

Father's Responsibility for Child Maintenance in Divorce

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ABSTRACT

The responsibility of fathers for child maintenance in divorce is a crucial issue in family law in Indonesia, regulated by the Civil Code (KUHPerdata) and Law Number 1 of 1974 concerning Marriage. This journal aims to analyze the legal obligation of fathers in providing maintenance to children after divorce, as well as factors that affect their fulfillment. This study uses a normative juridical method with an analytical approach to relevant legal provisions and case studies from court decisions. The results of the study show that fathers have the responsibility to meet the basic needs of children, including food, clothing, shelter, and education, until the child reaches adulthood or can be independent. Despite clear legal provisions, in practice, many fathers do not fulfill their obligations for various reasons, such as difficult economic conditions and a lack of understanding of legal responsibility. The court has an important role in enforcing this maintenance obligation through a fair judgment and in accordance with the father's ability. The study also found that communication between ex-spouses and support from legal institutions is essential to ensure that children's rights are met. It is hoped that the results of this study can be a reference for policymakers and legal practitioners in an effort to improve the protection of children's rights after divorce.

Keywords: Father's Liability, Child Support, Divorce, Civil Code, Family Law.

I. Introduction

As social beings, humans need a partner to achieve their life goals. As proof that humans need a life partner to achieve their life goals, every community must have customary rules that apply. Marriage is basically the inner bond of a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty (Soemiyati, 2007). A family is the fundamental foundation of the social structure in a country. A valid marriage, recognized by both religion and the state, forms the basis of a stable and harmonious family. Making a valuable contribution to the development and sustainability of the nation through the next generation who are raised with good values and have strong responsibilities is one example of goodness for life in society. The family plays a major role in the growth of children both mentally and physically. Educating children and taking care of children has a huge impact on their future, parents provide protection and protect children until they are independent or adults, In Article 45 of Law Number 1 of 1974 concerning Marriage of State Institutions Number 1 of 1974 Number 1 emphasizes that (1) Parents are obliged to educate their children to the best of their ability (2) The obligation of parents referred to in paragraph (1) is to educate children until marriage or to be able to stand on their own, this applies until the marriage between

the parents is broken up (Napitupulu 2011). In the Explanation of the Marriage Law, it is emphasized that as a country based on Pancasila, where the first precept is the One Godhead, marriage has a close relationship with religion/spirituality. So that marriage not only has a born/physical element, but also a mental/spiritual element also has an important role. Forming a happy family is closely related to offspring, which is also the purpose of marriage, maintenance and education children are the rights and obligations of parents (Sudarsono, 1994).

Divorce is a social phenomenon that is increasingly common in modern society today. The consequences of divorce that touch various aspects of life must be faced by divorced couples. So, what is very important to pay attention to is the issue of responsibility for childcare costs. Child maintenance costs concern all living needs and applicable needs according to circumstances and places such as food, clothing, board, education fees, and others. Divorce in Civil Law is the annulment of marriage with a judge's decision, or the demand of one of the parties in the marriage. Divorce, which often occurs in marital relationships, will have fatal consequences if it cannot be properly maintained (Pradoto, 2017). Divorce occurs due to the will of the husband by imposing a Talak Divorce or on the submission of the wife who is often known as a Divorce Lawsuit (Talak Divorce is regulated in Chapter IV, Part Two, Paragraph 2, Article 66 and Divorce Lawsuit is regulated in Paragraph 3, Article 73 of Law Number 7 of 1989 concerning Religious Justice which has undergone two changes, namely the first amendment with Law No. 3 of 2006 and the second amendment by Law Number 50 of 2009 (Amin & Hadi, 2019).

The obligation of the father to provide for the child is not only due to blood relations, but also because the child is not able to be independent and needs to earn a living, and his life depends on the existence of a responsible party to provide for his life. If a mother is obliged to take care of her children at home, then a father is obliged to provide for his children as long as the child needs sustenance, he is not obliged to provide for his children who have property to support himself if a father who is able but does not provide for his children when he needs them, then he can be forced by a judge or given an appropriate punishment until he can fulfill his obligations. If in providing maintenance to his child but it turns out that the child is not in need of alimony from his father who is in arrears, then his right to alimony becomes lost, because the child in fulfilling his needs as long as his father is in arrears does not owe because he is able to finance himself but if the child does not have his own funds to meet his needs he has to owe money, then the father is considered to owe unpaid alimony to his child (Nasir, Heriyanto & Sutanto, 2023).

The divorce process not only affects the couples involved but also has a significant impact on the children who are part of the family. Through an empirical approach and qualitative analysis, this research will explore the real experiences of fathers and ex-wives regarding the fulfillment of maintenance obligations. The results of this study are expected to provide new insights into the challenges faced by fathers in fulfilling their responsibilities as well as provide recommendations to increase awareness and compliance with child support obligations. Thus, this research is not only relevant for academics, but also for legal practitioners, policymakers, and the wider community to protect the welfare of children after divorce. Based on that, the problem formulation for this study is (1) How is the father's responsibility for child support in divorce? (2) What are the factors that affect a father's responsibility for child support after a divorce.

II. Research Method

This research was carried out using a normative legal research method that focuses on the study of documents by analyzing laws and regulations (statue approach), legal principles, court decisions and rulings, legal theories and opinions of legal scholars. The pasapproach carried out is a legal approach and a conceptual approach. The data used consisted of primary legal materials, secondary legal materials, and non-legal materials (Suharmanto, Muhaimin & Santoso, 2020). The technique of collecting legal materials is carried out by adjusting the type of data used through decision research (library research) by collecting data that has been published in the form of books, journals, laws and regulations, reports and other scientific works, as well as the opinions of legal experts.

III. Result and Discussion

Father's responsibility for child support in divorce is an important issue in family law in Indonesia. In this context, the Civil Code (KUHPerdata) and Law Number 1 of 1974 concerning Marriage provide a clear legal basis regarding the obligation of parents, especially fathers, to fulfill child support. This study aims to analyze the legal provisions that govern the responsibility of fathers in providing maintenance to children after divorce. Here are some explanations:

1. Legal Basis for Maintenance Liability:
 - a. Article 41 of Law Number 1 of 1974 states that both mothers and fathers are obliged to maintain and educate their children, with an emphasis on the interests of the child.
 - b. In the Civil Code, especially Article 105, it is stipulated that the father is responsible for all costs of maintaining and educating the child. If the father is unable to fulfill his obligations, the court can decide that the mother should bear the costs.
2. Obligations of a father after divorce:
 - a. Fathers are required to provide maintenance until the child reaches adulthood or can be independent, which includes basic needs such as food, clothing, board, and education fees.
3. Application of Law in Court:
 - a. The court has the authority to enforce the obligation of maintenance. If a father is negligent in providing maintenance, the mother or child can apply for execution to the court.
 - b. In practice, there are often obstacles in the implementation of these obligations, including economic factors and a lack of awareness on the part of the father about their responsibilities after the divorce.

The father's responsibility for child support after divorce is very important to ensure the welfare of the child. Although there are clear legal provisions regarding this obligation, many fathers do not fulfill their responsibilities. Some factors that affect the father's responsibility for child support after divorce include:

- a. Economic Conditions: Many fathers face economic difficulties after divorce, so they are unable to fulfill their maintenance obligations in full. This shows the need for economic support for ex-husbands to be able to fulfill these responsibilities.
- b. Legal Awareness: Awareness of post-divorce rights and obligations is still low among the public. Legal education about child support responsibilities needs to be improved so that fathers understand their obligations.
- c. Court Intervention: Although courts have the authority to enforce decisions regarding child support, often this process is hampered by bureaucracy and a lack of effective law enforcement. Reform in the justice system is needed to increase responsiveness to children's needs.

3.1. Parents' Obligations in Raising Children After Divorce

In Marriage Law, parents are obliged to educate and nurture their children as best as possible for the benefit of their children. It is the obligation of parents to maintain and educate children until the child is an adult or can stand on his own. Parents are obliged to maintain and educate the child even if the marriage between the two parents has been broken up due to divorce. The Marriage Law provides protection for the interests of children to be able to continue to be educated and nurtured even though their parents have

separated. For parents who are negligent or deliberately do not carry out their responsibilities to maintain and educate their children, they can be sued in court by the party who feels aggrieved.

Children who have not reached the age of 18 (eighteen) years or have never been married are under the authority of their parents if their parents are not deprived of their power. What is meant by parental power is the power of fathers and mothers to educate and nurture their immature or unmarried children. (Witoko & Budhisulistiyawati, 2019). If there is a dispute regarding child custody, it can be decided by the Court with various considerations. The judge's considerations will be based on the testimony and evidence in the trial, by prioritizing the interests of the child so that his welfare is not disturbed due to the divorce of his parents. According to jurisprudence, the custody of a child will usually fall to the mother, unless there is a reason that the father is more appropriate to take care of the child. Factors that make the father get custody if the mother cheats, commits adultery, or behaves badly so that he cannot set a good example for the children (Mulyadi, 2016). Children's Rights are recognized both nationally and internationally. internationally. The UN Convention on the Rights of the Child (UNCRC) entered into force as international law on September 2, 1990. Indonesia itself has ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990 on August 25, 1990 (Soemitro, 1990).

3.2. A father's responsibility for the rights of a child after a divorce.

In the life of people in Indonesia, the legal relationship between parents and children is clearly seen in "alimentatieplicht", which is an obligation of parents to their children to provide their livelihood until the child has the ability to earn his own living, for example he has worked, and it is even better for the child to be financed by his parents even though he is married, for example to continue his education to a higher level. However, it depends on the condition of each child's parents. On the contrary, it is good that the child has been burdened with the obligation to earn a living from the end of elementary school and even help his parents to reduce the burden of their life. With a divorce, the court can require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife. As parents, they are still obliged to maintain and educate their children and if there is a dispute regarding the custody of the child, the court will decide solely based on the child's interests. A father is responsible for all the maintenance and education costs that the child needs, and if the father is unable to fulfill his obligations, the court can determine that the mother bears the burden. (Fahrurrozi et al, 2023).

IV. Conclusion

This study has examined the responsibility of fathers for child support in divorce by focusing on legal aspects and practices in society. Based on the analysis carried out, several important points can be concluded as follows:

- 1) Legal Obligations: Based on the provisions of Law Number 1 of 1974 concerning Marriage and the Civil Code, fathers have a legal obligation to provide maintenance to their children after divorce. Article 41 of the Marriage Law emphasizes that both parents are obliged to maintain and educate their children, and this obligation remains valid even after the marital relationship has ended. In the Civil Code, Article 105 states that the father is responsible for the child's maintenance and education costs.
- 2) Post-Divorce Maintenance Provisions: The father's maintenance obligation does not end in divorce. This shows that the father's responsibility is sustainable.
- 3) Role of the Court: The Court has the authority to enforce this maintenance obligation. If a father fails to fulfill his or her responsibilities, the mother or child can apply to the court for execution. However, there are often obstacles in the implementation of these obligations, including a lack of effective law enforcement and complicated bureaucracy.

- 4) Factors Causing Negligence: Father's negligence in providing maintenance is often caused by several factors, such as difficult economic conditions and a lack of awareness of legal responsibilities after divorce. This creates challenges for children who are victims of the situation.
- 5) The Importance of Legal Awareness: Increasing legal awareness among parents regarding their rights and obligations post-divorce is essential to ensure the well-being of children. Legal education can help parents understand their responsibilities and the consequences of negligence in providing for their livelihood.
- 6) Recommendations for Legal System Improvement: Reforms in the justice system are needed to improve the efficiency of child support-related law enforcement. This includes speeding up the process of filing lawsuits and executing fathers who do not fulfill their obligations.
- 7) Best Interests of the Child: In any legal decision regarding child support, the best interests of the child must be the top priority. Overall, this study confirms that the father's responsibility for child support in divorce is very important and must be fulfilled for the welfare of the child. With a better understanding of this responsibility, it is hoped that a better environment will be created for children after divorce, as well as encouraging fathers to be more responsible in carrying out their roles.

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