



LEGAL REVIEW OF THE PROTECTION OF CHILDREN'S RIGHTS IN TERMS OF MAINTENANCE RIGHTS AS A RESULT OF DIVORCE BASED ON THE VALUES OF JUSTICE A STUDY OF DECISIONS IN THE TANJUNG BALAI RELIGIOUS COURT

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15	Divorce not only affects the relationship between husband and wife, but also has serious consequences for children, especially in terms of custody and support. In the Indonesian legal system, child maintenance rights after divorce are regulated in Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019 and Law Number 35 of 2014 concerning Child Protection. The main principle in determining custody rights is the best interest of the child, as stated in national and international law. In Islamic law, hadhanah is generally given to the mother, especially for children who are not yet mumayyiz. This study aims to analyze legal protection of children's rights in post-divorce maintenance through a case study of the Tanjung Balai Religious Court's decision. The results of the study indicate that there are challenges in the implementation of court decisions, especially in the execution of custody rights and the fulfillment of child support. In some cases, court decisions are not followed by an effective execution mechanism, causing children's rights not to be fully fulfilled. Therefore, a clearer legal reconstruction is needed regarding post-divorce child care, including strengthening regulations regarding child support and the execution of court decisions. In addition, the shared parenting approach can be an alternative in maintaining children's welfare while still involving both parents in their care.
Keywords: <i>Child Custody, Divorce, Hadhanah, Best Interests of the Child</i>	

I. INTRODUCTION

Divorce not only breaks the bond of marriage between husband and wife but also has significant consequences for the structure and well-being of the family, especially the children. In Indonesia, the issue of child custody rights after divorce raises significant legal and moral complexities, requiring fair and effective handling by the justice system. The related legal regulations have been regulated in Law No. 1 of 1974 concerning Marriage which has been amended by Law No. 16 of 2019 and Law No. 35 of 2014 concerning Child Protection, which states that child custody must always be based on the best interests of the child.(Fitriani 2012)

According to the Child Protection Law, protection for neglected children is a must, considering the condition of children who experience vulnerability due to their parents' divorce. This is important because divorce often results in instability in fulfilling children's basic needs, including housing, education, and emotional affection.

In the context of Islamic law, which also influences most religious court decisions in Indonesia, child custody after divorce tends to be

the mother's right, as emphasized in various articles in the Compilation of Islamic Law. However, disputes often arise when one or both parents fail to fulfill this obligation, or when there is a dispute over who should have custody of the child.(Sartika et al., nd)The Tanjung Balai Religious Court, like other religious courts in Indonesia, is tasked with resolving these disputes by deciding based on applicable law and the principles of justice, often having to make legal discoveries to balance positive law with the values of justice that exist in society.

However, there is often a mismatch between court decisions and social realities and children's needs, indicating inadequacies in the existing legal system or its application. For example, several cases show that even though mothers are legally given custody, fathers who are not given custody often fail to provide sufficient support for the child's maintenance, leading to further suffering for the child. On the other hand, the execution of court decisions on child support and maintenance is often ineffective, leaving many decisions without being properly implemented.

The Tanjung Balai Religious Court and other related judicial institutions face the challenge of

not only deciding based on existing laws but also ensuring that the decisions can be implemented in a way that truly protects children's rights and secures their welfare after parental divorce. This requires a more dynamic and responsive approach to changing social conditions and children's needs.(Syarief 2014)

This study aims to review the legal protection of children's rights in terms of maintenance rights as a result of divorce based on justice values, with a case study of decisions at the Tanjung Balai Religious Court. The focus of this study is to identify how the law is applied in divorce cases, how court decisions are implemented, and to what extent the decisions succeed in protecting the best interests of children. Through this analysis, it is hoped that it can provide recommendations for improvements in handling divorce cases that are more effective and fair, especially related to child maintenance and protection.

Formulation of the problem

1. What is the legal status of children born in a marriage and how are their rights affected by parental divorce?
2. What is the decision of the Tanjung Balai Religious Court regarding child maintenance due to divorce and how is the decision implemented in practice?

By understanding this context, this study hopes to produce insights that can assist in the reform of existing laws and judicial practices, so as to better support the fulfillment of children's rights and the application of the values of justice in divorce cases.

II. RESEARCH METHODS

The research method used in this study is normative legal research, which focuses on the analysis of legal norms contained in laws and regulations, legal literature, and jurisprudence. This study combines primary data collected through interviews and observations, as well as secondary data obtained from literature studies including books, journals, and online sources. The collected data is analyzed qualitatively to answer the formulation of the research problem, by utilizing primary legal materials such as the 1945 Constitution and various laws related to Child Protection, as well as supporting secondary and tertiary legal materials.

III. RESULTS AND DISCUSSION

A. The Legal Status of Children Born in a Marriage and How Their Rights Are Affected by Parental Divorce

The principle of the best interests of the child is the main foundation in family law. Islam and positive law in Indonesia both recognize that children must be protected from all forms of injustice, including the negative impacts of parental divorce.(Iskandar and Nugroho 2024)

In the Qur'an, Allah SWT says in QS. An-Nisa: 9 that parents are obliged to maintain the welfare of their children, both in terms of physical, psychological, and economic aspects. This principle is reinforced in positive law through the UN Convention on the Rights of the Child (UNCRC 1989) which has been ratified by Indonesia through Presidential Decree Number 36 of 1990. This convention affirms children's rights in various aspects, including the principle of non-discrimination (Article 2), the best interests of the child (Article 3), the right to life and development (Article 6), and respect for the child's opinion (Article 12).

In the national context, this principle was then adopted in Law Number 23 of 2002 concerning Child Protection which has been amended by Law Number 35 of 2014 and Law Number 17 of 2016. This law requires parents and the state to ensure that children's rights are still fulfilled even if their parents divorce.

According to Article 42 of Law Number 1 of 1974 concerning Marriage, a legitimate child is a child born in or as a result of a legitimate marriage. Meanwhile, Article 99 of the Compilation of Islamic Law (KHI) also states that a legitimate child is a child born in a legitimate marriage or the result of a legitimate fertilization of a husband and wife even though outside the mother's womb (for example, a test tube baby).(Cape 2023)

Children born in a legitimate marriage have full civil rights to their parents, including the right to maintenance, inheritance rights, custody rights, and other legal protection. Islamic law stipulates that legitimate children have a blood relationship with their father and mother, so they are entitled to protection and care until adulthood.

However, this status can change when there is a divorce between the two parents. In this case, the law has special provisions regarding custody (hadhanah), maintenance, and the relationship between the child and both parents after the divorce.

Divorce has a significant impact on children's rights, especially in three main aspects: custody, support, and the child's legal identity.

a. Child Custody (Hadhanah) in Divorce Cases

Child custody after divorce is a major issue in family law. In Article 41 of the Marriage Law, it is stated that as a result of divorce, both father and mother are still obliged to care for and educate their children based on the best interests of the child. However, in practice, custody is often given to the mother, especially if the child is under 12 years of age (the *mumayyiz* period), as confirmed in Article 105 of the KHI. (Suprayogi 2023)

However, if the mother is not considered capable of providing good care—for example if she changes her religion, commits violence against the child, or has behavior that is detrimental to the child—custody can be transferred to the father or the closest family member. The court has the authority to determine who is more deserving of custody based on the child's best interests.

b. Post-Divorce Child Support Rights

In Article 41 letter c of the Marriage Law, it is stated that even though child custody is given to one party, the other party is still obliged to provide maintenance. This obligation is also emphasized in Article 156 letter f of the KHI, which states that the father remains responsible for the maintenance of his child, including education and welfare costs.

If the father is negligent in providing maintenance, the mother or guardian can file a lawsuit in court to request a decision regarding the obligation to provide maintenance. Some court decisions even require the father to provide financial security for the child being cared for by the mother, to ensure that the child's living needs are met.

c. Children's Identity and Lineage Rights After Divorce

Divorce does not remove a child's legal status as a legitimate child. Based on Article 42 of the Marriage Law, children still have a civil relationship with both of their

parents, including in terms of name, citizenship, and inheritance rights. However, in practice, divorce can have an impact on children's access to certain rights, especially in cases where the father is reluctant to acknowledge the child or refuses to provide financial support.

In Islamic law, a child still has a blood relationship with his father, unless there is evidence that the child is not the result of a legitimate husband-wife relationship. Article 100 of the KHI states that a child born from a legitimate marriage still has inheritance rights from his father, even though his parents have divorced. On the other hand, in the case of an illegitimate child, the blood relationship is only recognized with the mother, unless there is recognition from the biological father.

Positive law in Indonesia provides special protection for children whose parents are divorced. Law Number 23 of 2002 concerning Child Protection, as amended by Law Number 35 of 2014, regulates several basic rights of children that must still be fulfilled even though their parents are divorced, including:

1. Right to life (Article 4): Children have the right to stay alive and receive adequate protection from the state, parents and society.
2. Rights to religion and expression (Article 6): Children have the freedom to choose and practice their religion and to voice their opinions.
3. The right to welfare and education (Article 12): Children have the right to receive adequate education and must not become victims of economic exploitation.
4. Right to care and protection from violence (Articles 13-15): Children have the right to receive good care and protection from all forms of violence and exploitation.
5. Right to justice (Article 16): Children have the right to receive fair treatment in every aspect of their lives.

In addition, religious courts or district courts have an important role in ensuring that every divorce decision takes into account the rights of children and does not ignore the principle of the child's best interests.

The legal status of children born in a legal marriage remains intact even if their parents divorce. Children still have their rights that must be fulfilled by both parents, including custody

rights, maintenance rights, and inheritance rights.(Tanjung and Tanjung 2022)

Divorce can present challenges in fulfilling children's rights, especially in terms of parenting and financial well-being. Therefore, it is important for the law to ensure that the best interests of the child are the primary consideration in any divorce decision. The state also has a responsibility to enforce the protection of children's rights, as stipulated in various applicable laws and regulations.

With clear regulations and consistent law enforcement, children whose parents are divorced can still grow up in a safe environment and receive their full rights.

B. Decision of the Tanjung Balai Religious Court Regarding Child Maintenance Due to Divorce and How the Decision is Implemented in Practice

In the Indonesian legal system, child custody rights after divorce are regulated in various laws and regulations, such as Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and various Supreme Court decisions that serve as guidelines for Religious Courts. Custody rights or hadhanah are rights and obligations that must be carried out by parents towards their children for the best interests of the child.(Suprayogi 2023)

Article 41 of the Marriage Law states that even if a marriage ends, both the father and mother still have the obligation to care for and educate their children based on the interests of the child. Meanwhile, Article 105 of the KHI emphasizes that the care of a child who is not yet mumayyiz or under the age of 12 is the right of the mother, while a child who has reached the age of mumayyiz can choose who he wants to care for. The cost of caring for the child is the responsibility of the father, unless the father is unable to, then the mother can also bear it.

The Religious Court has the authority to determine custody rights in divorce cases, especially if there is a dispute between the two parents. In practice, if there is no dispute, child custody often falls to the mother automatically. However, in some cases, the court may consider other factors, such as the financial condition, morals, and psychological readiness of the parents in raising the child.(Laraszaty, Hasibuan, and Purba 2022)

The three decisions of the Tanjung Balai Religious Court analyzed in this study provide an overview of how the court decides on child

custody rights and their execution in divorce cases.

1. Decision Number 15/Pdt.G/2024/PA.Tba
In this case, the court granted custody of the child to the mother (Respondent) while still granting the father access rights to meet his child. In addition, the father is required to pay child support of Rp750,000 per month, which increases by 10% every year, as well as pay iddah, kiswah, maskan, and mut'ah support.
2. Decision Number 139/Pdt.G/2024/PA.Tba
In this case, a divorce was filed due to an unresolvable domestic conflict. The court granted the husband's request to issue a divorce, and determined the child's custody rights to the mother. However, the court also regulated the father's access rights to the child, and determined the maintenance obligations that must be given by the father to the mother for the child's needs.
3. Decision Number 197/Pdt.G/2023/PA.Tba
This case is related to a divorce lawsuit filed by a wife because her husband did not provide maintenance and often committed verbal violence. The court granted the divorce lawsuit, determined child custody to the mother, and determined the amount of child maintenance that the father must provide each month with a 10% increase per year.

From the analysis of these three decisions, it was found that in cases of divorce, the court generally determines the obligation to provide child support to the father without having to be asked by the wife.(Risawati et al. 2022)However, in a divorce lawsuit, the court will only determine child support if the wife files the lawsuit. In addition, in a divorce by talak, the verdict often does not automatically include hadhanah rights, so the ex-wife must file a separate application to obtain child custody rights.

Legal provisions on child custody in Indonesian positive law need to be reconstructed to be fairer and more in line with the needs of society. Some aspects that need to be revised include:

1. Improvement of Regulations Regarding HadhanahArticle 105 of the KHI needs to be clarified regarding the conditions under which a mother or father can lose custody of a child. In addition, the concept of joint custody also needs to be developed to provide balance in fulfilling children's rights after divorce.

2. **Strengthening Regulations Regarding Child Support**Currently, there is no definite standard regarding the amount of child support that must be provided by the father. Therefore, clearer regulations are needed regarding the method of calculating child support based on the minimum standard of living, the father's income, and the increasing needs of the child.
3. **Improvement of Court Decision Execution Mechanism**The execution of decisions regarding child custody still faces many obstacles, especially because there are no specific regulations in the HIR or R.Bg that regulate the execution of children. Therefore, it is necessary to create a Supreme Court regulation or Supreme Court Circular (SEMA) that specifically regulates the mechanism for executing hadhanah rights.

The implementation of child custody decisions after divorce often encounters obstacles, especially in cases where one party is unwilling to implement the decision voluntarily.(Saladin 2017)According to Sudikno Mertokusumo, execution is the realization of the obligation of the losing party in a case to fulfill the contents of the court's decision. In the context of child maintenance, execution can be carried out if the party given the obligation does not carry out the court's decision.

The implementation of child custody rights can be carried out in several stages, namely:

1. The hadhanah decision has permanent legal force.
2. The losing party is unwilling to hand over the child voluntarily.
3. The winning party submits a request for execution to the court.
4. The court issues a warning to the losing party through an *aanmaning* hearing.
5. If the losing party still does not want to carry out the decision, the court will issue an execution order.
6. The execution was carried out by involving security forces, mediators, and psychologists so as not to cause trauma to the child.

However, in practice, the execution of child custody rights often encounters obstacles, such as resistance from the losing party, the child's unpreparedness to be separated from one of the parents, or the child's whereabouts are unknown. Therefore, the execution mechanism must

consider the humanitarian and psychological aspects of the child.

In addition, the concept of shared parenting can be a solution for divorced parents to remain involved in their children's lives without having to fight over custody. In this system, both parents still have responsibility for the child even though they have separated.

Child custody after divorce is a very important aspect in Islamic family law and positive Indonesian law. Based on the provisions of the Marriage Law and the KHI, custody of minor children is given to the mother, while the cost of maintaining the child is the responsibility of the father. However, in practice, there is often debate about custody, especially in cases of divorce lawsuits where child support is not automatically included in the verdict.

The execution of child custody rights also still faces legal and social obstacles, especially in cases where the losing party refuses to hand over the child to the party entitled to care for it. Therefore, legal reconstruction is needed in the form of a revision of fairer regulations and policies and a more effective execution mechanism. One solution that can be applied is the concept of shared parenting, where both parents remain involved in child care after divorce to maintain the child's welfare and psychological development.

IV. CONCLUSIONS AND RECOMMENDATIONS

Child custody rights after divorce are a crucial aspect of family law that must be handled with the best interests of the child in mind. In the Indonesian legal system, both positive law and Islamic law stipulate that children have the right to receive protection, support, and proper care even though their parents have separated. However, in practice, the implementation of court decisions regarding child custody and support often encounters obstacles, especially in terms of executing decisions and compliance of the responsible parties. An analysis of the Tanjung Balai Religious Court decision shows that although the court attempts to apply the principle of justice in determining child custody and support, there are still many obstacles in implementing the decision, such as the father's non-compliance in providing support or difficulties in executing child custody rights.

To ensure that children's rights remain effectively protected, a clearer legal reconstruction is needed regarding the provisions of hadhanah, child support standards, and the

mechanism for executing court decisions. One solution that can be applied is the concept of shared parenting, which allows both parents to remain involved in the child's life without having to fight over custody. In addition, increasing legal awareness for the community and stricter law enforcement against parties who do not comply with court decisions are also important steps in ensuring the protection of children's rights after divorce. With more comprehensive regulations and more effective mechanisms, it is hoped that the legal system can be more responsive in handling child maintenance issues due to divorce, so that children's welfare is maintained and they can grow up in a stable and supportive environment.

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