

## Obligations and Responsibilities of Parents of Sexually Disoriented Persons towards Minors as Legal Relations Due to Marriage and Blood Relations

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ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> Parental obligations and responsibilities, Marriage, Sexual disorientation.</p>	<p>In Indonesian positive law, the obligations and responsibilities of parents towards children are regulated in Article 45 of Law No. 1 of 1974 concerning Marriage and Article 77 paragraph 3 of the Compilation of Islamic Law. The obligations and responsibilities of parents with sexual disorientation towards children tend to be unfulfilled because the sexual disorientation behavior threatens the child's growth and development reasonably. This study aims to know and understand the obligations and responsibilities of parents towards minors in the event of divorce associated with Law No. 35 of 2014 concerning Child Protection based on the Marriage Law and IHL and find and formulate legal consequences for parental obligations and responsibilities if parents experience sexual disorientation based on the Marriage Law and KHI. This research was conducted using normative juridical methods with analytical descriptive research specifications. The author relates the problem comprehensively based on relevant laws and regulations. The data collection technique used is a literature study. The results showed that the obligations and responsibilities of parents in the form of maintaining and educating children are an attachment that will not be broken even though the marriage of both parents ends. Sexual disorientation suffered by parents can threaten the child's growth and development naturally, resulting in legal consequences, namely the revocation of parental power. However, it does not necessarily eliminate all obligations and responsibilities as parents.</p>

### INTRODUCTION

Every human being has the right to have a family and continue offspring through legal marriage as contained in Article 28B paragraph (1) of the 1945 Constitution. Article 1 of the Marriage Law defines marriage as an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One True Godhead. Meanwhile, the validity of marriage is contained in Article 2 of the Marriage Law which states: "Marriage is valid if it is carried out according to the laws of each religion and belief. Every marriage shall be recorded in accordance with the prevailing laws and regulations."

The establishment of a sacred covenant between a man and a woman in marriage for a long time then forms a family (Subekti 2003). The consequences arising from the existence of marriage are the emergence of legal relations between husband and wife that include the rights and obligations of husband and wife to uphold the household, be faithful to each other, help each other, and help. In addition, another consequence arises, namely the legal relationship between parents and children where people are obliged to maintain and educate their children as well as possible.

The basic obligations and responsibilities of parents towards children are regulated in the Marriage Law, precisely in Article 45 paragraphs (1) and (2) which explains that parents have an obligation to maintain and educate their children as well as possible even though the marriage between the two parents breaks up. In addition, the obligations of parents are also contained in the IHL which basically states that husband and wife bear the obligation to nurture and nurture their children in physical, spiritual, intellectual, and religious education.

Today the spread of Lesbian, Gay, Bisexual, Transgender (LGBT) organizations is increasingly widespread, including one of them in Indonesia. Based on the results of a Central Intelligence Agency (CIA) survey in 2015, Indonesia ranks 5th with the largest LGBT population after China, India, Europe, and America (Center 2023). Several independent domestic and foreign pollsters state that Indonesia has 3% LGBT population (Hasnah and Alang 2019).

According to the Statistics Indonesia report, the number of divorce cases in Indonesia increased by 53.50% compared to 2020 which reached 291,677 cases to 447,743 cases in 2021. Based on the report, as many as 75.34% of divorces occurred due to divorce lawsuits and the rest occurred due to divorce talaq (Annur 2022). Of these, dozens of them divorced because of sexual disorientation in the form of Lesbian, Gay, Bisexual in couples (Hafni, Syahputra, and Erwinda 2023). Divorce occurs because the party suffering from sexual disorientation or sexual deviance cannot meet the biological needs of the other party, so that his obligations as a wife or husband cannot be carried out.

In addition to causing rifts in the household, sexual disorientation also causes the need for protection for children as early as possible, because basically Article 4 of the Child Protection Law states: "Every child has the right to be able to live, grow, develop, and participate reasonably in accordance with human dignity and dignity, and to be protected from violence and discrimination." It has become a joint obligation and responsibility, both by the State, government, local government, community, especially families and parents to provide protection to children including protection in the fields of life, religion, education, health, social, including protection from deviant behavior such as social disorientation (Haling et al. 2018). Wiener and Breslin state that a person's sexual orientation can be formed partly because it is influenced by sociocultural including culture, family, socioeconomic differences, and religious approaches (Piko and Kopp 2004).

Based on this, it can be seen that sexual disorientation suffered by parents also has the potential to affect children's sexual orientation which is very dangerous for children because it makes children lose the right to live, grow, develop and participate reasonably in accordance with human dignity and dignity as contained in Article 4 of the Child Protection Law. But on the other hand, based on Article 45 of the Marriage Law, parents also still have obligations that will never be erased even after the marriage has ended and still have responsibility for their children as well as possible, because basically responsibility is a causal cry for the consequences of a person's freedom about his actions that are given ethically or morally (Notoatmojo 2010). Based on the background of these problems, the author identifies how the obligations and responsibilities of parents towards minors in the event of divorce are associated with the Child Protection Law based on the Marriage Law and the Compilation of Islamic Law and how the legal consequences on parental obligations and responsibilities if parents experience sexual disorientation based on the Marriage Law and the Compilation of Islamic Law.

## **METHOD**

In this writing, the type of research used is a type of normative legal research. This paper is based on secondary data sources in the form of primary and secondary legal materials. The type of approach used from this paper is a juridical approach, which is an approach that is based on rules and provisions based on legislation. The legal materials used in this writing, namely: Primary legal materials, namely legal materials that have juridically binding force such as the 1945 Constitution, laws and regulations or other regulations that are not codified (Taufani 2018). Primary Law materials used by researchers include; Constitution of the Republic of Indonesia Year 1945 Amendment IV; Law Number 1 of 1974 concerning Marriage; Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; Law Number 39 of 1999 concerning Human Rights. Secondary legal materials, namely materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, namely some opinions and thoughts of experts contained in various books, journals, papers or other literature that have something to do with the title of this paper.

The data collection technique used in this study is a literature study with data collection carried out by reading, recording, and citing several literature, books, scientific journals, mass media, laws and regulations, and other written materials related to research.

## **RESULTS AND DISCUSSION**

### **A. Obligations and Responsibilities of Parents Towards Minors in the Event of Divorce**

Indonesia regulates Marriage Law Number 1 of 1974 concerning Marriage (hereinafter the Marriage Law). Article 1 of the Marriage Law defines marriage as an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One True Godhead. Then,

referring to Article 2 of the Marriage Law, marriage is considered valid if it is carried out according to the laws of each religion and belief and registered according to applicable laws and regulations. In principle, the purpose of marriage is to form a happy and eternal family, as well as to continue offspring (Lestari 2018).

The family law system in force in Indonesia stipulates that the birth of a child from a valid marriage will have legal consequences, namely the emergence of a legal relationship in the form of an engagement between parents and children which includes parental power (Lestari 2018). Article 1233 of the Civil Code divides the source of engagement into two, namely engagement originating from agreements and engagements originating from law. The engagement between parents and children occurs because of the birth of the child, so the engagement that arises is an engagement that originates from the law, because both parents and children are bound by God's will and not purely on the basis of the will of the parties (Lestari 2018). This is similar to the basic concept of responsibility which is an attachment to the consequences of one's freedom about one's actions related to ethics or morals in doing something, in this case marriage.

Based on the description above, the legal relationship between parents and children, which includes parental power over the child's person, is realized through the obligations and responsibilities of parents in fulfilling children's rights. The provisions of parental obligations towards children are regulated in Article 45 of the Marriage Law which states that both parents are obliged to maintain and educate their children as well as possible and the obligation continues to apply until the child marries or can stand alone. Based on the provisions of the article, it can be obtained that the obligation to maintain and educate children is placed by law on parents without the will of each pair of parents concerned.

In addition to incurring obligations as determined by the Marriage Law, parents have also been charged with moral responsibility for the educational process and mental development of their children since the child is born by creating harmonious, peaceful, and conducive family conditions for proper growth for children, while paying attention to the physical and spiritual needs of children so that the child's mental and physical growth can be fulfilled properly (Isnaeni 2016).

A happy, eternal home life is the ideal of every family. However, in fact, family life by uniting two people who have different traits and personalities is certainly not an easy thing to realize a smooth household life without conflict. Sometimes, marriages are forced to fail because of the lack of harmony or frequent disputes due to differences of opinion, disputes that cause the fading of affection and harmony in the household, or other things that can cause a rift in the marriage of the husband and wife itself until the end of the marriage is forced to end or break. If the rift continues until it is impossible for a household to reconcile and all peaceful efforts such as deliberation and mediation are fruitless, then the last resort that can be taken is divorce.

Divorce causes a legal consequence that not only affects the husband and wife, but also the children as stipulated in Article 41 letter a and b of the Marriage Law. In the article in the event of divorce, both mother and father are still obliged to maintain and educate their children solely based on the interests of the child. When a marital relationship between the two parents breaks, either mother or father is still obliged to maintain and educate his children including financing the needs of education and maintenance of children. The statement is reinforced by the provisions in Article 45 paragraph (2) which states that The obligations and responsibilities of parents will not stop even if the marriage between the two parents breaks up.

Then Article 41 of the Marriage Law also explains that the implementation of obligations to children in maintaining and educating after divorce is carried out by both parents. This can be interpreted that the Marriage Law gives both parents the right to take care and the custody is still the responsibility of both parents no matter what (Iksan 2020). The new court will give a decision to determine to whom custody of the child is granted in the event of a dispute over child custody. Thus, in order to ensure welfare for children, judges will regulate the maintenance of children, especially for minors based on the principle of the best interest of children.

The legal consequences of the breakup of marriage due to divorce of children are also regulated in Presidential Instruction No. 1991 concerning the Compilation of Islamic Law (hereinafter KHI) in the provisions of Article 105 Jo. 156 KHI which specifically gives the right of hadhanah (maintenance rights) for children who are not yet mumayyiz or minors to the mother. IHL assigns obligations and responsibilities in nurturing and educating minors to the mother, whereas, the cost of education and maintenance needed by the child remains the responsibility of the father until the child is an adult or can stand alone. When the mother leaves the world, the right of hadhanah will be replaced by women in a straight line up from the mother, father, women in a straight line up from the father, sisters of the child concerned, and women of blood relatives according to the side line of the father.

The provisions of laws and regulations in Indonesia do not regulate the conditions for hadhanah (child custody), but rather look at the responsibilities and obligations of a mother and father towards children both in the marriage bond and after divorce. However, Article 156 letter c of the IHL stipulates that the provision of hadhanah must ensure the benefit and physical and spiritual safety of children. This can be interpreted that granting hadhanah rights for minors to mothers is not an absolute thing.

Furthermore, the author will analyze the obligations and responsibilities of parents towards minors related to the Child Protection Law in the event of separation between children and both or one of their parents. Such separation does not necessarily remove all obligations and responsibilities as parents. A child still has the right to meet directly and have regular personal contact with both parents, get care, maintenance, education, and protection for the growth and development process of both parents in accordance with their abilities, talents and interests, obtain living expenses from both parents and obtain their rights as stated in Article 14 paragraph (2) of the Child Protection Law.

Minors are children who are still in the stage of growth and development. As a bud, potential, and the next generation of young people who are the successors of the nation's struggle ideals, a child must be protected his rights including the right to grow and develop reasonably. Article 4 of the Child Protection Law states that every child has the right to live, grow, develop, and participate reasonably in accordance with human dignity and dignity, and to be protected from violence and discrimination

Children's rights are obligations for parents that must be fulfilled their needs. Therefore, the survival of minors should always be a concern for parents, especially in terms of growing and developing both physically and spiritually. This is because children are still in a dependent state not yet independent, require special treatment both in health, education, nutrition, security, free from fear and worry, and so on (Laurensius Arliman 2016).

The involvement of parents in the child's growth process is expected to be able to meet various children's needs in aspects of health education, peace, and aspects related to daily needs. This is inseparable from the principle of the relationship between parents and children which includes relationships of responsibility, affection relationships, and future relationships, so that children as offspring and guardians of their parents need to be raised and cared for as well as possible.

## **B. Legal Effects on Parental Obligations and Responsibilities If Parents Are Sexually Disoriented**

Man as a creature of God was created in pairs, male and female to defend his habitat through marriage, thus giving birth to offspring. By nature, humans are created with a heterosexual sexual orientation which means that men love women, and vice versa. However, in reality, there are sexual disorders that cause a person to be unable to meet his sexual needs in a reasonable way or commonly known as sexual disorientation.

One form of sexual disorientation that has occurred for quite a long time in the history of human civilization and has become one part of the human sex pattern is homosexual, both gay and lesbian. Sexual disorientation behavior can occur due to several factors, including socio-cultural (such as always watching shows or seeing genderless behavior, men acting as women or vice versa), psychological (such as a person's childhood experience that encourages his sexual orientation as an adult to like the same sex or unpleasant heterosexual experiences), family (such as mistreatment of boys who treated like women because all their siblings are women or vice versa), biological (such as differences in hormones, brain structure, chromosome gathering in the process of forming sexual orientation), and lack of religious, moral, and moral knowledge (Pambudi and Yitawati 2022).

Article 47 of the Marriage Law states that children who have not reached the age of 18 or have never entered into marriage are under the authority of their parents as long as they are not deprived of their power. The power of parents is present not without limits, but to fulfill their obligations and responsibilities towards children in terms of maintaining and educating children as well as possible. Parents as the first teachers of children should model good behavior, because they are role models and role models for children the main factor of success in character education in the family.

Indonesia is a country based on the Almighty God as contained in the provisions of Article 29 paragraph (1) of the 1945 Constitution. Constitutionally, Indonesia does not regulate specifically related to sexual disorientation behavior, but that does not mean sexual disorientation in the form of lesbians or gays is allowed, considering that sexual disorientation behavior is not allowed in the teachings of recognized religions in Indonesia. As a country that adheres to eastern culture and a population whose majority religion is Islam, sexual disorientation is seen as contrary to legal norms or *suslila*. When associated with the intention of *Pancasila*, morals, and ethics in Indonesia that have been rooted in all levels of society, then sexual

disorientation behavior is a revile behavior because this is included in the form of deviation (Pambudi and Yitawati 2022).

Some studies show the impact experienced by children who are under the control of parents with sexual disorientation have a greater presentation of emotional and social problems than children of heterosexual parents, in addition, similar studies have also found that a child who is under the control of parents with sexual disorientation has a smaller likelihood of graduating from school compared to children of couples Heterosexual. This is because a child grows up without the role of parents as it should be and does not feel harmony in the family environment (Fitzgibbons 2016). When there is a divorce caused by sexual disorientation in one spouse, both husband and wife, then there is a dispute regarding child maintenance and one or both parents apply for a child care determination, then the sexual disorientation experienced by the parents will be considered by the judge in determining the imposition of child custody.

Although Article 41 letter a Jo. Article 45 paragraphs (1) and (2) of the Marriage Law essentially states that both parents continue to carry out their obligations in terms of maintaining and educating children even though the marriage breaks up, the sexual disorientation behavior suffered by parents is worried that it will adversely affect the child resulting in children's growth and development being not optimal.

Maintenance of children should be given to parents who are able to carry out their obligations and responsibilities to the best of their ability. If one or both parents neglect their obligations towards children or misbehave, there will be a legal effect, namely the revocation of parental power as stipulated in Article 49 of the Marriage Law. Parental power over a child may be revoked at the request of the other parent, family, child in a straight line upward, and adult siblings, or an authorized official by decision of the Court.

Sexual disorientation behavior suffered by parents is included in the category of bad behavior that threatens the child's growth and development reasonably, so that parents who suffer from sexual disorientation can be revoked their power based on a request for determination of child custody from the Court by one of the other parents. However, referring to Article 49 paragraph (2) it is stated that the revocation of parental power does not abolish their obligation to finance child maintenance costs. This means that, even if the sexually disoriented parent is deprived of power, he is still obliged to pay for the child's maintenance and livelihood costs, such as paying for the child's schooling, proper clothing, or other needs related to the child's interests.

KHI does not recognize the term parental power, but hadhanah includes the maintenance and achievement of something that hurts and damages it, educating physically, spiritually and akahlnya, so that they are able to stand alone to face life and bear responsibility. Article 156 of the IHL stipulates that in the event of divorce, the maintenance of a minor or not yet 12 years old rests with the mother and the father is responsible for paying maintenance costs. If the holder of the hadhanah is found to be unable to guarantee the physical and spiritual safety of the child such as apostasy, behaves dishonorably and/or cannot be trusted, then at the request of the relative concerned the Religious Court can transfer the right of hadhanah to another relative who has the right of hadhanah. In other words, judges can exercise discretion that not always a mother is the holder of hadhanah rights, especially for minors. The concept of transfer of hadhanah rights is similar to the revocation of power as stipulated in the Marriage Law.

Imam Ibn Qayyim an expert on Islamic jurisprudence stated that Allah Almighty will hold parents accountable, before Allah Almighty holds children accountable to their parents, because just as parents have rights over their children, children also have rights over their parents (Yasin 2018). This can be interpreted that even though parents are no longer able to carry out their obligations in nurturing and maintaining children, it does not necessarily remove all their obligations and responsibilities as parents to children, because children still have their rights, this statement is in accordance with the provisions of Article 14 paragraph (2) of the Child Protection Law regarding children's rights in the event of separation from their parents.

Islam has known sexual disorientation since the time of Prophet Lut with the term al-liwath. Sexual disorientation in the form of liwath (homosexuality) is included in the category of committing grave sins, because it damages personality, morals, and religion (Yanggo 2018). The prohibition against same-sex liking is explained in QS. Al-Araf verses 80 and 81 which basically state that when a man vents shahwat (lust) not to a woman, it is transgression. Furthermore, in Q.S Ash-Shuara verses 165 and 166 it is also explained about sexual disorientation acts that are contrary to religious teachings.

Based on the explanation of hadhanah rights according to the KHI and the description of sexual disorientation in the Islamic perspective above, the sexual disorientation behavior experienced by parents can

be classified as dishonorable acts, resulting in aborting the right of hadhanah, because sexual disorientation is an act that deviates from the Islamic religion and is feared to have a bad influence on children's psychology. Maintenance should be limited to prevent children from behaving in the same way as their parents, because children are very vulnerable to becoming victims of sexual disorientation behavior and are easy to deceive. Therefore, in order to ensure the physical and spiritual health of the child, the family can ask the court to transfer the right of hadhanah to other relatives who have the right of hadhanah as well.

The transfer of hadhanah does not eliminate the relationship between the child and both parents. Therefore, parents with sexual disorientation can still carry out other obligations as long as they do not threaten the optimization of children's growth and development psychologically, morally, and spiritually. Obligations that can still be done include the obligation to provide love to visit children, have good relations with children, and obligations in fulfilling other children's rights.

## CONCLUSION

The obligations and responsibilities of parents towards minors in the event of divorce in terms of educating and maintaining children still apply to both parents as contained in the Marriage Law. In the KHI, if there is a divorce, the obligation to maintain a minor or not yet mumayyiz is given to the mother with financing from the father, but this is not absolute because it still has to meet the requirements of the recipient of the hadhanah. The obligations and responsibilities of parents towards minors after divorce must be carried out and fulfilled by prioritizing the best interests of the child, because minors have the right to grow and develop reasonably as stipulated in Article 4 of the Child Protection Law.

Legal consequences of parental obligations and responsibilities if parents experience sexual disorientation, if reviewed based on the provisions of the Marriage Law, parents who experience sexual disorientation can be deprived of their power because they threaten the growth and development of children, but still burdened with the obligation to support the child's livelihood. In IHL parents who experience sexual disorientation can threaten the spiritual and physical safety of children, so that the right of hadhanah or maintenance is transferred to other relatives who are entitled, however, Islamic fiqh stipulates that children still have rights over their parents. When related to the Child Protection Law, parents with sexual disorientation still carry out the obligation to meet in person, have good relations, provide life financing, and carry out other obligations for the benefit of children as long as they do not threaten the child's growth and development reasonably.

The need for guidance to prospective husbands and wives before marriage to provide understanding that marriage is not only carried out according to law, but also concerns human dignity manifested in their responsibilities. This is because at the time of marriage, the power of parents to carry out their obligations is born and parental responsibility to children is born as a form of causal attachment to their actions that are closely related to ethics or morals, so that even if parents do not hold their power, they are still bound to provide maintenance and education costs to their children, and fulfill the rights of other children.

Changes to the minimum age limit for women to carry out marriage in Law Number 16 of 2019 on Marriage are carried out by considering that women have special responsibilities related to biological health related to reproduction, mental health, and social health to produce a quality next generation of the nation. Therefore, it is expected that the government, in this case, the Ministry of Health and / or the Ministry of Women's Empowerment and Child Protection can create educational programs on adolescent reproductive health to improve reproductive health and realize preventive measures from reproductive disorders, one of which is sexual disorientation as early as possible. This program can be carried out by Guidance and Counseling Teachers (BK) who collaborate with Intra-School Student Organizations (OSIS) in the field of physical quality and health through counseling or socialization to students at school.

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