

# THE NON-EXISTING LEGAL AND SOCIAL WELFARE FOR CHILDREN AFTER PARENTS' DIVORCE

*A Case Study in Yogyakarta Indonesia*

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## Introduction

One of the motivations for divorce which shows an increasing trend in modern society is the shift from extended family into nuclear family system. A stronger demand from the women side for autonomy, fairness, rights, and reward as the result of industrialization and urbanization accounts for the divorce patterns (Karim, 2004: 140). The Marriage Act No: I/1974 is the principal regulation for all matters pertinent to divorce. Article 41 stipulates that both father and mother are responsible for raising and educating their children, solely for the sake of their children. It further regulates that father is responsible for covering all costs of rising and educating the children; however, he may be relieved from his responsibility if he lacks competency that prevents him from carrying out his responsibility.

In this case, the court will pass the responsibility on the mother. Unfortunately, father often intentionally ignores this regulation, forcing his former wife to raise and educate their children alone. As the result, women receive heavier burden, or, in some cases children of divorced parents are faced with uncertain future due to neglect of protection by the father. Children suffer from legal vulnerability. This study aims to identify children's social and legal vulnerability in Yogyakarta from the perspective of Legal Anthropology.

The statistics shows that the rate of divorce in Yogyakarta is increasing. It reaches 47 cases in 2008, 50 in 2009, and 63 in 2010 (*Kota Yogyakarta*

*dalam Angka*, 2011: 51). The research chose Danurejan subdistrict, one of poor subdistricts in Yogyakarta, as the research location based on the following consideration. It has 4,652 households of different levels of prosperity status: 408 pre-prosperity families, 1,078 prosperity level I families, 960 prosperity level II families, 1,870 prosperity level III families, and 336 prosperity plus families. In addition, it has some neighborhoods in slum areas along Code river and around Lempuyangan railway station ([www.Widodo.staff.uui.ac.id/urban-kampong-improvement-a-case-of-code-river-area-yogyakarta](http://www.Widodo.staff.uui.ac.id/urban-kampong-improvement-a-case-of-code-river-area-yogyakarta)), and is the second most densely populated subdistrict in Yogyakarta (*Kota Yogyakarta dalam Angka*, 2011: 92).

The data were collected from observation and interview with 10 divorced parents. It interviewed the divorced husbands or wives during the 2008-2009 periods. The data on divorced families were obtained from the Religious Court of Yogyakarta City as well as The Office of Religious Affairs of Danurejan district. Illegitimate divorced families (*pisah kebo* for economic reasons) were included as respondents because there were problems of meeting the respondents due to changes of address or status (remarry) and their irregular working hours. The information on illegitimate divorced couples came from their neighbors, community members, or head of the neighborhood. It also obtained other data for support from RT (neighborhood group), RW (surrounding group) or staff of the Office of Religious Affairs of Danurejan district.

## Causes and Types of Divorce

Lower class urban society such as in Danurejan district is facing some obstacles in their divorce process. For them divorce has always been a winding process, time and energy consuming, as well as emotionally costly. Having been absorbed in various activities to earn money to sustain their life, they see *pisah kebo*, or illegitimate divorce, as a more practical option. However, it does not give them a divorce certificate. They realize that without a divorce certificate they could not ask their former husband to support in raising their children. S (40 years old, laundry worker, elementary school graduate) describes:

“I got separated from my husband when I was pregnant. I couldn’t stand receiving abusive treatments from him, so I decided to go home

to Yogyakarta. I knew that if I didn't have a divorce certificate I could never ask him to give money for rising our son. He has never provided me with any help since my son was born until he is now 13 years old. No problem; I will do my best to raise him alone.”

S is now living with her parents and younger siblings, who already get married, in a small, crowded home. She finds it very difficult to raise her son alone. But it is impossible to ask her parents nor her siblings to relieve her financial burden. They are also in poverty. She keeps her hope that her husband will see her some day and give some money for her son's tuition. It remains a hope; she even has no idea where her husband is now. She remembers that she saw her husband twice, that is when he visited to see their baby. She is very sad when thinking about her marriage life, so she wants to leave her dark history behind her. She committed an illegitimate marriage (underhanded marriage, *sirri*) because she and her husband embrace different religions. *Sirri* marriage is usually performed because it seems to be easier and legal according to the religion (Voice of Aisyiyah, 2010: 8). The marriage turned her life into a miserable one. She hates her husband who used to be abusive to her and abandoned her and their son.

Information from the head of neighborhood and staff of the Office of Religious Affairs of Danurejan subdistrict confirms that only the rich moslems are keen to have a legitimate divorce (through the office of religious affairs) as the process can be very expensive. For the lower class, *pisah kebo* is a better option. Those choosing legitimate divorce see the importance of the state's acknowledgement for their marriage status. In addition, all the consequences from marriage termination when decided by the judge are binding. Despite the cost, a legitimate divorce remains the best option for the economically able people. The more sessions in the trial, the more expensive the cost for a legitimate divorce.

The religious court shall decide a divorce case involving lower class couple after the third trial, regardless of the defendant's absence. This policy – a minimum of 3 sessions- has reduced the cost to a maximum range of Rp 400,000 to Rp 600,000. The trial for lower class couple seeking divorce usually runs smoothly as both sides are already determined to get divorced, and there usually is no dispute on the custody and division of shared property. The court

usually grants the wife with the custody, thus, transferring all the economic burdens from raising children to her and her big family.

On the contrary, the trial for a divorce case involving upper class family usually goes through more sessions. Apart from mediation, the court will give both sides times to contemplate on their intention for seeking divorce. There usually are conflicts on the custody and division of shared property. It takes a more complicated measure to reach an agreement on wealth division. Some couples, however, do not bother with shared property division, and will give more emphasis on the custody.

In the following case, A (30 years old, university graduate) got separated from her husband due to unreconciled differences which put them in a never ending quarrel. Their marriage lasted only in 6 years. According to their most intimate relatives, A's parents, they have not divorced yet; they are only living separately. Together with her 8 year-old daughter, A is now living with her parents, while the husband is living with his parents in different home.

The fact that the husband is working in different city but frequently visiting his daughter, going shopping all together, dining out, or going on a picnic, makes people think that they are leading a harmonious life; likewise, A' parents do not believe if A has divorced from her husband. The divorce is registered to the local Court/Office of Religious Affairs, but it remains undisclosed to them. Apparently, for the sake of her daughter's mental stability, A and her former husband agree on a commitment to always show their harmonious relation before her daughter. Her former husband continues his financial support to raise their daughter.

The case of M (47 year old, unfinished elementary education) and his spouse R (36 year old, Elementary School graduate) decided to get an illegitimate divorce when they found unreconcilable differences despite their 15 year old marriage. They came from West Sumatra, migrating to Yogyakarta in 1989 for a better life. R, his wife, decided that their two daughters should be raised by M because she is unable to take care of them. They got separated without ill-feelings toward each other. He is fully responsible for the living cost. To maintain mother and daughters love bond, the daughters stay a night at R's home every week.

R feels deeply sorry for the divorce, so she apologized to her former husband. In spite of his non-formal job in Malioboro street, M still has time to

cook and prepare meals for the children. The impact from the divorce is that their daughters now prefer to spend times at home than playing outside. They used to play with friends around the house until evening. The divorce has caused embarrassment for the children, and eventually their withdrawal from peer circles.

Divorce is permitted (Parkin and Stone, 2004: 1995), but in Yogyakarta society regards divorce a big shame. Children feel that their life is imperfect after their parents are no longer united. Some children tend to withdraw themselves from their peers, become dependent, or less matured than their peers. In some cases, children of divorced families receive little attention and care from parents because many of them are transferred to grandparents' care. Sympathy for their condition comes, among other, from Women Movement/ Association (under Aisyiyah organization) of Danurejan district which initiated a program to give a one-year scholarship to elementary and junior school, aged children from poor families. Children from divorced families are included. The amount of scholarship and the number of recipients is relatively small but it has shown people's concern to unattended children.

Love affair is often the cause of divorce. This happens to D (43 year old, high school educated, self employed). Her harmonious family lasted only in three years. When she was pregnant for her second child in 2000, her husband, H (41 year old, university graduate), left her to work in different city. H felt inferior to his wife's status, and his inferiority grew worse when he could not bid enough projects to carry out. He had expected financial support from his parents in law, but they did not want him to be dependent.

Then, while working away from family, he met his former girlfriend and got married. To the best of her knowledge on Islamic teachings, D understood that her marriage had ended when her husband neglected her material and biological needs for more than 6 months after leaving home. At first, she did not want to get divorced as it would bring shame to her parents and family. However, being in uncertainty for so long, she finally consulted a moslem cleric in 2006. After she could make up her mind and be strong to face the fact, she insisted on her divorce.

On the other side, H was feeling worried that he should give allowance to his children after he formally divorced his wife. He tried to buy the time, and

when the court finally granted a decree for the divorce, he refused to sign it. He even misused the letter of divorce appeal (*talak*) for the purpose of marrying her former girlfriend. Finally, after waiting for 10 years in uncertainty, D got the divorce decree from the court.

After the divorce, H called her several times to ask about their children's condition. H sometimes gave money to pay their children's tuition, but the time was not reliable. H is now economically settled but his new wife bosses him around and does not like if his husband continues keeping in touch with his former wife and children from previous marriage. D is aware of this situation, and she must accept it. D wants to do her best in raising her children alone. She often gets phone calls from H's new wife who says bad words to her. Her children are reluctant to see their father even though only through the telephone. Together with her children, D continues to live with her parents.

## Legal Vulnerability

The 10 cases from the data reveal that children of divorced parents do not have adequate legal protection from their custodian although both the Islamic Law and regulation of the Marriage Act 1974 clearly state that they are under the mother's or father's custody. This happens because most fathers avoid their responsibility for providing life sustenance. The data reveal father's tendency for inconsistency in fulfilling the responsibility: he gives life sustenance to the children only during the first year after the divorce, and then, he gradually stop doing it. It usually happens when the father is poor, or financially established but has married a second wife and subsequently stops giving financial support. His new wife will usually disapprove when he continues to keep in touch with his former wife and children.

A strong tendency among the lower class divorced family is that they ignore both the Islamic Law and the Marriage Act 1974. They would prefer *pisah kebo* in order that they can avoid responsibility for their children's living cost. According to the Islamic Law, father is responsible for raising and educating his children until they reach their adulthood; it is a big sin when he abandons his children. Likewise, the state rules through the Marriage Act 1974 that father shall be responsible for providing the means for caring and protecting his children;

however, he may be relieved from this responsibility if his condition prevents him from carrying it out, and in view of this, he may ask his wife to share the burden.

According to the *adat* law, however, children do not have the rights to get protection from their divorced parents; it is up to their parents' conscience (Dellyana, 2004). Many divorced fathers have misunderstood it as reason to avoid responsibility for providing living cost after the divorce. They will innocently avoid the responsibility, either with, or without economic reasons or others. Neglecting or abandoning children by divorced parents will not bring severe punishments from the law, and this loophole seems to motivate father to escape from his responsibility. Although the Marriage Act 1974 rules that father is responsible for providing life sustenance for his children, it does not stipulate punishment for violation against this rule.

## Social Welfare Vulnerability

The divorce causes communication breakdown. It happens not only to the husband-wife relation, but also to parents-children relation. Subsequently, communication breakdown results in children abandonment. Apart from this, many husbands intentionally abandon their children because it is too heavy to pay for their children's living allowance. They have shifted the burden to their former wives who are now the sole caregivers. Children from the lower class family suffer worse neglect after their parents' divorce. They face uncertainty of financial support for their school tuition, health care, clothing, etc.

The future of their education is dark. The case of S indicates that children of lower class divorced parents grow up in a non-conductive environment, for they are living with the mother's big families in a neighborhood where most people work in non-formal sector and violent acts are frequent. In her (S) limitation, she keeps her hopes that her son is able to finish his vocational school and then able to find a job to help her.

The women always have many burdens after separated (Zulminarni, 2006). Children from divorced families have no guaranty for social welfare because their father refuses to give financial support, while at the same time their mother, having learnt from past experiences, never wants to depend on

others. Their mother is aware of the fact that her divorce has brought shame to the family, so they do not want to add up the misery. She and her children generally continue living with her extended family because she has no better option until she could build her own home. She and her children must be extremely alert in any circumstance in order to prevent hard feelings and rejection from the family.

In the cases where a divorced mother has to work in another city, or marries to a new husband, her children live with their grand mother. Javanese families believe that grand mother's affection to their grand children is superior than that of parents to their children (Geertz, 1986). Children of divorced family often receive bigger affection and financial support from their grand parents, uncles, and aunts from their mother's side.

## Conflict and the Role of Close Relatives

The causes of conflict prior to divorce in Danurejan district include unresolved quarrel, fornication, and drinking/gambling habits. Other cases of divorce also have similar causes (Soimin, 2002). At its early stage a divorce generally starts with a conflict between husband and wife, and indeed, many divorce cases result from poorly managed conflicts (Karim, 2004). Divorce is frequent among the lower class families who marry at very young age due to the couple's immatured personality (Nakamura, 1981). This case happens to S whose marriage lasted in only few months. Lower class families also tend to prefer *pisah kebo* than going through the religious court for a legitimate divorce.

Researches by Singarimbun and Manning (1974) and Nakamura (1981) also demonstrate that *pisah kebo* frequently happens among Javanese families in rural Yogyakarta. The divorced families are usually still young, and will marry again later. S and M chose *pisah kebo* while D and A go through the religious court for their divorce. They have decided not to marry again despite encouragement from family and approval from their children. The main reasons to reject second marriage are traumatic experiences from the first marriage and an effort to prevent their children from experiencing mental unpreparedness if having a new father. It is too hard for women to be a single parent but they



do their best to raise and educate their children. They pray for the success of their children in their education, job, and marriage life.

Each husband and wife wants to solve conflicts (individual conflicts) arising in marriage life on his/her own way. The Office of Religious Affairs offers counseling or mediation to reconcile the two (Kriekhoff, 1993: 226), but fails as each side is stubborn and has strong will to get divorced. Children's welfare should be the top priority in order to secure their future. Both legal and social vulnerability can be minimized when children have financial security. However, since mothers usually become single parent with double roles, their economic condition is in jeopardy. They need help from relatives, neighbors, society, organizations, NGOs and government who should work together to secure their welfare.

## Conclusion

Divorce, either legitimate or *pisah kebo*, brings adverse impact to children in the form of legal and social welfare vulnerability. Despite the stipulation in article 14 of the Marriage act 1974 that children of divorced parents shall get legal protection, they continue to suffer from legal vulnerability. They also suffer from social vulnerability since they have no body but their mother to guaranty their future. The absence of father's financial support leaves them with uncertain social welfare. Problems related to affection and communication due to their parents' divorce have laso marginalized them in their social environment.

The divorce cases among the upper class families show that both parents make some efforts to share responsibilities for raising their children while maintaining good communication, affection, and togetherness. However, it does not totally prevent the children from legal and social vulnerability. When the father marries again, he will likely stop the supports because of his new wife's intervention. The mother's extended family is able to maintain its role in giving affection and economic support to children of divorced parents only when it has economic stability. It needs cooperation as well as synergy among many parties, such as family, society, and the governmet to ensure that the children get legal and social protection.

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