

# A Husband's Obligations Following a Divorce Outside the Religious Court in Society: A Perspective from Islamic Family Law

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## Abstract

The main issues of this study are the practice of fulfilling children's rights following divorce outside the Religious Court, the response of traditional leaders to the fulfillment of children's rights following divorce outside the court, and who is responsible for child support following divorce outside the Religious Court in the traditional community of Nagari Tanjung Bonai. The objectives of this study are to determine how the fulfillment of children's rights following divorce outside the Religious Court is practiced, to understand the response of traditional leaders to the fulfillment of children's rights following divorce outside the Religious Court, and to identify who is responsible for child support following divorce outside the Religious Court within the traditional community of Nagari Tanjung Bonai. This study is a field research project employing a qualitative approach. Primary data was collected through interviews with niniak mamak and community leaders. Data collection techniques included interviews and documentation. Data analysis was conducted inductively to draw conclusions. The results of the study indicate that in the practice of fulfilling children's rights following divorce within the Minangkabau community in Nagari Tanjung Bonai, instances of fathers failing to fulfill their obligations still occur. Of the 16 divorced couples, only 3 fathers adequately fulfilled their child support obligations, while the majority of the others failed to provide child support. Traditional leaders emphasized that divorce should be conducted through religious courts to ensure clear legal validity and avoid various adverse consequences. Nevertheless, they stressed that a father's obligation to provide child support does not cease even if the divorce is conducted outside formal legal channels, as it is a religious obligation. In some cases, community elders play a role by facilitating agreements to ensure the father continues to fulfill his responsibilities. However, out of 13 respondents, only 3 consistently provide child support, while the other 10 do not, resulting in the mother bearing the greater burden of meeting the children's needs.

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## INTRODUCTION

Divorce outside the religious courts remains a critical issue in Indonesia's marriage law system (Daulay & Muhammad, 2026; Hayati & Seff, 2025). Although Law No. 1 of 1974 on Marriage has long been in effect, the practice of divorce outside the judicial system continues to occur and has not yet been comprehensively addressed by the state (Tarigan & Esther, 2025). Data from the Religious Courts Agency indicates a rising trend in divorce rates year over year, from 444,358 cases in 2018 to 534,018 cases in 2022. Divorce not only results in the dissolution of the marital relationship but also has implications for psychological well-being as well as the fulfillment of children's rights and those of former spouses. Conceptually, divorce is the dissolution of the marital bond, which can occur through a judge's ruling or a petition by one of the parties (Patimah et al., 2025), and in Islam, divorce is made difficult to preserve family unity (Kurniawan et al., 2022). Therefore, regulations stipulate that divorce must be conducted in a court hearing to ensure legal certainty and justice for the affected parties.

The reality in society reveals a dualism between positive law and religious practice. In Islamic jurisprudence, a divorce is considered valid if it fulfills the essential elements and conditions, even if it is conducted outside of court. However, under Indonesian positive law, a divorce is only recognized if it is granted by a court (Nasution et al., 2025; Pranoto et al., 2025). This phenomenon leads some members of the community to continue choosing non-litigious avenues for divorce. In Nagari Tanjung Bonai, for example, the practice of divorce outside religious courts remains quite prevalent, with at least 13 couples divorcing without formal legal proceedings, according to field observations. This practice is generally driven by considerations of convenience, lower costs, and a religious understanding that is deemed sufficient to legitimize the divorce (Azizah & Hafidzi, 2025; Widad & Musthofa, 2025). Consequently, many divorces lack legal validity, leading to uncertainty regarding post-divorce status and rights (Prasetyo et al., 2024).

This study is important because out-of-court divorces give rise to various problems, particularly regarding the fulfillment of children's rights. Children are often the most adversely affected because there are no legal guarantees regarding child support, education, and protection that should be provided by both parents. In fact, the Compilation of Islamic Law explicitly states that both parents remain responsible for the child's upbringing, and the father is obligated to cover living expenses until the child reaches adulthood. This provision is further reinforced by Islamic teachings, as outlined in Quranic Surah Al-Baqarah, verse 233, which emphasizes the father's duty to meet the child's needs. Without a court ruling, this obligation is often neglected, causing children to lose their rights both legally and socially. Therefore, this study is urgently needed to examine the reality of the fulfillment of children's rights in the context of non-judicial divorce.

This study offers a novel perspective compared to previous research because it specifically examines the practice of fulfilling children's rights following divorce outside religious courts within the context of Minangkabau society in Nagari Tanjung Bonai. Unlike previous studies that have largely focused on the causes of divorce or its general impacts (Daud & Syarif, 2021; Rofiqi et al., 2020), this study integrates the perspectives of Islamic law, positive law, and Minangkabau adat, which is grounded in the philosophy of "*Adat Basandi Syara', Syara' Basandi Kitabullah*". Furthermore, this study also considers the shift in the social structure of Minangkabau society from an extended family system to a nuclear family, which influences a father's responsibilities toward his children. This contextual approach offers a new contribution to understanding the dynamics of fulfilling children's rights within a traditional society undergoing social transformation.

Although there has been extensive research on out-of-court divorce, there

remains a gap in empirical studies regarding the implementation of children's rights following divorce, particularly in traditional communities such as the Minangkabau. Previous research has tended to focus on normative aspects or the causal factors of divorce (Fauzi, 2025), as well as the general impacts on families (Hidayatulloh & Oktafia, 2023), but has not yet thoroughly examined how children's rights are actually fulfilled in social practice. Furthermore, few studies have linked state law, Islamic law, and customary law within a comprehensive analytical framework. Therefore, this study aims to address this gap by presenting an empirical analysis of practices regarding the fulfillment of children's rights following divorce outside religious courts within a specific local context.

Based on the research focus outlined above, the research question of this study is to examine how the fulfillment of children's rights following divorce is practiced outside the Religious Court in Nagari Tanjung Bonai, Lintau Buo Utara Subdistrict. Additionally, this study aims to determine how traditional leaders respond to these practices, particularly in assessing the compatibility between customary norms, Islamic law, and state law. Furthermore, this study examines the parties responsible for fulfilling child support obligations following a divorce outside the Religious Court, thereby providing a clear picture of the fulfillment of parental responsibilities within the local social context.

## METHODS

This study is a field study employing a qualitative approach. The field study was conducted to directly identify, understand, and describe social phenomena occurring in the community regarding divorce practices outside of religious courts. A qualitative approach was used because this study seeks to explore the meanings, perceptions, and social realities experienced by the research subjects in a deep and contextual manner. Thus, this study does not focus solely on numbers or statistical data but places greater emphasis on understanding the social, legal, and cultural dynamics underlying divorce practices and their implications for the fulfillment of children's rights.

This research was conducted in Nagari Tanjung Bonai, Lintau Buo Utara Subdistrict, Tanah Datar Regency. This location was selected based on the consideration that divorce proceedings outside of religious courts are still common in the area, making it relevant to the research focus. The research was conducted in stages, beginning with the refinement of the proposal, a seminar, field data collection, data processing and analysis, and culminating in the final stages of supervision and defense, which took place from August through February. This timeframe allowed the researcher to obtain comprehensive data and conduct an in-depth analysis.

Data collection in this study was conducted using two main techniques: interviews and documentation. Semi-structured interviews were conducted with key informants, such as divorced couples, traditional elders, community leaders, religious scholars, and officials of the Kerapatan Adat Nagari (KAN) who are familiar with divorce practices outside the religious courts. This technique was chosen so that the researcher could explore information in depth while remaining focused on the research objectives. Additionally, the documentation phase involved analyzing various documents related to divorce, including local data, archives, and religious court rulings. Through these two techniques, the researcher obtained complementary primary and secondary data to strengthen the research findings.

Data analysis in this study employed a qualitative descriptive method, which involved systematically organizing, categorizing, and interpreting data obtained from interviews and documentation. The analysis process consisted of several stages: data collection, data reduction through the selection of relevant information, presentation of data in narrative form, and drawing conclusions. The researcher also interpreted

the data to understand the meaning behind the phenomena under study. With this approach, the research results are expected to provide a clear and in-depth picture of divorce practices outside religious courts and their impact on the fulfillment of children's rights in the study area (Engkizar et al., 2024; Fauzi, 2025; Jaafar et al., 2025; Rahman & Lubis, 2023; Ridho, 2018; Yulianis & Susanti, 2025).

## **RESULT AND DISCUSSION**

### **Practices Regarding the Fulfillment of Children's Rights Following Extrajudicial Divorce**

There are still many communities that disregard regulations established by the government as well as existing customary and religious norms. One such group is the Minangkabau community in Nagari Tanjung Bonai, who still conduct divorces outside religious courts and fail to fulfill children's rights following a divorce within their households. Based on the researcher's study in Nagari Tanjung Bonai, 13 couples were found to have divorced without going through the religious court process.

Based on data regarding the reasons for divorce outside the religious court, obtained through interviews with the wives, it was found that the primary cause of divorce was financial support issues, cited by 10 respondents. Additionally, 6 respondents stated that the divorce occurred due to domestic violence (DV), and 4 respondents cited infidelity. Other factors identified included the husband leaving home without providing any news (2 respondents), and 1 respondent mentioned that the divorce occurred because the husband had remarried. This data indicates that economic issues and the husband's responsibilities are dominant factors in divorces occurring outside the religious court in Nagari Tanjung Bonai.

Regarding the divorce process, it was found that all respondents divorced without going through the Religious Court, using various methods. One person divorced by remarrying another woman without any legal proceedings. Additionally, six people chose to simply leave their partners without clarifying their marital status. Furthermore, 3 respondents experienced divorce because they were expelled by their wives, and 3 others separated by mutual agreement without formal legal procedures. These data indicate that out-of-court divorce practices remain prevalent and are carried out in diverse ways, which ultimately risks creating legal uncertainty and impacting the fulfillment of the rights of those involved, particularly children.

Based on the results of interviews conducted with the perpetrators, regarding the fulfillment of children's rights, there are two categories of fulfillment:

First, the Fulfillment of Children's Rights Is Going Well. Based on interviews conducted with individuals who divorced outside of religious courts, one of them in this case, Ali, Lus's husband continues to provide for his child as a father should, both materially and non-materially. Regular child support is provided in the amount of Rp. 200,000 per week. Lus has only one child. Additionally, communication between Alinurdin and his child remains smooth; every week, he spends dedicated time with his child. Lus stated that she and her husband had separated amicably, without going through a religious court proceeding. In her statement, she noted that the divorce only severed the relationship between her and her husband, not the relationship between the father and the child (informant 1).

In an interview, Yul said that after we divorced, we parted ways amicably but not through a religious court; we have two children, and their father continues to provide child support every month. He provides 300,000 rupiah in child support for his child every week. Their father has moved to Jakarta to work (informant 2).

In an interview, an stated that we did not file for divorce in religious court, citing that the process is very lengthy and, of course, requires a significant amount of money. After our divorce, the children continued to receive child support from their

father every week in the amount of 200,000. We have two children, one of whom lives with me and the other with their father (informant 3).

Second, child support obligations are not being adequately fulfilled. Based on interviews conducted with individuals who divorced outside the religious court, many children were found not to be receiving their full rights after their parents divorced outside the religious court, particularly from the father. A total of 10 individuals the husbands of Marnis, Wirda, Tiara, Zulhijah, Nismawati, Melda, Indah, Yulianti, and Mar failed to fully fulfill their obligations to provide for their children's rights following the divorce. The plaintiffs stated that after the divorce, the husbands provided child support only a few times, in amounts that were far from sufficient to meet the children's needs; some had never provided any support at all. Furthermore, communication with the children was poor, so the children's non-material needs from their fathers were not adequately met.

Wirda admitted that since separating from her husband, she has borne all expenses for their child on her own. Her husband has shown no initiative to pay child support and only sends money when the child has asked repeatedly. Even then, the amount is very small. Furthermore, non-financial support is also minimal due to the lack of communication between the husband and his children following the divorce (informant 4).

In her interview, Tiara stated that her husband no longer provides adequate support for their children following the divorce. He has only ever given money once an amount of Rp. 100,000 just before Eid for his two children. Furthermore, communication between the father and the children is also not well-established (informant 5).

In her interview, Zulhijah said that her husband only provided child support at the very beginning of their divorce. However, a few months later, her ex-husband remarried another woman. Since then, child support has no longer been provided by her husband (Informant 6).

A similar situation occurred with Nismawati's child, where her toddler did not receive enough child support to even buy milk. Consequently, Nis was forced to seek work outside the region. Her toddler was left with his grandparents in the village (informant 7). Melda's child, who lives with her *eteke* (the mother's sister) in the village, does not receive direct affection from either parent following the divorce. Both parents live separately in different areas. Regarding child support, neither the father nor the mother has the awareness to fulfill it, so the child's support is borne by the mother's matrilineal family (informant 8). Indah's child also experienced the same situation. The child was left with the grandmother because the father and mother chose to migrate after the divorce. Child support from the father was irregular due to their poor communication. The child was supported only by the mother, grandfather, and grandmother (informant 9).

Some children receive absolutely no support from their fathers following a divorce. Yulianti explained that since she divorced her husband, her child has not received a single payment of child support from the father. There is not even any communication anymore. She cares for her child, who was born with a disability, all by herself with the help of her mother. She said she doesn't make a big deal out of it because, for her, it's better to focus on caring for and raising the child (informant 10)

Mar's child has experienced the same situation; after his parents separated, he no longer communicates with or receives child support from his father. To provide for her child's needs, Ismiati had to work as a domestic helper outside the region. The child was left with his grandparents because he had to continue attending school. Fortunately, within Ismiati's extended family, they did not simply abandon her and her child. They consistently helped provide for and gave the child who had been left behind after his father's divorce enough love and support (informant 11).

Nismawati's children also did not receive their rights as the father's children after their parents' divorce. Nismawati supported her child on her own through the hard work of gardening and selling goods. The child's father never provided any assistance for the child's school expenses (informant 12).

Based on the above discussion and data, the author concludes that the fulfillment of children's rights following a divorce outside of religious courts is generally not met; out of 13 married couples, only 3 husbands fulfilled their children's rights following a divorce outside of court. They argued that their jobs did not generate excess income and that their earnings were barely enough to cover their own needs.

### **Traditional Leaders' Response to the Fulfillment of Children's Rights Following Divorce Outside Religious Courts**

At present, neither the Mamak nor the KAN can provide guarantees or compel a father to fulfill a child's rights following a divorce outside of religious courts. In the community, the expectation that children's rights will be fulfilled after divorce rests on the parents' own sense of responsibility and awareness. Parents who possess a sense of responsibility and awareness of their obligations will continue to provide the rights that the child is entitled to, even after a divorce has occurred.

Based on these interviews, the fulfillment of children's rights following a divorce in Minangkabau must still be carried out by both parents. Custody of the child falls under the mother's responsibility, as the community follows a matrilineal kinship system. However, the father remains responsible for child support and the costs of raising the child. This is a religious duty in this world and the hereafter that a father cannot escape, even after a divorce. This is clearly explained in the Quran, Surah al-Baqarah 233 (Lismar D. Dt. Marajo, Member of the Nagari Customary Council (KAN)).

In Minangkabau tradition, adult men have two roles: to support and to guide. (Sabirman Dt. Sati, Member of the Nagari Traditional Council (KAN)). A traditional proverb states:

*Kaluak paku kacang balimbiang, buahnya lenggang-lenggangan*  
*Anak dipangku kamanakan dibimbiang, urang kampung dipatenggangan*  
(*Kaluk paku kacang belimbing, buahnya lenggang-lenggangan*)  
(*Anak dipangku kamanakan dibimbing, orang kampung dipertenggangan*)

The proverb above illustrates the significant role of a Minangkabau man in community life. He is obligated to provide for his children with the wealth he earns. This is a religious duty that will never cease. It is a father's responsibility both in this world and the hereafter toward his children. Meanwhile, guidance is the role of a Minangkabau man as a mamak to his nephews and nieces. He is obligated to guide his nephews and nieces using the ancestral wealth of his clan. High-ranking ancestral wealth is property passed down through generations along the maternal line.

Customary law states that this property cannot be bought or sold, but it may be transferred in urgent situations under certain conditions, such as the saying "*rumah gadang katirisan, gadih gadang balum balaki, mayik tabujua di ateh rumah, mambangkek batang tarandam*" (the traditional house is no longer habitable, an unmarried adult woman, a body that has not been buried due to obstacles). Customs are flexible and can evolve; the meaning of the phrase "*gadih gadang balum balaki*" can be expanded to include children whose futures may be at risk due to a lack of financial support from their parents following a divorce. In this case, ancestral property may be used in accordance with a mutual agreement. The maternal uncle is not responsible for the material costs of his sibling's child, but rather bears the responsibility of educating the child according to custom to shape their manners and character (Ardi Dt. Paduko Suanso, Member of the Nagari Customary Council (KAN)).

Divorce has a profound impact on a child's development, especially when children's rights are not adequately fulfilled. This can lead to psychological effects on the child, such as low self-confidence in social interactions and difficulty concentrating on studies (Syamsurilas, Bundo Kanduang). It is extremely difficult to ensure the fulfillment of children's rights following a divorce outside of religious courts, as this relies solely on the awareness and responsibility of individual parents. An understanding of Sharia law and customary law is essential in this context. Therefore, the leadership of the Kerapatan Adat Nagari Tanjung Bonai has made this issue one of the agenda items to be discussed in the upcoming review by the *Unsur Alim Ulama* Council in Nagari Tanjung Bonai, alongside the discussion of informal marriage practices. Currently, the KAN does not have direct authority over issues regarding the fulfillment of children's rights in Tanjung Bonai, as each issue has its own established procedures for resolution. "*Bajanjang naik batanggab turun.*" When a problem arises, it should first be resolved by the immediate family the *mamak, iniak, and datuak*. The KAN does not immediately intervene.

Based on the above explanation, the fulfillment of children's rights following a divorce in Minangkabau remains the responsibility of both parents. Custody of the children falls to the mother, in accordance with the matrilineal kinship system. However, the father remains responsible for child support and the costs of raising the child. This is a religious duty in this world and the hereafter that a father cannot escape, even in the event of a divorce, whether through a religious court or outside of one.

### **Who Is Responsible for Child Support After Divorce Outside the Religious Court?**

Based on the statement from the *niniak mamak* that the child is in their care and the grandchild is under their guidance, this responsibility certainly falls to the *niniak mamak*. Because in the adat, the *niniak mamak* is the father figure within a community; if the couple cannot resolve the issue, then the *niniak mamak* has the right to resolve it (informant 13).

Currently, neither the *mamak* nor the KAN can provide guarantees or compel a father to fulfill the child's rights following a divorce outside of religious court proceedings. In the community, the hope for the fulfillment of a child's rights after divorce rests on the sense of responsibility and awareness within the parents themselves. Parents who possess a sense of responsibility and awareness of their obligations will continue to provide the rights that the child is entitled to, even after a divorce has occurred (informant 14)

Of the 13 fathers who initiated out-of-court divorces, only three demonstrated full awareness and responsibility for fulfilling their children's rights following the divorce. The remaining fathers lacked this awareness, resulting in the children's rights which should have been fulfilled by their parents not being adequately met. The emergence of parental awareness especially among fathers to fulfill their children's rights after a divorce is significantly influenced by their level of religious understanding.

If this understanding is present, the fulfillment of children's rights will certainly proceed smoothly. If other factors hinder the fulfillment of children's rights after divorce such as remarriage following the divorce this religious understanding will guide the parent back to their natural duty as a parent obligated to provide for their children. Or, if the obstacle is an economic factor, parents with a good understanding of religious knowledge will still strive to ensure that the children's rights which are their obligation are properly fulfilled.

Furthermore, children cannot receive full support from the family inheritance, even though the elders maintain that customary law is flexible and subject to change; the meaning of the expression "*gadib godang balum balak?*" can be expanded to include

children whose future may be at risk due to a lack of financial support from their parents following a divorce. In this case, the ancestral property may be used in accordance with a mutual agreement. However, based on the interviews, the ancestral property generally consists of forest land, which requires cultivation and inevitably incurs significant costs; moreover, the existing rice fields can only provide for their daily sustenance.

The *niniak mamak* also cannot provide full financial support for their nieces and nephews, as the *niniak mamak*, in this context, serve only as advisors and provide support to their grandchildren; the responsibility for their basic needs lies with the father, even if he has divorced the mother. If the father fails to provide for his own child, the biological mother automatically becomes the primary provider for the child's well-being.

### **Practices for Ensuring Children's Rights Following Divorce Outside of Court**

Divorce inevitably brings consequences that the divorcing couple must accept and carry out. One of these consequences pertains to the children born of their marriage. This is explicitly stated in several regulations, including Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) state that there are several matters concerning children's rights arising from the dissolution of marriage due to divorce. First, both parents remain obligated to care for and educate their children. Second, the father is responsible for all costs of the child's maintenance and education until the child reaches adulthood or can support themselves. In this regard, the KHI sets the age limit at 21 years. Additionally, the Compilation of Islamic Law (KHI) also states that custody of a child who is not yet of discerning age or under 12 years old is the mother's right. In Minangkabau customary law, which follows a matrilineal kinship system, after a divorce, custody of the child falls to the mother. Within the nuclear family, after a divorce, the child is no longer the responsibility of the maternal relatives as in the extended family system; rather, the father is obligated to provide financial support both before and after the divorce until the child is able to live independently.

Although the divorce was finalized outside of religious court meaning it lacks the legal authority to compel the father to fulfill his obligations regarding his child's rights the child's rights have been adequately fulfilled and realized. This is in line with Article 41(b) of Law No. 1 of 1974 on Marriage, which states that: "The father is responsible for all necessary maintenance and educational expenses for the child; if the father is in fact unable to fulfill this obligation, the court may order him to share in bearing these costs." This is also consistent with Article 156(d) of the Islamic Family Law (KHI), which states: "All costs of custody and child support are the father's responsibility according to his ability, at least until the child reaches adulthood and can support themselves (21 years of age)." Furthermore, in Surah al-Baqarah (2): 233, it is also emphasized that the father's obligation to fulfill the child's right to maintenance is a duty, particularly for the father to the extent of his ability. Even though the marital relationship between husband and wife has ended due to divorce, this does not hinder the relationship between father and child. Their bond will never be severed, no matter what.

According to the author's analysis, the obligation to provide child support following an out-of-court divorce must still be fulfilled by the husband. From the perspective of classical Islamic jurisprudence, a divorce conducted outside of court is considered valid in accordance with its terms and conditions. In the Quran, Surah Al-Baqarah, verse 233, Ibn Kathir's commentary explains: "If a man divorces his wife and has a child with her, and his former wife breastfeeds the child, then as the father, he is obligated to provide maintenance and clothing to his former wife in a manner that is appropriate." Therefore, child support must still be provided because a

husband's responsibility toward his family is an obligation that must be fulfilled. This is because it relates to responsibilities in this world and the hereafter; if the father violates this, he will certainly face the punishment for a major sin.

### **Traditional Leaders' Responses to the Fulfillment of Children's Rights Following Divorce Outside the Religious Court**

In Minangkabau tradition, adult men have two roles: to care for and to guide. (Sabirman Dt. Sati, Member of the Nagari Traditional Council (KAN). A traditional proverb states:

*Kaluak paku kacang balimbiang, buahnya lenggang-lenggangkan*  
*Anak dipangku kamanakan dibimbiang, urang kampung dipatenggangkan*  
 (Kaluk paku kacang belimbing, buahnya lenggang-lenggangkan) (Anak dipangku kamanakan dibimbing, orang kampung dipertenggangkan).

The proverb above illustrates the significant role of a Minangkabau man in community life. He is obligated to provide for his children with the wealth he earns. This is a religious duty that will never cease. It is a father's responsibility both in this world and the hereafter toward his children. Meanwhile, guidance is the role of a Minangkabau man as a "mamak" (uncle) to his nieces and nephews. He is obligated to guide his nephews and nieces with the assistance of his clan's ancestral wealth. High-ranking ancestral wealth is property passed down through generations along the maternal line.

Customary law stipulates that this property cannot be bought or sold, but it may be transferred under urgent circumstances in certain conditions, such as the saying "rumah gadang katirisan, gadih gadang balun balaki, mayik tabujua di ateh rumah, mambangkek batang tarandam" (the grand house is no longer habitable, an unmarried adult woman, a body yet to be buried due to obstacles). Customs are flexible and can change; the meaning of the phrase "gadih gadang balum balaki" can be expanded to include children whose futures may be threatened due to a lack of financial support from their parents following a divorce. In this case, ancestral property may be used in accordance with a mutual agreement. The maternal uncle is not responsible for the material costs of his sibling's child, but rather bears the responsibility of educating the child according to custom to shape their manners and character.

Divorce has a profound impact on a child's development, especially when children's rights are not adequately upheld. This can lead to psychological effects on the child, such as low self-confidence in social interactions and difficulty concentrating on studies. It is extremely difficult to ensure that children's rights are upheld following a divorce outside the religious court system, as this relies solely on the awareness and sense of responsibility of the parents as individuals. An understanding of Sharia law and customary law is essential in this context. Therefore, the leadership of the Kerapatan Adat Nagari Tanjung Bonai has made this issue one of the agenda items to be discussed in the upcoming review by the Unsur Alim Ulama Council in Nagari Tanjung Bonai, alongside the discussion of informal marriages. Currently, the KAN does not have direct authority over issues regarding the fulfillment of children's rights in Tanjung Bonai, as each issue has its own established procedures for resolution. "Bajanjang naik batanggah turun." When a problem arises, it should first be resolved by the immediate family the *mamak*, *niniak*, and *datnak*. The KAN does not immediately intervene.

Based on the above discussion, the author concludes that the emergence of problems in fulfilling children's rights following a divorce outside of religious courts is caused by the lack of legal validity of the divorce itself. While divorce is legally valid under Islamic law, it is not yet recognized under state law, leaving no enforceable mechanism to compel parents particularly the father to fulfill their children's rights after divorce. Additionally, religious, economic, and legal and

customary knowledge significantly influence parents' awareness of their obligations toward their children.

Nevertheless, the father still has the obligation to fulfill his children's rights, particularly regarding child support, until the child is able to live independently. Although, according to customary law, the child's maternal uncle also has the obligation to provide education and guidance to the niece or nephew, regarding child support, the father remains the primary party most responsible, and this responsibility does not cease even if a divorce occurs. This is consistent with what is taught in Islamic law and also in Indonesian positive law. In fact, Wahbah Zuhaili states in his book that a father is obligated to provide for his daughter until she marries, and if she is divorced, the father once again becomes responsible for her maintenance (Yunarti, 2017).

The concept of "*kamanakan dibimbing*" where the grandmother takes care of her grandchild implies that the grandmother truly helps and advises the child, not only spiritually but also ensures their physical needs are met. This is because, in today's world, many grandchildren lack proper manners toward their grandmothers; some even disobey them or become physically aggressive toward them. This is certainly caused by the mothers themselves, who never give advice to their grandchildren and never ask about their well-being. This is because the concept of "grandchildren being guided" has mostly become merely a traditional philosophy without any actual implementation on the part of the mothers themselves.

#### **Who is responsible for child support after a divorce outside the Religious Court?**

Today, society lives in nuclear families where the father's role is more dominant than that of the maternal uncle, especially in economic matters. The maternal uncle only plays a role in matters related to custom. Regarding child support, each family is supported by the father, who serves as the head of the household within a nuclear family. Thus, in the event of a divorce, the wife and children are no longer the responsibility of the matrilineal extended family, as was the case in the traditional kinship system of Minangkabau. Today, following a divorce, the children remain with their mother, and it is the father who is obligated to bear the financial responsibility for his children until they are able to live independently. Regarding financial support, the principle "custom is based on religion, and religion is based on the Book of Allah" must be upheld. The father remains responsible for his children's financial support even after a divorce, as taught in Islamic law.

The state has provided a safeguard: if a father fails to pay child support following an out-of-court divorce, the family caring for the child in this case, the mother may file a child support claim with the religious court, as provided for in Article 34 of Law No. 1 of 1974 on Marriage, Article 49 of Law No. 3 of 2006 on Amendments to Law No. 7 of 1989 on Religious Courts, Explanatory Note No. 37. Article 34(3) of the Marriage Law states: "If the husband or wife neglects their respective obligations, they may file a lawsuit with the Court." Article 49 of Law No. 3 of 2006 states that "Religious courts are tasked with and have the authority to examine, adjudicate, and resolve cases at the first instance involving Muslims in matters of marriage, inheritance, wills ...". In the explanatory note to Article 49(a), it is explained that "marriage" refers to matters regulated by or based on the applicable marriage laws conducted in accordance with Sharia law, one of which, as stated in point seven, is a lawsuit for the neglect of the obligations of the husband and wife.

Providing child support is the father's obligation both before and after a divorce. Therefore, if the father fails to fulfill his responsibility, the child's mother may sue the father by filing a child support claim with the religious court. This claim may be filed without filing for divorce. In cases where the divorce is settled out of court, the marriage is not yet legally dissolved. This means that the husband and wife

are still bound by a marital bond under national law; therefore, the wife may file a child support lawsuit against her husband in the religious court of the husband's domicile as the defendant, as he has failed to fulfill his obligation to provide for the child born of their marriage.

In addition, a father who fails to fulfill his obligations toward his children and family may be subject to Article 9(1) of Law No. 23 of 2004 on the Elimination of Domestic Violence (KDRT), which states that: No person shall neglect a person within their household, even though under the law applicable to them or by virtue of an agreement or contract, they are obligated to provide for the livelihood, care, or support of that person. The child is the father's responsibility. Following a divorce, the father is responsible for all necessary maintenance and educational expenses for the child, as stated in Article 41 of the Marriage Law. If the father violates this provision following a divorce outside of religious court proceedings, he may face a maximum prison sentence of 3 years or a maximum fine of 15 million rupiah.

Indonesian law stipulates that the fulfillment of children's rights must be carried out and ensured by the parties responsible. In the event of a divorce, parents must continue to fulfill their obligations to ensure their children's rights are met. This obligation is outlined in Article 41 of Law No. 1 of 1974 on Marriage and also in Article 105 of the Compilation of Islamic Law (KHI), which states that parents remain obligated to care for and educate their children in the best interests of the child, and that the father is responsible for the costs of maintenance and education required.

Islamic law also explains that it is the parents' obligation to fulfill all the rights of their children. This cannot be altered or nullified under any circumstances. Even if one parent dies, the obligation must be fulfilled by the other parent or the surviving heir. Likewise, in the event that the marital bond is severed due to divorce, parents must still fulfill their obligations regarding their children's rights, particularly the father. A father is obligated to provide for his children, and if he fails to do so, he has disobeyed Allah's command. This obligation to provide for one's children is stated in the Quran, Surah al-Baqarah (2), verse 233.

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا

Meaning: *And it is the father's duty to provide for their support and clothing in a proper manner.*

*No one is burdened beyond their means (QS. Al-Baqarah: 233)*

The phrase بِالْمَعْرُوفِ instructs fathers who have a duty to provide financial support to do so in a manner that is *ma'ruf*. This means that the quality and quantity of the support provided should be in accordance with the customs and traditions for children of the same age in their local area. Therefore, when providing for their children after divorce, parents should not merely provide support haphazardly but also consider whether the support provided is appropriate and meets the children's needs. While this principle is followed by the statement that no one is burdened beyond their capacity, this should not be used as an excuse for someone to become negligent or unjust in providing support.

Many members of the Minangkabau community who have divorced outside the religious courts in the village of Tanjung Bonai have been found to be failing to fulfill their obligations toward their children following the divorce. This clearly contradicts the Qur'an, Surah al-Baqarah, verse 233, and is also inconsistent with Indonesian law, particularly Article 41 of Law No. 1 of 1974 on Marriage, which stipulates that following a divorce, both parents remain obligated to care for and educate their children in the children's best interests, and the father is responsible for the costs of the children's care and education. Furthermore, Article 45 of the Marriage Law also reiterates that parents are obligated to care for and educate their children until the children are able to stand on their own, and this obligation remains

in effect even in the event of a divorce. Furthermore, this is inconsistent with Articles 149 and 156 of the Islamic Family Law (KHI), which state that if a marriage ends due to divorce, the father is responsible for the child's maintenance and support until the child reaches adulthood and is able to care for themselves, up to the age of 21.

Based on the above discussion, the author concludes that a father is obligated to provide financial support for his child until the child reaches the age of 21. In the Quran, Surah Al-Baqarah, verse 233, explicitly outlines the consequences for neglecting the obligation to provide for one's child following a divorce. This responsibility is not merely earthly but extends to the afterlife as well.

Furthermore, grandparents have a duty to consistently counsel their grandchildren and oversee their education, as this is not solely the father's responsibility but also that of the grandparents, as the proverb goes: "A child is held in one's lap; a grandchild is guided." In this context, guidance is not merely words spoken, but also providing some assistance to the grandchildren so their daily needs are met. Furthermore, ancestral property can help the grandchildren with their daily living expenses and educational costs, because if there are no other means available to support the child's livelihood, the ancestral property may be utilized to the best of its ability.

## CONCLUSION

In the practice of ensuring children's rights following out-of-court divorces in the Minangkabau community of Nagari Tanjung Bonai, there are still instances of parents particularly fathers failing to fulfill their obligation to provide child support. Most fathers demonstrate a low level of awareness regarding this responsibility, even after the marriage has ended. This situation indicates that divorce outside the court system not only affects the legal status of the couple but also has serious implications for the well-being of children as vulnerable parties. Local traditional leaders regret the practice of divorce outside religious courts because it has the potential to cause various harms. Nevertheless, they emphasize that the father's obligation to provide for the child must still be fulfilled. This obligation is not merely a formal legal requirement but also a religious duty that cannot be ignored. In reality, the fulfillment of children's rights still depends on the parents' personal awareness, without any legally binding enforcement. Yet, the state has provided legal mechanisms through Law No. 1 of 1974 on Marriage and Law No. 3 of 2006 on Religious Courts to guarantee children's rights. Therefore, the public is encouraged to understand the importance of pursuing divorce through legal channels to ensure that children's rights are protected. In addition, understanding of the Compilation of Islamic Law needs to be improved, and further research is needed to deepen this study.

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