THE FULFILMENT OF CHILDREN'S RIGHTS POST-DIVORCE A STUDY AT THE LEGAL AID INSTITUTION OF THE INDONESIAN WOMEN’S ASSOCIATION FOR JUSTICE (LBH APIK)-EAST NUSA TENGGARA (NTT)

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ABSTRACT

Objective: One goal of marriage is to create a happy, dedicated family with children. Having children is one reason many marry. However, some marriages result in divorce. The breakup of a marriage doesn’t change parents’ child rights obligations. This study examines parental obligations for children’s rights following divorce.

Methode: The type of research in this study is empirical research in order to analyse the implementation of the Law in society, and to examine events or situations of the objects of research in details by collecting facts and to develop relevant concepts underlying the issues.

Result: The study finds that court decisions in divorce cases generally give custody of the children to the mother. The main consideration being that children, especially young ones, are of age that still requires care from a mother. father’s inability in fulfilling these rights has implications on other areas of children’s lives. In cases where mothers bear custody to the children, there is no prosecution from the mothers to the fathers regarding this condition where they are resigned to accepting the condition, especially when efforts that have been made to ask for the fathers’ obligations have not produced results.

Suggestions: First, the government, in this case the court, and LBH APIK NTT, which helps women in divorce cases, should educate parents about children's rights after divorce. Second, mediation and legal action are needed to guarantee dads fulfill their children's rights.

Keywords: children's rights, divorce.

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O CUMPRIMENTO DOS DIREITOS DA CRIANÇA APÓS O DIVÓRCIO
UM ESTUDO NO INSTITUTO DE ASSISTÊNCIA JURÍDICA DA
ASSOCIAÇÃO DE MULHERES INDONÉSIAS PARA A JUSTIÇA (LBH
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RESUMO

Objetivo: Um dos objetivos do casamento é criar uma família feliz e dedicada com crianças. Ter filhos é uma das razões pelas quais muitos se casam. No entanto, alguns casamentos resultam em divórcio. A separação de um casamento não muda as obrigações dos pais em matéria de direitos da criança. Este estudo examina as obrigações parentais para os direitos das crianças após o divórcio.

Método: O tipo de pesquisa neste estudo é a pesquisa empírica, com o objetivo de analisar a implementação da Lei na sociedade, e examinar eventos ou situações dos objetos de pesquisa em detalhes através da coleta de fatos e desenvolver conceitos relevantes subjacentes às questões.

Resultado: O estudo conclui que as decisões judiciais em casos de divórcio geralmente dão a custódia dos filhos à mãe. A principal consideração é que as crianças, especialmente as jovens, são maiores de idade e ainda exigem cuidados da mãe. Nos casos em que as mães têm a custódia dos filhos, não há processo das mães para os pais em relação a esta condição, quando eles se resignam a aceitar a condição, especialmente quando os esforços que foram feitos para pedir as obrigações dos pais não produziram resultados.

Sugestões: Primeiro, o governo, neste caso o tribunal, e a LBH APIK NTT, que ajuda as mulheres em casos de divórcio, devem educar os pais sobre os direitos das crianças após o divórcio. Segundo, a mediação e a ação legal são necessárias para garantir que os pais cumpram os direitos de seus filhos.

Palavras-chave: direitos da criança, divórcio.

1 INTRODUCTION

Marriage is the inward and outward bond between a man and a woman as husband and wife with the aim of forming a happy and fulfilling family. Husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty (Article 1 of Law No.1 of 1974). Eternal based on God Almighty (Article 1 of Law No.1 of 1974). The bond is a formal relationship that can be seen because it is formed according to law5.

One of the purposes of marriage is to create a stable home in which children are born and grow. This means that children are integral part of a marriage. There are many expressions in the community that show the importance of children is in marriage such

as: "children are the fruit of love between a married couple", "children are the future of parents", et cetera. In fact, children are not only having important position in a family life, but also for the nation, as expressed in a saying: "children are the future of the nation."

In reality, married couples often can not reach the goals of marriage. Some families are experiencing unstable relationship and unable to live in harmony. Family disputes and acts of domestic violence sometimes lead to a divorce. Based on data from the Indonesian Central Statistics Agency (BPS) 2022, there were 447,743 divorce cases occurred in 2021 in Indonesia. This figure has increased compared to the previous year with 291,677 divorce cases. This data however, only covers divorce cases among Muslims communities. The Religious Courts Agency reports that causes of divorce including disputes and quarrels, economic factors, neglect, domestic violence, apostasy, imprisonment, gambling, polygamy, adultery, forced marriage, physical disability, alcohol and drug addictions, and others.6

According to East Nusa Tenggara (NTT) Provincial Statistics (BPS NTT), throughout 2019–2021 there were 1,366 divorces where talak7 divorce amounting to 623 (46,60%) cases and litigated divorce amounting to 743 (54,40%) cases. Data on litigated divorces based on BPS 2022 shows an increasing trend each year. In 2019, there were 181 cases, in 2020 there were 296 cases and in 2021, 301 cases. The causes of divorce are dominated by domestic violence and economic issues, as stated by the Head of NTT Provincial Health Service.8

In general, children are mostly affected by parental divorce. Various studies show that divorce bears negative impact on children’s social and psychological development. The impact of divorce on children's development including: 1) Mental stress in facing parental separation; 2) Changes in behavior such as avoiding social life and becoming inferior; 3) Increased fear and anxiety; 3) Self-blaming for perceiving the divorce is the result of their actions (naughtiness); 4) Confusion in deciding to choose between father

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7 Talak means: a Muslim divorce that is effected by the simple act of the husband's rejecting the wife (Merriam-Webster).
or mother; 5) Growing up into being a lonely teenager for losing a pleasant childhood experiences.9

Considering the negative impact of divorce on the development of children's lives, the State regulates the protection of children's rights in the event of a divorce between the parents. This regulation aims to minimize the negative impact of divorce on children. Article 41 of the Marriage Law states that as a result of the dissolution of a marriage due to divorce: a) parents are obliged to care for and educate their children, solely based on the interests of the children. If there is a dispute regarding the custody of children, the court will determine the decision; b) The father is responsible for all child care and educational costs. If the father cannot fulfill these obligations, the court can determine that the mother must share in the costs.

Based on the background presented previously, this research will focus on analyzing the obligations of parents (father and mother) in fulfilling children's rights after divorce. This study is carried out at the Legal Aid Institute of the Indonesian Women's Association for Justice in NTT Province (LBH APIK NTT), as an institution that focuses on providing legal assistance for women in divorce cases.10

2 THEORETICAL FRAMEWORK

Family is the smallest institutionalized unit in the society which is formed through a marriage. Abdulkadir Muhammad explained the meaning of a marriage as stated in Law Number 1 of 1974 concerning Marriage, as follows:11 a) An emotional bond in the form of formal relationship established by law, binding men and women and other parties in society. Inner ties are informally formed by mutual will that bind both parties; b) Inner and outer bond, which means that the physical and spiritual bond occurs between a man and a woman; c) Husband and wife are functioning as a result of the existence of physical and spiritual ties. The purposes of a marriage is determined by the functioning of husband and wife.

The purposes of marriage include: a) To form a family consisting of husband, wife and children; b) To form a household, which means forming a unified relationship

10 LBH APIK NTT, Laporan Pendampingan Kasus LBH APIK NTT Selama Periode 2018–2021 (Kupang, 2022)
between husband and wife in a shared residence; c) To create happiness, which means there is harmony in the relationship between husband, wife and children in the household; d) To create an everlasting bond, which means a sustainable relationship that cannot be easily dissolved according to the wishes of the husband and wife; e) To build a marriage based on ones’ belief in the Almighty God means that a marriage is a gift from God to humans as civilized creatures.12

The Marriage Law contains several important principles, including: a) The maturity of the prospective husband and wife. Prospective husband and wife must be mature in body and soul to be able to enter into a marriage so as to realize the goal of marriage and to have children. b) Create difficulties for the occurrences of divorce. One of the considerations is because the purpose of marriage is to form a happy, everlasting and prosperous family. Divorce can be carried out based for certain reasons (Article 19 of Government Regulation No. 9 of 1975) and must be carried out in the Religious Court for Muslims and the District Court for non-Islamic groups. c) The rights and position of the wife are balanced with the rights and position of the husband both in domestic life and in social interactions, so that every issues within the family can be negotiated and decided together among the husband and wife.13 The principle of making divorce difficult implies that divorce is the last alternative that can be taken if various efforts have been taken but the household cannot be brought back together.14 The principle of making divorce difficult has another significance for the protection of children so that they continue to live in an intact family, where children can grow and develop better in physical, psychological and social aspects.

2.1 REGULATIONS CONCERNING CHILDREN'S RIGHTS IN LAW

According to R.A Koesnan (2015), children are young people at a young age in their soul and life journey as they are easily influenced by the circumstances around them.15 Sugiri and Gultom stated that as long as the process of growth and development is still going on in the physical body of the children, they are still considered as children, and will only become an adult when the growth process is completed.16 These two

12 Ibid
13 Mardani, Hukum Perkawinan Islam di Dunia Modern ( Graha Ilmu, Yogyakarta, 2011), p. 7
meanings emphasize that a child's age is a period of a child's growth, where children need full attention from parents. Law No. 23 of 2002 which has been amended by Law Number 35 of 2014 concerning Child Protection (hereinafter referred to as the Child Protection Law) states that a child is someone who is not yet 18 years old, including children who are still in the womb.

Based on Article 42 of the Marriage Law, it stipulates that a legitimate child is a child born in or as a result of a legal marriage. Whereas Article 250 BW stipulates that every child who is born or raised during a marriage gets the husband as his father. The Child Protection Act defines a child as someone who is not yet 18 (eighteen) years old, including children who are still in the womb and child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with the dignity of humanity, and receive protection from violence and discrimination.17

The regulations regarding children in Indonesian Law show the importance of children in the family, community, nation and state. Parents interpret children as their future, as stated by Soerojo Wignjodipoero in Setiady (2018): "Apart from being seen by their parents as the next generation, the child is also seen as a vessel for all their parents' hopes for the future, and is also seen as their parents' protector in the future when they are no longer physically able to earn a living."

Children are also the nation's next generation who determine the development of a nation in the future. Therefore, children should be given guidance in the family and receive special protection by the State and the law to enable maximum growth and development. In order for children to be able to assume responsibility as the next generation of the family and of the nation, they need to have the widest possible opportunities to grow and develop optimally in physical, mental and social aspects and acquire noble moral standards.19

Articles 45–49 of the Marriage Law regulates the rights and obligations of parents and children, as follows:

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18 Tolib Setiady, Intisari Hukum Adat Indonesia Dalam Kajian Kepustakaan (Alfabeta, Bandung, 2018), p. 173
19 H. Rozali Abdullah, Perkembangan HAM dan Keberadaan Peradilan HAM di Indonesia (Ghalia Indonesia, Jakarta, 2014), p. 20
A. Both parents are obliged to care for and educate their children as well as possible. This parental obligation applies until the child marries off or able to live independently. This obligation applies even if the marriage between the parents breaks down.

B. Children are obliged to respect their parents and obey their good wishes.

C. If a child has entered adulthood, he is obliged to take care of his parents and family in a straight line upwards, if they need his/her help.

D. Children who are not yet 18 (eighteen) years old or have never been married are under the authority of their parents as long as they are not deprived of their authority.

E. Parents represent their children in matters related to all actions.

F. Parents are not permitted to transfer rights or pawn fixed assets owned by children who are not yet 18 (eighteen) years old or have never been married, unless the child's interests require this.

G. One parent or both parents can have their authority over their child revoked, for a certain time at the request of the other parent, the child's family in the direct line up, an adult siblings or authorized officials, by a court decision in the case of neglecting their obligations towards the child and bad behavior.

H. Even though parents are deprived of their authority, they are still obliged to provide costs for the child’s growth and development.

Regulations regarding parental obligations towards children emphasize the rights of children that must be fulfilled by parents. Article 45 Paragraph 1 emphasizes that children have the right to be cared for and educated by their parents as well as possible. The marriage law does not provide more detailed explanation of what is meant by education and care. According to the Indonesian Dictionary (KBBI), the word “pemeliharaan” (caring, looking after) comes from the basic word “pelihiara” (maintain), which has several meanings, namely: a) to protect and cared for, b) to look after and educate, c) to save and protect from danger. Child care is parents’ efforts to fulfil children’s material, spiritual, mental and physical needs for growth so that children are able to overcome problems in life independently when they grow up. Parents also must fulfill child rights by educating their children. Educating means nurturing and providing training (teachings, guidance, leadership) for moral and mental intelligence development.
Based on the understanding of education and child care, it can be concluded that education and child care are two components that are closely related to each other. Thus, it can be concluded that the rights of children that must be fulfilled by parents in the family are: a) The right to receive care and love through good communication within the family; b) The right to receive protection, ensuring that children are not in a situation that endangers their lives; c) The right to receive education through formal education; d) The right to obtain education in the family such as: values of goodness, ethics, and religion; e) The right to obtain healthy food; d) The right to receive clothing (decent clothing); g) The right to live a healthy life, receive care for preventing diseases and getting access to health care if sick.

3 METHODOLOGY

The type of research in this study is empirical research in order to analyse the implementation of the Law in society, and to examine events or situations of the objects of research in details by collecting facts and to develop relevant concepts underlying the issues. This research aims to determine the extent to which parents (father and mother) who are divorced in realizing their obligations in fulfilling their children's rights. This research uses a legal sociological perspective. This perspective aims to provide an explanation and depiction of how the Law is practiced in society.

4 RESULTS AND DISCUSSION

4.1 THE ROLE OF LBH APIK NTT IN HANDLING DIVORCE CASES

The Indonesian Women's Association for Justice Legal Aid Institute in East Nusa Tenggara (LBH APIK NTT) is a legal aid institution that focuses on realizing justice and gender equality. LBH APIK NTT is a branch of the National LBH APIK, established in Kupang on 23 July, 2011. LBH APIK NTT in its work uses Structural Gender Legal Assistance which focuses on assistance by looking at the context of gender relations in a case. In Indonesian law, women are a group that is often disadvantaged, so LBH APIK focuses on legal services for women who are in conflict with the law. The Vision of LBH APIK NTT is: “The realization of a gender-just legal system, which is reflected in power relations in family, community and State life, by strengthening women's movement as

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21 Ibid
part of the civil society movement in empowering gender-just laws.” LBH APIK NTT's missions include: 1) Provide assistance and legal aid for women who experience injustice, violence and various forms of discrimination; 2) Carrying out and encouraging changes in policies and legal systems to ensure gender equality.22

One of the roles of LBH APIK is to assist cases of divorce, specifically for women, both in the position of plaintiff and defendant. The roles of LBH APIK in assisting divorce cases are as follows:23 a) Legal Consultation. LBH APIK provides legal consultation services, especially legal consultations related to divorce matters. Legal consultation in the form of providing legal information and advice. The legal consultation aims to increase legal understanding and awareness of women who will go through the litigated divorce process. b) Legal assistance to women and children who are victims of violence in the litigated divorce process. LBH APIK has prepared two lawyers to accompany women and children when facing litigated divorce, starting from preparing the lawsuit, registering the case in court, the trial and defense processes, until there is a legal decision that has permanent legal force. c) Assistance in the mediation process. During legal consultations, LBH APIK usually offers the mediation process first. If the parties refuse the mediation process, it will proceed to the lawsuit preparation process. In the process of litigated divorce cases in court, there are mediation opportunities offered by the court. LBH APIK will accompany the victim during mediation. The role of mediation is included in the process of assisting clients to obtain children's rights as stated in the divorce settlements.

Throughout 2019–2022 LBH APIK NTT assisted 50 women who sued or were sued for divorce by their husbands. Litigated divorce cases assisted by LBH APIK can be described as follows: 1) Women/wives are predominantly in the position of plaintiff in the divorce case. According to LBH APIK lawyers, of the 50 divorce cases they were involved in during 2018–2023, 80% of the wives were in the position of plaintiffs while 20% of the wives were in the position of defendants.24 2) The dominant factors that cause a wife to file a lawsuit against her husband is: domestic violence (DV). The forms of DV experienced by the wife include: a. Physical violence such as beatings, abuse; b. Psychological violence such as being threatened, cursed at, insulted; c. Neglect such as

22 LBH APIK NTT, https://lbhapikntt.com/index.html, accessed on August 2, 2023 on 18.00 Central Indonesian Time
23 Interview with LBH APIK NTT Advocate, July 2023
24 Interview with LBH APIK, July 2023
not providing financial support to wife and children. In this case, children are usually raised by their mothers; d. Adultery, dominantly committed by the husband. One of the factors causing neglect by husbands towards their wives and children is because they have affairs with other women. 3) Wives generally have experienced domestic violence for years before they file for divorce from their husbands.

The following is an example of a case accompanied by LBH APIK from an interviewed respondent. This case contains a brief description of the problem and the court’s decision, as follows:

Case 1: The plaintiff is a 37 years old woman, has a junior high school diploma, works as a cake seller. The defendant is 44 years old man, self-employed, has a junior high school diploma. The plaintiff and defendant were married in 2008. From this marriage they were blessed with 4 children. The first child is a boy (16 y.o.), the second child is a boy (14 y.o.), the third child is a girl (10 y.o.), the fourth child is a girl (6 y.o.). The plaintiff sued the defendant for divorce in June 2021. The reason for filing for a divorce was because they had been arguing continuously since 2010–2014, the defendant went to live with another woman, leaving the defendant and children behind. Since 2017, the plaintiff and defendant have lived separately. The plaintiff supports the children on her own. The divorce was settled in February 2022. The court decided that: 1) The children are under the guardianship of the plaintiff. 2) The defendant is obliged to provide support for the children until they are able to live independently.

Case 2: Plaintiff is a 42 years old woman, completed elementary school education, and a housewife. The defendant is 45 years old man, has a high school diploma and works in the private sector. The plaintiff and defendant were married in 2007. From this marriage they were blessed with 4 children. The first child is a girl (15 y.o.), the second child is a boy (13 y.o.), the third child is a boy (12 y.o.), and the fourth child is a girl (8 y.o.). The reason for the divorce lawsuit is constant bickering because of family economic problems and the husband having an affair with another woman. Since 2017, the defendant has left the plaintiff and the children. The plaintiff filed for divorce from the defendant in July 2020. The divorce was settled in December 2020. The court decided that: 1) The children are under the guardianship of the plaintiff; 2) The defendant is obliged to provide support for children until they are able to live independently.

Case 3: the plaintiff is a 42 year old woman with a high school diploma, and a private employee. Defendant is 45 years old man, has a junior high school diploma, and
self-employed. The plaintiff and defendant were married in 2010. From this marriage they were blessed with a 9 year old daughter. The reasons for the divorce were continuous bickering, economic pressures, verbal and physical violence against the plaintiff and adultery by the plaintiff. The divorce suit was filed in June 2020 and the divorce was settled in October 2020. The court decided that 1) The child was under the defendant’s care; 2) The plaintiff continued to care for and looking after the child.

Case 4: Plaintiff is a 44 year old woman with a high school diploma, and self-employed. Defendant is 54 years old man who works as an entrepreneur. The plaintiff and defendant were married in 1998 and from this marriage they were blessed with four children. The first child is male (28 y.o.), the second child is a female (23 y.o.), the third child is a male (18 y.o.), the fourth child is a 15 years old girl. The reason for the divorce was DV which was carried out by the defendant against the plaintiff and the children, continuous bickering over a long period of time, and household economic issues. The court decided: 1) The children can choose to live with their father or mother, except for the fourth child which is required to be under the care of the plaintiff. 2) Children who are not yet adults/not yet independent are cared for jointly by the plaintiff and the defendant.

4.2 FULFILLMENT OF CHILDREN'S RIGHTS BY PARENTS AFTER DIVORCE

Court decisions generally determine that child custody is given to the mother. According to LBH APIK NTT advocates, the court generally decide to give custody of child to the mother. Meanwhile, children who are over 18 years old are given the freedom to choose whether to follow their father or mother. The court's decision regarding custody was also influenced by the previous situation, where the defendant (father) had abandoned his children several years before the divorce. In cases where the wife commits an affair, the court decision gives custody of the minor child to the husband/father.25

The court decision determines the obligations of fathers and mothers to care for and raise children, including in paying for children's living costs until they are independent and live their own lives. This decision confirms that divorce between husband and wife does not eliminate the obligations and responsibilities of parents regarding the education and care of their children. According to LBH APIK, 97% of the women/wives they accompany in divorce cases ask for child custody, considering that

25 Interview with LBH APIK, July 2023
The children are still in young ages and require a mother’s care. Around 60% of men/husbands in court proceedings ask for custody of their children. Generally, the court decides to give custody of the children to the mother, taking into account the age of children and their needs for the care and nurturing from the mother.26

The fulfillment of children's rights after divorce found from the above cases are as follows:

There is limited understanding of respondents who are also parents on children's rights after divorce. There are some parents who have better understanding on children's rights, but there are also parents who do not understand what it means by children's rights. The level of understanding of children's rights is also varies. Generally, they understand that children has the rights for receiving parental support. The majority of respondents did not read the court decision for various reasons. Some felt that the settlement document was too long, others felt that it was enough to get brief information from LBH APIK.

Generally, court decisions give custody to the mother because they take into account the age of children. All of the mothers who receive child custody said that they hoped that the care and upbringing of children could be carried out jointly by the father and the mother. One of the mothers, Mrs. B, stated that: "There are ex-husbands and wives, but there are no ex-children. Therefore I hope that the children will still receive a living, education and love and attention from both mom and dad."27

Children's rights are generally fulfilled by the mother who has custody of the child. According to LBH APIK, throughout their experience in assisting litigated divorce cases, only around 20% of fathers eventually provide support for their children. This is confirmed by LBH APIK clients during interviews. Of the six mothers being interviewed, five of them reported that their husbands never provided support for their children after divorce. There is a husband who has left for several years and has lost contact until now.28

This situation shows that there are children whose rights to education, health and care are not fulfilled by their fathers.

When filing for divorce, the husband usually demands the rights of the child. If the court decides not to give custody to the father, then it becomes an excuse for the husband/father not to provide support for the child. One husband said that: "During the trial in court, I asked to get custody of the child, but the court decided that my wife had

26 Ibid
27 Interview with a female client, Mrs. B, assisted by LBH APIK NTT, August 2023
28 Interview with a female client, Mrs. A, Ibid
 custody over them. If that's the case then the wife is obliged to provide for the child's living needs." This condition shows that the failure to fulfill the demand for child custody has an impact on the failure to fulfill the responsibility for fulfilling the child's rights by one of the parents.

There are cases where the husband's parents provide assistance to their grandchildren who are neglected by their father. However, the assistance provided is not entirely sufficient to fulfill the lives of the children. Mrs. H said, "Until now, we still live within my husband's family. My father-in-law still helps to meet our living needs, but only partially. My children and I still have to work to meet our needs." This situation shows that it is still the responsibility of grandparents to fulfill some of their grandchildren's living needs. However, this responsibility is not provided in full. The grandparents' support are seen as representing the obligations of the fathers who neglect their children.

Many children are forced to work at a young age to meet their living needs. Mrs. G said that one of her sons who is 13 years old had to work as a construction worker after finishing elementary school. Apart from being a construction worker, sometimes her son has to work at a car wash company for additional income. This additional work is done after school, and on holidays he will work longer hours, from 7 am to 7 pm in the evening. All of earnings were given to his mother to meet some of their living needs. Mrs. I mentioned a similar situation as her 13 year old son worked as labor worker in carrying goods from the warehouse to the car. Usually the work is done from 1 pm after school until 11 pm. Sometimes her 8 year old child also participates in lifting lighter items. The money they earned from their work was handed over to their mothers to meet their living needs. Mrs. M stated similar condition where her 16 year old son works at a cellphone sales store. He usually works from 5 pm to 10 pm. This condition shows that children have to lose some of their rights such as the right to learn and the right to play in order to help their mothers meet life's needs such as food and school fees.

Communication between fathers and children who live with mothers is rare, some even never communicate with one another. In this case, children spend more time with their mothers. Education about moral values, including religious teaching is provided by

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29 Interview with Mr. D, August 2023
30 Interview with a female client, Mrs. M, op cit.
31 Interview with Mrs. G, Ibid
32 Interview with Mrs. I, Ibid
33 Interview with Mrs. M, Ibid
the mother. Care for children during illness and care for child development including reproductive health is carried out by the mother. There are children who meet their fathers at Christmas, during family events such as weddings, deaths or birthdays of relatives. There are also children who never meet their parents after divorce. This condition illustrates that when divorce occurs, children generally do not receive full love and attention from their father.

Communication between mother and children who are under the custody of the fathers are usually better. In a divorce case assisted by LBH APIK, the court decided to give custody of a girl aged 9 to her father. Mrs. M explained that when she was still working, she always fulfil the child's needs, such as buying school supplies, clothes and school pocket money. However, because she is currently not working, she cannot meet the child's needs as usual. There were times when she could meet her child, but the father did not allow the child to stay over at her place. Communication with the child continues to run smoothly, especially as she is now entering their teens. Education about reproductive health is one of the things that is often communicated with her child. This condition shows that the mother is still providing attention, affection and care to her child's growth and development, even though custody is in the hands of the father.

According to LBH APIK, the female clients they accompany generally do not sue or report their husbands who do not provide support and attention to their children. This condition is due to several reasons: a) Before the divorce was filed, the husband had left his wife and children for several years and they had lost contact with his. b) The women have communicated with their ex-husband to help pay for the children's living expenses but there are no response. c) The children have communicated with their father to ask for help with expenses, but the decline their request (usually by saying he has no money). d) They still live in the husband’s family environment and receive help from former parents-in-law. This situation shows that women generally accept/surrender to the husband's irresponsible attitude in fulfilling their children’s rights.

There are several clients who sue their ex-husbands who do not provide for their children, but the court usually request that amicable decision to be made by the parties involved. LBH APIK once assisted a female client to have a dialogue with the managers where her husband worked to demand support for the children who were neglected. In

34 Interview with Mrs. M, Ibid
such cases, some of these efforts were successful but some were unsuccessful. This really depends on the leaders where the husband work. There are people in the leadership positions who think that the problem being communicated is a family matter and therefore the solution should be carried out within the family. However, there are people in leadership positions who believe that the workplace has an obligation to intervene because parents are responsible for fulfilling children's rights.36

The findings above show that after divorce there are still many parents, especially fathers, who do not receive child custody rights, neglecting their responsibilities in fulfilling children's rights such as children’s the right to decent live, their rights to receive education and health costs, and their rights to receive paternal attention and affection, as regulated in the Marriage Law and as stated in the court settlements.

5 CONCLUSION

Based on the above findings, the following can be concluded. Firstly, Law Number 1 of 1974 concerning Marriage regulates the rights of children in the family and the rights of children after divorce. This regulation emphasizes that divorce does not eliminate parents' obligations to fulfill children's rights. In a divorce case, the divorce settlements must be based on the principle of the best interests of the child for their growth and development. In practice, there are still many divorced parents who do not properly understand children's rights as regulated in the Law and court decisions and their implications for their obligations in fulfilling children's rights. Second, court decisions in divorce cases generally give custody of the child to the mother, with the main consideration being the age of the child who still needs care from a mother. There is still very little responsibility of fathers in fulfilling their obligations towards children's rights such as the right to a living, the right to attention and affection, the right to education, and the right to health care. Not fulfilling these rights has implications for not fulfilling other aspects of children's rights. Generally there are no prosecutions from mothers who get custody of their children when their husbands do not fulfill their responsibilities. Most of them are resigned to accepting this condition, because efforts that have been made to hold their ex-husbands responsible are not successful.

The following are recommendations based on the findings in this study. First, the Government, in this case the Court, and LBH APIK NTT as an institution that provides

36 Interview with LBH APIK NTT Legal Assistant, July 21, 2023
legal assistance for women in divorce cases should socialize about children's rights after divorce to parents who are going through the divorce process. Socialization about children's rights must also explain the impact of not fulfilling children's rights to their growth and their future. This emphasis of the socialization must be based on the principle of meeting the best interests of the child. Second, efforts such as mediation and legal action need to be taken to ensure parents (fathers) carry out their obligations in fulfilling children's rights. Mediation efforts through the place where parents (fathers) work need to be carried out by building a mutual understanding with workplace leaders so that they understand children's rights and the implications for the child's growth if their rights are not fulfilled. Collaboration with community leaders, traditional leaders and religious leaders needs to be carried out to assist in the mediation process so that parents can consciously fulfill their children's rights.
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