

Upholding the rights of children of divorced parents

One of the biggest fears which all children have is the thought that their parent's will separate. When parents are divorced, children are often the people who suffer the most. Divorced parents should consider how to help their children cope with the hardships which result from their parent's separation.

Divorce cases appear to be on the increase. Infotainment shows on television broadcasting a parade of celebrities or public figures who decide to end their matrimony by means of a court order seem to validly suggest a trend in divorce in Indonesia. Impressionable people who watch such public figures on television can easily adopt this trend into their own lives.

It sometimes appears as if the sacredness and significance of matrimony are no longer important to people in Indonesia. As divorcing couples become pre-occupied with justifying why they need to separate, they can easily forget just how much their children will suffer from this. In reality, children are a gift from God who requires that parent's give their children the best start in life possible.

This is in line with the Indonesian Marriage Act, which requires parents to protect their children until they come of age. Article 45 of the Marriage Act No.1/1974 provides that "Both parents are responsible to the best of their abilities for the upbringing and education of their children."

Article 1 paragraph (1) and (2) of the Law on Child Protection defines that (1) a Child is a person under 18 (eighteen) years of age; and (2) Child protection shall mean all activities designed to guarantee and protect children and their rights so that they may live, grow, develop and participate optimally in society in accordance with the dignity to which they are entitled as human beings and so that they may be protected against violence and discrimination.

There are many reasons for a divorce. Ayu Ningsi, the Director of the Legal Aid Insitute for Children (LBH Anak) says that in addition to a lack of common interests,

financial issues and the presence of a third party are the most likely reasons contributing to divorce.

Like human beings of all ages, all children are entitled to have their inalienable human rights protected. Article 3 of the Law No. 23 of year 2002 on Child Protection stipulates: "Child protection is designed to guarantee and protect children and their rights so that they may live, grow, develop and participate optimally in society in accordance with the dignity to which they are entitled as human beings and so that they may be protected against violence and discrimination to become qualified, dignified and prosperous children of Indonesia."

A question arises then whether it is possible for children to have their rights upheld and protected as mentioned above when their parents divorce? In relation to this, Ayu Ningsih says that all divorced parents should uphold their children's rights and that they should maintain their obligation to fulfill their children's rights.

With all divorces, children have the right to decide which parent they will prefer to live with after the divorce. For young children, such decisions will be issued by the court based on the considerations guided by the children's specific needs. M. Jamal Ibrahim, one of the judges at the *Mahkamah Syar'iyah* (Islamic Court) in NAD province, says that the right to take care of the upbringing of child victims of divorced parents will usually be granted to the mother. However, the results can be different, depending on the situation of the related families.

Post-divorce, children have the right to obtain:

1. Care, even though the parents have divorced. Child should get the proper love and care and have the right to decide which parent they will stay with.
2. Education.
3. Health care.
4. A decent home.



The four basic elements of children's rights above should be fulfilled by the parents in case of a divorce. It is undeniable that in a divorce, one of the parties may not fulfil these rights and neglect the children's rights. Under such circumstances, Ayu Ningsih says that penalties should be enforced against the parents in accordance with the agreement made during the divorce. However, there are many institutions which can be used to resolve conflicts caused by a divorce in a peaceful and amicable manner, for example with the help of authority figures in a *gampong* (village), such as the *geuchik* (head of village), *imum gampong* (village elders) as well as the immediate family to discuss parental obligations to their children after a divorce. However using such family-oriented ways to end disputes are often very difficult to control and monitor.

When an agreement is reached, it is also possible that one of the parties may not fulfil their obligations where no penalty applies. This is especially the case when a couple was married in a *siri* (unregistered) arrangement, added Ayu. Here, there are no legal documents to explaining the various rights and obligations of a married couple and their children. Thus, a *siri* marriage is greatly disadvantageous to women and children.

Post-tsunami in Aceh, child protection has not only focused on child victims of divorced parents but also on children in special conditions such as those who have been displaced, children with criminal problems, and also children with mental and physical impairments.

As an institute that focuses on the legal issues of children, LBH Anak continues to facilitate advocacy on behalf of children in Aceh. All parents who have problems regarding children are encouraged to report their problems to LBH Anak.

Ayu says that at this moment many parents and families are reluctant to report their problems to a third party. It is considered shameful when such problems are heard outside of the family environment. In reality though by reporting their problems, parents or children will get the information they need on how to resolve their problems.



As can be seen across Indonesia, there is a slow but growing momentum in the community's use of legal means to end disputes. Due to an increased understanding of the law, more and more people are beginning to resolve their problems through legal means, either formally or informally.

After the tsunami, some organisations focused on child protection grouped together and launched a program called TESA (*Telepon Sahabat Anak*/Friendly Telephone for Children) to provide a child-friendly mechanism for child complaints. Anyone can call 129 to receive advice on their problems and avenues to pursuit for their complaints. TESA has so far recorded numerous reports on child victims of divorced parents. TESA then works with the family on creating an agreement which is accepted by all. Through such a process many problems have since been resolved.

A divorce always inflicts deep trauma to those who are involved in the process, especially children. Even if such processes run well and peacefully, it still causes problems to the children. A child's response to a divorce may vary, depending on the children's age and the intensity as well as the duration of the conflict before the divorce. Every child bears a different level of hardship. Some children, especially those who are already at school or teenagers, will share the feeling of guilt and responsibility for the divorce. For some children divorce can sometimes seem as if their family is defective in some way, and leave a lasting scar on their emotional outlook. The feeling it often causes in children is fear – fear for the here and now and fear for the future and their lives when they have families of their own.

Ayu Ningsih says that the government's involvement is necessary to provide the best solution to child victims of divorced parents to ensure that their rights are respected. At the very least says Ayu, the government can enact a more stringent rule governing divorce in court in providing an alternative for child protection. In Indonesia, where so much emphasis is placed upon the familial relationship, it is the best place to provide the care and security which all children need to grow and develop into successful and happy adults. All parents should remember this when weighing the possible negative impacts that a divorce could bring to them.



Anyone who needs legal assistance regarding with children can contact LBH Anak at Jalan Angsa No. 2 Kp. Ateuk Pahlawan, Banda Aceh, at phone number 0651 7411587.

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