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A legal perspective on child support obligation after divorce: The Vietnamese case

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ABSTRACT

Parents are legally obligated to pay child support; if they do not live with their child Upon divorce. The obligation to support the child following a divorce is a central provision of Viet Nam's 2014 Marriage and Family Act and a significant aspect of family law. It is the responsibility of both parents and the government to safeguard children. However, the 2014 Act on Marriage and Family still needs to improve its provisions regarding child support obligations, such as the absence of a minimum quantity and a starting date. This article investigates the historical periods and regulations governing child support obligations in Viet Nam compared to other nations. This study also evaluates the practical applicability of the current legal provisions and identifies their deficiencies. This study intends to recommend modifications to child support laws that will help protect children's rights following parental divorce.

1. INTRODUCTION

The Act on Marriage and Family in Viet Nam stipulates the obligation to support parents for their child after a divorce. According to the provisions of Article 110 of the 2014 Act, fathers and mothers must support their minor child and adult child who cannot work and has no property to support themselves for a period. The child's alimony obligations will arise in two cases: 1/ When the child does not live with the parents, but the child is a minor; 2/ When the child is over 18 years old but has no working capacity and no property to support himself/herself. Parental support for adult children when the child has no wife, husband, or children or has such relatives but cannot take care of and help him/her (Article 53 of the 2015 Civil Code). Compared with a parent's custody obligation, supporting obligations require parents to provide money, property or even food and drink to maintain their child's life when they are not living together (Hoang, 2017).

Parental custody duty is a fundamental obligation both parents take on their shoulders about their children regardless of whether the parents and child live in the same residence (Thi, 2021). According to Grall (2007), approximately 13.7 million parents in the United States had custody of 21.8 million children under 21 while the other parent lived elsewhere. Over a quarter (26,3 percent) of children under 21 living with one parent while the other lived outside the home. Twenty-four percent (24.6%) of all custodial parents had incomes below the poverty line, compared to 18.2% of those who received at least some child support payments (Grall, 2007).

According to the data on the Court's official website (<https://congbobanan.toaan.gov.vn>), 589.543 of the 1.155.082 court judgments and decisions were about family relations. This shows that judgments about family make up over 51% of all the cases the Court takes on. Considering this, resolving marriage and family issues is integral to how courts do their jobs. Between 2017 and 2023, the Vietnamese Court will make available on its website 336.020 marriage

verdicts out of 589.543 family cases. There are 336.020 accessible cases on divorce, 969 of which have to do with alimony, 51.182 cases on settlement

of custody of children after divorce and identification of parents and children, and 108 cases on cohabitation.

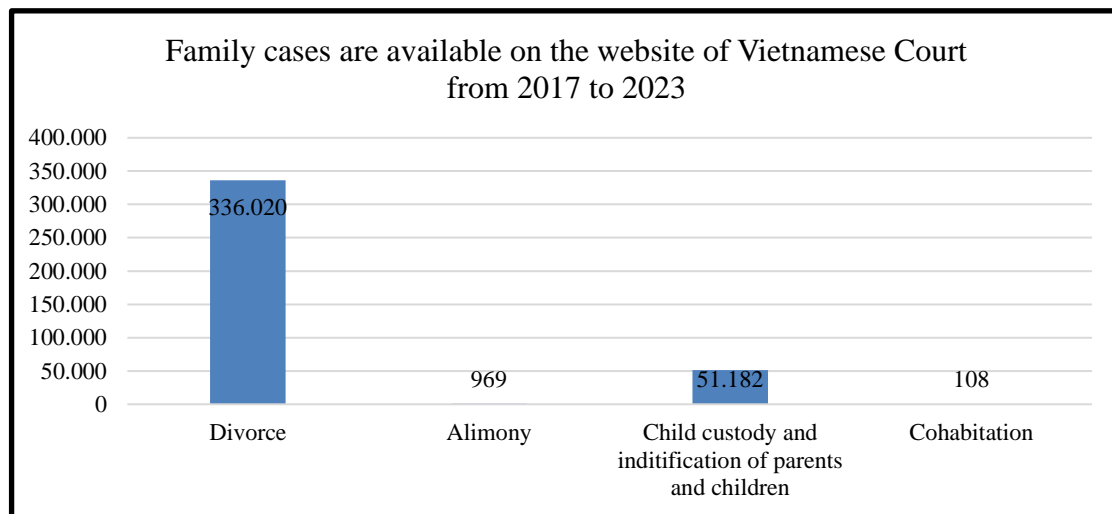


Figure 1. Family cases were published on the website of the Vietnamese Court from 2017 to 2023

(Source: the data on the Court's official website <https://congbobanan.toaan.gov.vn>)

The article will examine and compare the recipients of alimony when parents divorce. The level of assistance is also an issue because it is directly tied to the obligor's interests and has rights in the support relationship. This study will assess the possibility of implementing alimony in practice and the sanctions to ensure obligation performance and compare with other nations, namely Hungary and The US. The paper also highlights the problems and offers changes to Viet Nam's alimony laws.

2. BACKGROUND: VIETNAM'S LEGAL HISTORY OF CHILD SUPPORT

2.1. The feudal legal system of Viet Nam

The Vietnamese feudal court at that time (middle of the 19th century) was heavily influenced by northern culture, as evidenced by the Hong Duc Code (Le dynasty) and the Gia Long Code (Nguyen dynasty). Because of Confucianism's influence on respecting men and disregarding women, as well as recognizing the function and position of men in the family, women's status is degraded. There is no freedom to divorce; only a male may divorce his wife (Linh, 2018, 2019b).

During this period of feudalism in Viet Nam, parents' alimony obligations to their offspring after divorce were minimal. Article 161 of Hong Duc - Thien Chinh Thu contains the sole provision regarding parental responsibilities in childrearing:

‘As human beings, we must respect upbringing, a decent father, a filial son is the first and a father. People's mothers must provide food and clothing, not because the child did not consume breakfast, but because the parents leave in a rage. The Hoang Viet Code was issued in 1815 and was compiled to uphold the monarch's and the court's authority; its primary content is criminal law and punishment. During this period, the family model was patriarchal, emphasizing the role of males, and women's rights were rarely discussed. Parents have fundamental rights and responsibilities in the relationship between family members, such as caring for, educating, deciding on food, and housing, registering the household, and making marriage decisions for their children as proprietors (82 and Article 109) (Linh, 2020a, 2022). In addition, children have the responsibility to practice filial devotion. In a divorce, personal and property ties are severed, and the father becomes the primary caregiver of the children. The law does not address child support during divorce, but only the rights and responsibilities of the parents to provide for their children (Thong, 1968).

The family model adhered to the patriarchal model by emphasizing the role of males, while women's rights were rarely mentioned. In addition, children have the responsibility to practice filial devotion. In a divorce, all personal and property ties are severed, and the children primarily live with their father; the

law does not mandate that they live with their mother. Thus, during the feudal era, the alimony obligations of parents towards their children after divorce were not regulated, but only the nurturing responsibilities. If the husband-and-wife share custody of the children after a divorce, the property will typically be divided. If the child lives with the father, the wife's separate property will be merged with the husband's property to raise the child jointly (Hien, 1960). Feudal law does not recognize or stipulate that an illegitimate child is entitled to financial support from their fathers.

2.2. During the French colonial rule

The French colonialists discharged the first shot at the Son Tra peninsula, the estuary of Da Nang, on September 1, 1858, marking the beginning of their invasion and dominance of the Vietnamese territory. The Nguyen dynasty signed the Treaty of Hue (known as the Treaty of Hardmand) and the Treaty of Patenôtre with France in 1883 and 1884, respectively, ushering in the French colonial period in Viet Nam. At the time, Viet Nam was divided into three regions (Linh, 2019a): the North, the Centre, and the South, each with a different system of government. The Civil Code of Tonkin 1931 governed the North, The Centre Civil Code of 1936 governed the Centre region, and the Southern Region Concise Civil Code of 1883 governed the South (Mau, 1961, 1962, 1971, 1973). There were many changes to the law and the marriage and family law respect for males and women, influencing various aspects of family and social life in the Southern Civil Code. Articles 142 and 143 of the Centre Civil Code stipulate the support obligation between husband and wife upon divorce: 'The divorce trial will also deal with money support for the wife for the care of the children and the wife's property rights.' The support between husband and wife will cease if the wife remarries or has an affair. The law assigns the matter of child-rearing to the mother unless, for the child's sake, the court assigns child support obligations to the father (Hien, 1960). During this period, the law began to regulate the rights of divorced wives and their offspring. When Viet Nam was under French colonial rule, this was a significant development in the law governing child support obligations. Although justice and equality between husband and wife have not yet been established, this can be viewed as the basis for the future construction and development of the law governing the rights of women and children in the event of a divorce (Mau 1973). In Clauses 2 and 3 of Article 81 of the Act on Marriage and Family

2014, provisions determine the husband and wife's agreement on the person directly raising the child and the obligations and rights of each party towards the child. If no agreement can be reached, the court will decide; that child aged seven years or older may reside with their father or mother according to their wishes; children under the age of three years are assigned to their mothers for direct upbringing. The fathers may not acquire custody when the children are under 36 months of age (Giang & Linh, 2022).

2.3. The August Revolution from 1945 to 1975

After the successful August Revolution in 1945, a new era was opened, an era of independence, freedom, and democracy of the Democratic Republic of Viet Nam. Since its inception, the State has focused on building a separate and complete legal system for the country, including the Act on Marriage and Family. Since then, the post-divorce alimony regime has been divided into stages according to the national historical process, corresponding to the development of the Act on Marriage and Family:

2.3.1. 1945 - 1954

The first Constitution of the Democratic Republic of Viet Nam was born in 1946, marking a significant turning point for the constitution of our country. The 1946 Constitution, which recognised equality and fairness between men and women in all aspects, abolished the old regime's draconian, outdated regulations and removed barriers to social progress. That is the foundation and legal basis for promulgating the first Ordinance regulating marriage and family relations, including Ordinance No. 97/Act dated May 22, 1950, and Ordinance No. 159/Act dated November 17, 1950, gradually marked the development of the law on marriage and family. Ordinance 97/Act has 15 articles and stipulates: Removing the old patriarchal right feudalism, adult children get married without parental consent; removing the ban on marriage during the family mourning period and realising equality between men and women in the family. In Ordinance 159/Act, there are provisions to protect the interests of minor children when parent divorce. Article 6 of the Ordinance stipulates: 'The Court will base on the interests of minors to determine their care, upbringing, and upbringing. Divorced spouses must jointly bear the costs of raising children, each depending on their ability. Thus, Ordinance 159/Act has no provisions for child support but is only expressed as 'contributing expenses to raise children'. Although the law at this

stage has partly removed the outdated regulations on marriage and family (Linh, 2021), protecting the legitimate rights of women and the rights of the wife and minor children after the parents' divorce. In addition, there is still a limitation about not mentioning the regulations on protecting rights for children who have become established but have lost their civil act capacity and have no property to support themselves.

2.3.2. 1954 - 1975

In 1954, the resistance war against the French was successful; the country was still divided into two parts- the South and North, with two distinct political regimes. The North rose to build the socialist regime, while the South continued the regional revolution. In building socialism in the North, it has fulfilled its mission with two Ordinances: 97 and Ordinance 159. There was an urgent need to promulgate a new law on marriage and family. 'It is an objective necessity to promote the cause of building socialism in our country' - Official Gazette No. 1, 1960 (Thuy, 2011).

The 1959 Constitution recognized equal rights between men and women in all aspects: economy, politics, culture, society, and family. Promulgate a new law on marriage and family that in response to the pressing needs of society. The 1959 Marriage and Family Law was born with a whole chapter to regulate divorce and the legal consequences of divorce with new regulations different from before (Linh, 2020b). The Act on Marriage and Family 1959 has stated the principle of protecting the interests of children after divorce in Articles 31, 32, and 33 (Hong, 2009; Thanh & Hoa, 2021). Divorced spouses still have all rights and obligations towards their typical children. The assignment of children to someone in the care, rearing and education of minor children must be based on the child's interests in all aspects of the contribution of child-rearing expenses, which is clearly defined. Compared with Ordinance 97/Act and Ordinance 159/Act, the 1959 constitution has been more advanced and complete but still has general features and has yet to go into specific issues of shortcomings in terms of protecting rights of citizens (Dien, 2004; Phuong, 2004).

By 1954, the American empire gradually replaced the French by invading South Viet Nam, conducting a new colonial policy. In the South, the marriage regime was reflected in Family Act 1959, Decree No. 15/64, and Saigon Civil Code 1972. The divorce consequences will be settled based on the parties'

fault; whoever is at fault will support the other, and the person who is not at fault can adopt children under 16. Under Ngo Dinh Diem's regime, the Family Act of 1959 contained provisions for the equality of women and wives, abolishing the multiple-hire system. At this stage, marriage is given great importance and responsibility in marriage because these laws only provide for separation. In contrast, divorce is prescribed as a prohibition in Article 55 of the 1959 Family Act: 'Prohibition of husband-and-wife abandonment and divorce', except in cases decided by the president. Therefore, the consequences of divorce and post-divorce alimony were not mentioned.

After Ngo Dinh Diem's henchman government was overthrown, a new law was born to replace and remove unreasonable provisions of the 1959 Family Act. Decree No. 15/64 was issued on July 23, 1964, regulating the divorce between husband and wife and the consequences after divorce. The termination of a marriage relationship between husband and wife is the divorce; the issue of alimony will be based on the fault factor; who is at fault will have an obligation to support the person who is not at fault. The consequences after divorce in the relationship between parents and children are also regulated based on fault, the person who is not at fault naturally has the right to raise children under 16 years old, and the obligation to support and visitation belongs to the person at fault.

As soon as President Nguyen Van Thieu came to power, he amended and promulgated legal documents to serve his ruling regime. Since then, the 1972 Civil Code was born, replacing Decree No. 15/64. Divorce regulations considered the Civil Code 1975 are based on Decree 15/64. Alimony was outlined in Article 197 of the 1972 Civil Code: 'The court may force the spouse at fault in the divorce to support the other according to his/her strength. This alimony can be increased or decreased at any time, depending on the needs and capabilities of the two parties. The court also sets a certain amount of compensation that one spouse must incur against the other spouse to compensate for the material and emotional damage caused by the divorce. Besides, the issue of child support of parents after divorce is regulated according to their power. According to the principles of the Civil Code of 1972, the child will fall under the control of the person who is not at fault. However, if there is no reason to hinder, the children under 16 years old will be entrusted to the mother's care; if the children reach the age of 16, they will be assigned to the father or mother

according to their wishes. The court may also place one or more children in other 'relatives' custody. Where the parents do not have the right to reduce their defence, they still may visit their children according to the agreement of the two parties or determined by the Court.

2.4. The obligation of parents to support their offspring after divorce in the Vietnamese legal system since 1975

The resistance war against the United States liberated the South and reunified the nation. Viet Nam entered a new phase, the entire nation became wholly independent and unified, and collectively they moved towards constructing socialism. Because of the need for a nationwide legal system to meet the national construction goals, the 1980 Constitution was drafted. Based on the promulgation of the Act on Marriage and Family in 1986, the 1980 Constitution recognized the marriage and family regime's guiding principles.

The fundamental alimony provisions are still based on the Marriage and Family Act of 1959, but the law has been updated to reflect a more progressive perspective. This is also the first time there are regulations regarding protecting the rights of unable-to-work adult children and issues regarding the modification of support amount and duration. The Marriage and Family Act of 1986 has contributed to developing and improving the law, consolidating family and social relationships, and promoting national traditions. However, it confronts many difficulties and deficiencies that cause amendments and additions. In 2000, the seventh session of the 10th National Assembly enacted the 2000 Marriage and Family Act in response to the economy's and society's continuous development, which contributed to the enhancement of the role of the family in society, the development and perfection of the progressive marriage and family regime, and protecting human and citizen rights, particularly the rights and interests of women and children (Chau, 2015; Huong & Kien, 2013)

The nation entered a new phase of international integration and economic development in industrialization and modernization, so many adjustments must be made to marriage and family relationships to satisfy the needs of society. The Marriage and Family Act of 2000 has revealed several flaws and limitations during its thirteen years. The amendment and addendum become an urgent necessity to reflect the actuality of marriage and family relationships. The Act on Marriage and

Family 2014 was officially enacted at the 13th National Assembly's seventh session on April 19, 2014, and went into effect on January 1, 2015. The 2014 Marriage and Family Act comprises 10 chapters and 133 articles, specifically regulating issues such as marriage; husband-wife relationships; dissolution of marriage; parent-child relationships. The Marriage and Family Act of 2014 contains legal provisions regulating the marriage and family regime, standards of conduct for members, and the responsibilities of individuals, organizations, and the government in constructing and merging the marriage and family regime.

3. SUBJECTS IN THE CHILD SUPPORT: CHILD AND PARENT

3.1. Minor Child

According to Clause 1, Article 71 of the 2014 Act on Marriage and Family, both parents have the same rights and responsibilities when it comes to caring for and raising their minor children or adult children who have lost their civil act ability or are not able to work and do not have enough money to take care of themselves. From this, we can conclude that parents are responsible for raising and caring for their children, whether or not they are married. So, when a father and mother get a divorce, they still must take care of and raise their children. The 2015 Civil Code says that a minor is under 18. Children under 18 can not work to pay for themselves and take care of their primary wants. Children under 18 with divorced parents still have the same rights as other children, such as the right to go to school, be cared for, be raised, taught, and live in a healthy atmosphere (Huong & Kien, 2013; Huong, 2019). The parent who did not raise the child directly has to pay for the child's needs and make sure the child has good material and spiritual life. Article 82 of the 2014 Act on Marriage and Family says that parents who do not raise their children themselves must pay for them after a split (Article 110 of the 2014 Act).

In 2010, the child welfare system in the United States received reports of approximately 6 million children who were at risk of abuse or neglect. The causal effect of income, particularly child support, on maltreatment risk has been difficult to establish; numerous factors are associated with child support payment levels, poverty, and child maltreatment risk (Cancian et al., 2013). Bartfeld (2000) provided national estimates of the current and prospective impact of private child support transfers on the economic well-being of custodial and noncustodial families after the dissolution of a marriage. After

divorce, mothers and children fare significantly worse than fathers; however, these disparities would be much more pronounced without private child support (Bartfeld, 2000). Simulations of four existing child support guidelines show that substantial improvements in the economic well-being of mother-custody families are possible within the framework of the current child support system, with minimal effects on the destitution of nonresident fathers. Under all these guidelines, however, families with a custodial mother would continue to fare significantly worse than those with a nonresident father. Lund (2008) addressed the creation of the Report of the Lund Committee, which ultimately led to the establishment of the Child Support Grant (CSG) in post-apartheid South Africa, is documented in *Changing social policy, an essential historical record of one aspect of South Africa's post-apartheid policymaking*. It summarizes the context of policy reform at the time of South Africa's transition to democracy, examines the patterns of poverty and inequality that the first democratically elected government of South Africa had to address, and delves into the welfare sector, first under apartheid and then during the transition to developmental social welfare (Lund, 2008).

In Australia, the child support policy ensures that: (a) children of separated or divorced parents receive adequate financial support ('adequacy'); (b) both parents contribute to the cost of supporting their children, according to their respective capacities to do so ('equity'); and (c) government expenditure is limited to the minimum necessary to achieve these objectives (equity between parents and the State. In the twenty-first century, balancing the competing demands of children, separated mothers, separated fathers, and the State is a formidable challenge because of the increasing complexity and fluidity of families and relationships (Smyth, Oldham, & Aleema, 2022).

3.2. Adult Child

In Viet Nam, the parents do not have to pay child support if the child is an adult with normal mental and physical growth and the parents are no longer together. However, when the child is an adult but cannot work and does not have enough money to support himself, the parent who did not raise the child directly has to pay child support. When a child cannot work because of a physical or mental defect and does not have enough money to support himself, the parent who did not raise the child must pay child

support. This is true even if the parent is responsible for caring for the child but refuses to do so.

University students, individuals with disabilities, and the unemployed are examples of adult children who might need support from their parents. The vulnerability of these groups in today's economy has resulted in a greater reliance on family support, which has prompted many concerns about the legal obligations of their parents. Various nations have adopted diverse legal approaches to this issue. While some jurisdictions have ignored the issue, others have enacted post-majority support laws. In the United States, courts may order post-majority child support for college students and individuals with disabilities, but their approaches are neither uniform nor universal. In various aspects, post-majority support is controversial; therefore, we can learn from other nations, such as Poland, that permit post-majority child support. In Poland, courts have ordered child support for adult children outside of the context of divorce, sometimes even for unemployed adult children who are not students, based on a general obligation for parents to support their unable-to-provide adult children. This approach, which differs from that of the United States, sheds light on the issue of intergenerational assistance (Stepien-Sporek & Ryznar, 2011).

In Hungary, all minors (under 18 years of age) are entitled to alimony under the presumption of necessity established by law. Children under 20 are also entitled to alimony if they are in secondary school. Children of working age (from the age of 18) who continue their education are entitled to alimony regardless of the presumption of need if they need alimony to continue their studies within a reasonable period. However, the current regulation encourages children to complete their secondary education without working alongside it. Thus, they may be entitled to child support until they reach the age of sixteen or even twenty. The child must immediately inform the parents of his intention to continue his studies (Section 4:220(1) of Act V of 2013 on the Hungarian Civil Code). Studies consist of any course or training required to qualify for a career and are conducted continuously in a postgraduate or postgraduate program in higher education or higher professional education. When exceptionally justified, parents may need to provide for the maintenance of a child of 25 or older (Section 4:220(5) of Act V of 2013 on the Hungarian Civil Code). However, there is no maintenance obligation of the parents towards an adult child in further education if the child is not

considered being dependent if he or she fails to fulfil his/her educational and exam obligations through a fault of his or her own, or if the granting of child support would endanger the livelihood of the parents. A child of legal age is also deemed not to be dependent if he/she does not have any relationships with the parent who is obliged to provide maintenance for no legitimate reason (Section 4:220(3) and (4) of Act V of 2013 on the Hungarian Civil Code).

3.3. Father and Mother pay support

The obligation of parents to provide financial support for their offspring following a divorce is based on blood and nurturing ties. The blood relationship is between the child's biological parents and the child, while the nurturing relationship is between the child and his or her adoptive parents. There is no distinction between adopted and natural children regarding parental child support obligations following divorce. When a child is jointly adopted by the adoptive parents during their marriage and registered by the competent state agency by the 2010 Adoption Act, the adoptive parents and the child have full rights and responsibilities. By Articles 82 and 110 of the Act on Marriage and Family, parents who do not directly nurture their children must provide financial support after a divorce.

After a divorce, parents' support obligations to their children cannot be supplanted by other obligations nor transferred to another person. The alimony relationship is a property relationship associated with both parties' identities, so it cannot be transferred to another individual. The support obligations of parents towards their children after a divorce arise under specific conditions; therefore, the parties to the support relationship cannot unilaterally or voluntarily replace the support obligation with any other obligation.

When a parent does not directly rear the child and does not reside with the child at the time of the divorce, the parent will have child support obligations. The parent who does not directly nurture the child or who does not reside with the child is responsible for paying child support. According to Arditti and Keith (1993), the relationships between the frequency of father-child contact, quality of visitation, and child support payment were analysed using survey data from 212 divorced fathers randomly selected from divorce court records. A conceptual model was evaluated using structural equation modelling implemented in

LISREL version 7. Findings show that fathers who see their children frequently are more likely to live nearby, report greater father-child closeness before the divorce, and have joint custody. These results partially support the hypothesis that frequent father-child contact is associated with higher-quality visits and more outstanding child support payments. As expected, fathers who have frequent visitation report a higher quality of visitation and fewer issues during visitation. There is no correlation between visitation and child support payments. Consideration is given to plausible explanations for these findings and policy challenges (Arditti & Keith, 1993).

4. THE AMOUNT OF SUPPORT

The amount of support may be agreed upon between the individual owing support and the person receiving support or his/ her guardian. The non-custodial parent can negotiate the level of financial assistance with the children or the custodial parent. The support recipient's income and ability determine the extent of support. If the parties cannot agree, they may petition the court to resolve the matter. The quantity of support may be changed by mutual agreement between the parties. Currently, no regulation specifies the amount of child support. Hence, the court usually bases it on the income and actual ability of the person with the support obligation and reasonable expenses for raising and caring for children.

As far as the amount of support is concerned, it shall be agreed upon by the person with 'the support obligation and the supported person based on the actual income and ability of the support obligation and the essential needs of the supported person. If they cannot reach an agreement, they may request a court to settle it.' (Article 116 of the Act on Marriage and Family). It is believed that the level of support is not explicitly fixed by law but is made according to an agreement between the obligor and the person receiving support or the latter's guardian (Hien, 2023). When the parties reach the agreement in determining the amount of support, the alimony relationship will take effect. However, there are also numerous cases where the Court must determine the level of support because the parties cannot reach an agreement. This failure to agree usually results from the obligor wanting to support the oblige at a lower rate than the obligor's request or vice versa. The Court usually orders the obligor to provide monthly support to the oblige in a certain amount depending on the obligor's ability to support. However, this

support amount can still be changed later if reasonable (Article 116 (2) of the 2014 Act on Marriage and Family).

Article 6 of the 2022 Court of Justice's draft Resolution governing the settlement of marriage and family disputes states: 'Child support includes expenses for raising and studying children and as agreed by the parties. If the parties cannot agree, the Court shall determine the amount of support to be at least two-thirds of the base wage and not less than 30% of the person with the support obligation's average income for six consecutive months.' Determining the quantum of alimony in the Draft is to generate a uniform court settlement that is more binding on the obligor. There are regulations on the basic wage applied to employees receiving salaries and allowances working in agencies, organizations, and units, according to the Government's Decree 72/2018/ND-CP issued on May 15, 2018. The state budget supports enterprises of the Party, the State, socio-political organizations, and associations at the central, provincial, and municipal levels for operational expenses. According to Decree 38/2019/ND-CP, the base pay for 2022 is 1,490,000 VND/month. Starting July 1, 2023, the salary policy will be revised to VND 1,800,000/month.

Securing a child support obligation will assist in sharing the task of raising the kid with the custodial parent. In the US, one of the main reasons that custodial parents do not get official child support is that the other parent is not required to pay by a court order or agreement. Young, never-married, low-educated moms of color are likelier to have this problem than other groups. In 2008, only 54% of parents who had custody of their children had a deal or court order to get money from the other parent. Parents with understanding orders were likelier to be non-Hispanic white, married or divorced, or have at least a bachelor's degree.

In contrast, only 45% of custodial parents who had never been married, were split, were Black or Hispanic, or had less than a high school education had a child support order or agreement (Harris, 2011). In 2007, approximately 63% of all child support was paid (Grall 2007), but it was not split equally between the children and parents who were supposed to get it. If a custodial parent had never been married, was black, or had a low level of education, they were much less likely to get child support, and if they did, they were less likely to get the total amount due.

Under the general principles of jurisdiction, the court shall have jurisdiction in the defendant's (debtor's) home territory. If the debtor does not have an address in Hungary, his/her place of residence will determine the applicable jurisdiction. When the defendant's residence is unknown or located outside of Hungary, his or her last domicile in Hungary will be considered. Suppose the defendant's employment and residence are not in the same area; In that case, the court will refer the case to the court with jurisdiction over the defendant's place of employment to conduct the hearing and render a judgment if the defendant so requests no later than the first hearing in the case (Section 29 of Act CXXX of 2016 on the Code of Hungarian Civil Procedure).

The maintenance allowance must be paid as a fixed amount determined by the court based on the amount of allowance payable that is annually adjusted. The allowance quantity corresponds to the annual increase in the consumer price index published by the Hungarian Central Statistics Office beginning on January 1 of the following year (Section 4:207 of Act V of 2013 on the Hungarian Civil Code). Viet Nam does not have provisions on changes in the level of support that are implicitly present in the Hungarian Act on alimony. It would be logical for Viet Nam to learn to note that the pension level will automatically change every year in line with the annual consumer price change announced on 1 January by the Hungarian Central Statistical Office. The Court sets the current level of alimony in Viet Nam-based on the minimum wage set by the Government. However, it does not change continuously every year and usually only changes to keep up with rising consumer prices. This progressive regulation ensures that pensioners receive support appropriate to their needs and in line with expected general expenditures. The starting point is 15-25% of the obligor's income, which certain factors may adjust. The court typically awards 20% of the obligor's income, while the guardianship authority sets the child support at 15-30% per month but is always in a fixed amount (Csorna, 1940). When determining the average income of the individual obligated to pay maintenance, the person's total annual income in the year preceding the commencement of maintenance proceedings must be considered (Section 4:218 (4) of Act V of 2013 on the Hungarian Civil Code). Viet Nam does not have a fixed amount of child support compared to the Hungarian law of 15-25%. According to Vietnamese legislators, failing to set a

fixed level of support will create flexibility for the Judge when considering the actual needs of the supported and the supporter's ability on a case-by-case basis. Similarly, according to the Hungarian Civil Code, if a change in the parties' agreement or in the circumstances that formed the basis of the court judgment on the amount of the maintenance allowance would jeopardize a vital legal interest of one of the parties if that party continued to pay maintenance under the same terms, that party may request a change in the amount or the terms of payment. Periodically (monthly, quarterly, annually) in advance, the person obligated to pay maintenance must pay the maintenance allowance to the individual entitled to receive maintenance.

Last, a fair amount of child support must consider the child's basic needs and the obligor's actual income. During the process of getting support, the amount of support can also change. If there is a good reason, the law lets the amount of support change. Both parties can agree upon changes to this amount of support, and if they can not agree, it will be sent to court to be settled. Viet Nam has two forms of support: benefits in kind and cash benefits (support allowances). In the case of maintenance obligations towards minors, the child's father has the right and the obligation to care for his child in a family, raise him and create the conditions for his physical, cognitive, emotional, and moral development in housing, food, and clothing, as well as the child's access to education and health care. The parent who lives with the child in the same home provides for the child's material needs, while the separated parent (or who lives in the same home but does not contribute to the child's maintenance) mainly takes care of the child through alimony payment.

5. SUPPORT TECHNIQUE

The method of alimony can be understood as a means for the parties in the alimony relationship or the court, based on the stipulations of the law, to devise an appropriate solution for performing the obligation. Article 117 of the Marriage and Family Act includes the following provision regarding alimony: 'Support may be provided on a monthly, quarterly, semi-annual, annual, or one-time basis. The parties may alter the support mode or suspend support if the person with the support obligation falls into a difficult economic situation and cannot fulfil the support obligation; if no agreement can be reached, the case will be brought before the court for resolution. There are two types of maintenance: periodic maintenance and one-time maintenance.

5.1. Periodic maintenance

Periodic support is the determination of a fixed period for the obligor to perform the support obligation repeatedly throughout the support period. Periodic alimony is frequently the favored method of application due to its adaptability to most of the obligor's economic circumstances. In addition, periodic support demonstrates the affection, concern, and responsibility of a parent who does not rear their child directly. Periodic support can assist the person with a child support obligation to comprehend the child's essential needs better and adjust accordingly. Periodic support can assist the individual with the support obligation to control the amount of support and prevent it from being spent improperly.

5.2. One-time alimony

Because of its low practicality and the difficulty of calculating the quantity of alimony using the one-time support method, it is rarely used in practice. The advantage of the one-time support method is that it prevents the parent obligated to support the child from violating their child support obligation. In addition, it restricts dispersing assets to avoid fulfilling the child support obligation to ensure the ability to fulfil the obligation expeditiously and effectively. However, completing the one-time support obligation by the person obligated to pay child support does not signify the end of the person's obligations to the child. Besides the obligation to pay alimony, the person who did not directly nurture the child after the divorce must visit, care for, and educate the child by Articles 81 and 82 of the 2014 Act on Marriage and Family.

The one-time support will present many challenges for the Judges when calculating the total amount of alimony and determining the time for calculating the total amount of alimony. The number of years of support until the juvenile becomes an adult can be determined when the person receiving support is a minor. However, if the recipient is an adult child unable to work, it is tough to determine the total amount and the final year of support. Therefore, periodic support is given precedence over one-time support.

6. SUPPORT PERIOD

The support period is the duration of the support obligation, and the specific circumstances of each case determine its length. The support period begins when the person with the support obligation provides support and ends when the support

obligation ends or, in other cases, as prescribed by law. Article 114 of the Civil Code of 2015 contains the following provision regarding time limits: 'Term is a period determined from one time to another.' The 2014 Act on Marriage and Family contains no specific provisions for determining when alimony should begin.

The Court will determine when child support begins based on the date of the parent's divorce. Nonetheless, the determination of the duration of support is neither identical nor absolute. Due to the difference in the object of support, there is a difference in the duration of support in cases where parents have obligations to support their children after a divorce. For minor children, the time limit for the performance of the support obligation is determined by the difference between the adult age and the age at the time performance of the support obligation begins. Regarding an adult child, determining the time limit is not possible because it is impossible to determine the end time at the time of settlement. After all, there is no evidence to corroborate when the adult child has ceased to exist in a condition where they cannot work and have no assets to support themselves.

7. TERMINATION OF THE CHILD SUPPORT OBLIGATION

On the question of when the support obligations between parents and children will end, regarding termination of support, the parent's child support obligation will become terminated in the following cases: first, the supported child is mature and has working capacity; second, the person receiving support has the property to support himself; third, the person receiving support is adopted by another person (Article 118 of the 2014 Act)

Regarding Hungarian law, the maintenance obligation makes direct relatives liable towards family members: 1/ The parent has a support obligation toward the child, and the child has a support obligation toward the parent. If a child eligible for child support does not have a parent who can pay child support, his or her support will be transferred to distant relatives. When a support-eligible individual has no offspring, their support must be borne by more remote descendants. 2/ Minors without immediate relatives obligated to provide support should be supported by their older sibling, provided that the older sibling can meet the support obligation without compromising their ability to support themselves, their spouse or partner, and their direct dependents. 3/Cohabiting

spouses are required to support the dependent minor children of the other spouse (stepchildren) who have been brought into the household with the assent of the supporting spouse. If the stepparents provide support for an extended period, the stepchildren must provide for their dependent stepparents. 5/ Foster children have a support obligation to the person who has cared for them in their home for an extended period without requesting financial compensation and who is not the child's biological, adoptive, or stepmother (foster parents). When a spouse cannot support himself or herself through no fault of his or her own, he or she may request alimony from the other spouse in the event of legal separation or from the ex-spouse in the event of divorce. Regarding legal separation, an ex-spouse who cannot support himself through no negligence may request alimony from the other ex-spouse, provided the relationship lasted at least one year. It resulted in the birth of a child (Section 4:86(1) of Act V of 2013 on the Hungarian Civil Code).

8. MECHANISM TO GUARANTEE THAT PARENTS FULFILL THEIR CHILD SUPPORT OBLIGATIONS AFTER DIVORCE

In Viet Nam, numerous parents avoid their alimony obligations (Viet Nam Department of Justice, 2012), which damages their children's development. As a result, the law has enacted sanctions to protect the legitimate rights and interests of the recipient. Sanctions also show deterrence and education so that individuals with child support obligations understand their responsibilities.

Article 119 of the 2014 Act specifies who can request the performance of support obligations. The persons named in Article 119 of the 2014 Act on Marriage and Family have the right to ask the court to compel a person with a child support obligation to fulfill that obligation if that person fails to do so. When the parent of a person with a support obligation violates the provisions of Point b, Clause 1, Article 57 of Decree 144/2021/ND-CP: 'Refusing or evading the obligation to support and nurture the father or mother; obligations to support and take care of children after a divorce by the provisions of the law,' a fine of VND 5,000,000 to VND 10,000,000 shall be imposed. Besides penalties, violators will be subject to measures to enforce the obligation to contribute to foster care (based on Clause 2 of Article 57 of Decree 144/2021/ND-CP). In addition, Article 186 of the Viet Nam Penal Code 2015 (amended and supplemented 2017) defines the

crime of refusing or evading the support obligation as follows: ‘Whoever should support and the practical ability to provide support to the person for whom he/she has the support obligation as prescribed by law, but refuses or shirks the support obligation, causing the alimony to fall into a dangerous situation for his/her life, health or have been administratively sanctioned for one act specified in this Article but continue to commit them shall be subject to a warning, a fine, or a non-custodial sentence of up to two years or a prison sentence of up to two years (Article 380 of the Penal Code). Therefore, the deliberate failure of a parent to provide for their child may be punished according to the provisions of the law, and the most severe cases may be prosecuted criminally. It is evident that the amount of money prescribed by law, ranging from 5,000,000 VND to 10,000,000 VND for refusing or circumventing the support obligation, needs to be increased compared to the actual amount of alimony in a few genuine cases. Consequently, affecting the applicability of measures to enforce obligations for violations.

9. PROPOSAL TO IMPROVE THE CHILD SUPPORT LAW

9.1. Support agreement and amount of support

The law recognizes the parties' agreement on the amount of alimony following a divorce. The level of support is determined by the recipient's income, the actual ability of the person with the support obligation, and the recipient's essential requirements. Most cases of post-divorce alimony have not adequately provided for children's nutrition, education, and medical care (Thuy, 2022). This circumstance results from the person's subjective perspective on the support obligation.

Article 116 of the 2014 Act on Marriage and Family states: ‘The level of support shall be agreed upon by the person with the support obligation and the supported person or his/her guardian based on the income and actual ability of the person with the support obligation.’ the person with the obligation to pay support and the essential needs of the individual receiving support; if no agreement can be reached, ask the court to decide. Establishing the criterion for determining the level of support is still vague, needs more clarity, and needs more consensus. In practice, the court will set the quantity of support far below the supporter's basic needs. Each child will have unique needs at different times, distinct from those of other children. Article 3, clause 20 of the 2014 Act on Marriage and Family

states: ‘Essential needs are the normal daily needs for food, clothing, shelter, study, medical examination and treatment, and the need for childbirth, as well as other common activities indispensable to the life of each individual and family.’ In practice, however, many courts set a much lower level of support than the supporter's essential need because such support is deemed appropriate when justified. Based on the actual income and ability of the person with the support obligation. Child support after the divorce is a type of obligatory obligation that affirms the responsibility of parents for their children after divorce, not the act of providing a few monthly snacks (Hong, 2009). Suppose the level of support must be based on the actual income and ability of the person with the support obligation. In that case, the excess money is used to fulfill the alimony obligation after calculating and deducting the necessary expenses to meet the person's basic needs.

In many instances, performing alimony obligations is not proportional to the obliger's income. Numerous instances exist of organizations exploiting the divide to reduce their capacity to provide low-level support. To illustrate this shortcoming, the following examples are provided:

Example: Child support judgment 118/2020/HNG-ST, dated March 9, 2020 (FDNV Law Firm, 2023), from the People's Court of Chau Thanh District, Tien Giang Province. The court granted the wife and husband a divorce; they have a 5-year-old child together. When the divorce was completed, the wife had custody of the children and had not requested alimony. Following this, the mother asked the father to support the child at a rate of 2,000,000 VND per month until the child reached the age of eighteen. However, his father objected because of his difficult circumstances: he has a monthly income of approximately 7,000,000 VND (his basic salary is 5,635,000 VND) and is raising a young child (29 months) with his wife. Therefore, the father promises to pay between 500,000 and 600,000 VND monthly. The court determined that the father is presently the primary family breadwinner and raises the parents and children. At the ex-wife's request, the husband cannot pay child support at a rate of 2,000,000 VND/month, so the Court issued an order compelling the husband to pay child support at a rate of 1,500 000 VND/month from the time the judgment becomes legally binding until the child turns 18 years old.

The decision shows that the level of support determined by the court needs to adequately meet the essential requirements of the supported individual. The child is only 5 years old, which is still a very tender age and requires substantial supplementation in food, clothing, study, medical examination, treatment, and shopping expenses such as milk, toys, cooking utensils and educational instruments. All expenses must be significantly more significant than the quantity of child support that the ex-wife requests the father to pay.

The level of support that the mother offers to rear her child, 2,000,000 VND per month, is perfectly reasonable in the current Vietnamese economic market; however, it exceeds the father's actual ability (Ronald, 1998). Since then, the Court has determined that the amount of child support the father must pay until his child turns 18 is 1,500,000 VND per month, which is unreasonable. The Court determines the amount of child support based solely on the income, the actual ability of the person with the support obligation, and the income ability of the person directly raising the child, without considering the fundamental needs of the person receiving support.

If, from a legal standpoint, the Court has only considered the income and actual ability of the person obligated to pay support but has yet to consider the essential needs of the person receiving support, then the Court should reconsider its decision. This is common in modern practice, which significantly and directly impacts the alimony's benefit. In addition, there are many instances in which alimony is only maintained at a fixed level of support. Even though the economy is expanding, prices are rising rapidly, the supported individuals are growing, and their basic requirements are changing. However, given that the income and actual ability of the person with the support obligation have not increased, the level of support cannot continue to meet the supporter's essential requirements. Alternatively, if it is not reasonable to determine the level of support based on the essential needs of the person receiving the support, a level of support that is too high, beyond the ability of the person with the support obligation, may cause involuntary support, the avoidance of support obligations, and a lack of persuasion for the parties involved in the support relationship.

Consequently, the alimony agreement and the setting issue must be revised in contemporary practice. In some cases, the court's determination of

child support amounts needs to be more convincing to both parties, those obligated to pay and those who receive support. Many courts determine the level of support based solely on the income and actual ability of the person with the support obligation and the person directly raising the child without considering the family's essential requirements. The legislators have placed the basis of income and the actual ability of the individual with the obligation to support ahead of the essential needs of the person receiving support. Therefore, a specific and clear regulation is required to provide adequate support. Only then will the Court's final decision fully persuade the litigants and ensure the law can be applied.

It is appropriate that the Draft Resolution of the Vietnamese Court establishes the amount of alimony as a percentage of the payor's income or uses the minimum wage as a basis for determining the amount of support. Article 6 of the 2022 Court of Justice's draft Resolution governing the settlement of marriage and family should be approved. This article stipulates, 'Child support includes expenses for raising and studying children and as agreed by the parties. If the parties cannot reach an agreement, the Court shall determine the amount of support to be at least two-thirds of the base wage and not less than 30% of the person with the support obligation's average income for six consecutive months.' When there is a change in the salary level, which the judgment enforcement agency implements at each instance of judgment execution, it is possible to protect the interests of the alimony recipient and avoid disadvantages for the person who is directly raising the child.

10. TIME TO START PROVIDING SUPPORT

The time of commencing support is when the parent who cannot raise the child directly and has a child support obligation begins to fulfill that obligation. Article 20 of Decree 70/2001/ND-CP previously stated: 'The time of performance of the support obligation is determined by the person with the support obligation and the person receiving support.' agreed-upon alimony if no agreement can be reached, the time will begin on the date of the court's judgment or decision. Article 8 of the Draft Resolution 2022, entitled 'Guidelines on some issues relating to the settlement of marriage and family disputes', contains the following provisions regarding the efficacy of child support: The child support points must adhere to the agreement between the parties. If the parties cannot settle, the

duration of child support will begin when the court issues its judgment or decision.

From the above two legal documents, in the legislator's opinion, the period for implementing support is agreed upon by the parties, upholding the parties' freedom of agreement. However, if the parties cannot agree, these two legal documents provide two distinct calculation methods. Legally, the 2014 Marriage and Family Act lacks explicit guidance on this issue; Decree 70/2001/ND-CP has expired; The draft Resolution in 2022 titled 'Guiding some issues on settlement of marriage and family disputes' is merely a draft and has not yet been approved. Since then, family law has not provided a general premise for determining the duration of support in individual cases.

Therefore, the subjective wills of the Judges will cause consistent decisions regarding the timing of implementing support in the courts, causing consistency in determining the duration of local support. There are many opinions regarding the time of support, with the Court stating that the time of starting support is the time when the Court's judgment or decision becomes effective, that time will be counted from sentencing, or that the time to perform the support obligation is counted from the time when the person with the support obligation does not live with the child.

Based on the preceding analysis, the regulation on the time of starting to perform the support obligation in the Draft Resolution 2022 is inapplicable because if the time of performing the support obligation is calculated: From the date the Court issues the judgment or decision, it will no longer receive the supporter's benefits for the period preceding that date. For instance, in a case where the parents were separated for an extended period before the divorce, the person with the support obligation from that date did not live with the child and did not directly provide support, childcare, and education. Suppose the support obligation is calculated from when the court issues the judgment; In that case, the decision will affect the rights and interests of the person obligated to support because, during the period of parental separation, the child cannot receive any benefits from the person obligated to support.

In addition, Article 110 of the 2014 Act on Marriage and Family states: 'Fathers and mothers are obligated to support their minor children and adult children who are unable to work and have no property to support themselves if they do not reside with the child or if they reside with the child but

violate the obligation to raise the child.' According to the 2014 Act on Marriage and Family, support obligations are imposed on people who do not reside with their children or who do live with their children but violate their maintenance obligations.

From this, the 2022 proposed Resolution conflict with Article 110 of the Marriage and Family Act of 2014, which states that the date the court issues a support order determines when the support obligation must be fulfilled. Currently, the 2014 Act on Marriage and Family needs a specific reference document, which needs a basis to determine the specific time to perform the support obligation, resulting in consistency regarding determining the time of support in different regions of Viet Nam. This inadequacy, which may affect the supported individual's benefits, has yet to be completely guaranteed.

In the Draft Resolution 2022, titled 'Guidelines for some issues in resolving marriage and family disputes', a provision addresses the inadequacies regarding the time to perform the support obligation. If the parties cannot reach an agreement, the time will begin to run when the court issues its judgment or decision. This shows that this Draft Resolution 2022 is more recent than Decree 70/2001/ND-CP, which provided a basis for the Courts to concur on determining the beginning date. However, how the initiation of child support obligations is determined is still unreasonable and cannot completely protect the child support rights of divorced parents' children.

According to the terms of the Draft Resolution 2022 settlements for some issues of resolving marriage and family disputes, 'the date of the court's judgment or decision shall be the starting point for calculating the time to begin child support when the parties cannot reach an agreement'. It might not be reasonable to apply this provision in practice to specific cases. To ensure that the supportee's benefits are not disrupted, the time to fulfil the child support obligation should begin counting from the date the person with the obligation no longer lives with the child. To protect the child's best interests, the Draft of Resolution 2022 should assess and record the time to fulfil the child support obligation from when the person with the obligation no longer lives with the child.

11. CONCLUSION

Regarding the alimony obligations of parents to their children after a divorce, the regulations still

need to be revised, resulting in inefficiency and impracticability. In addition, it serves as the premise for assessing the status of cases involving parents' post-divorce child support obligations. On this basis, the article proposes improvements to the alimony law regarding the quantity of alimony and the starting date to improve the practicability of applying the law. The study has highlighted the

inadequacies in applying legal provisions regarding parents' child support obligations, which impact the legitimate rights and interests of the parties involved. In the unfortunate case of divorced parents, the exclusive rights of children will be protected by the court's application of the correct adjudication standards and strict enforcement of judgments.

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