capable of providing a deterrent effect.

Conclusion

As stated by Radbruch's legal philosophy, the goals of the law are legal certainty, justice, and

expediency. This research has shown that based on the selected sample, determining the resolution of *ḥaḍānah* cases through litigation at the Sharia Court has provided legal certainty. However, this is not enough fact to provide justice because of no mechanism in forcing fathers to provide their children needs after divorce. Thus, the benefits of the law are not achieved, because the law gives happiness to humans, both individual and communal. Nevertheless, the decision on the *ḥaḍānah* conflict case at the Sharia Court which cannot be executed causes children to not get their right to be happy. Therefore, a law is needed to compel the defendant to comply with the court's decision. The law is able to give a deterrent effect on defendants who are not willing to comply with the judge's decision. The three legal objectives, which are legal certainty, happiness, and benefits can be accomplished.

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