

# Determination of the Best Principles for Children in Divorce Cases: A Legal Analysis of the Cibinong Religious Court Decision Number 1042/Pdt.G/2019

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**Abstract.** *The purpose of this study is to determine the best principles for children in determining child custody, as well as to determine the legal considerations decided by the judge in determining child custody. This study is motivated by the number of divorce cases in Indonesia and the many children who become victims of conflict or parents. This study focuses on examining the best interests of children and legal considerations for judges in determining child custody arrangements due to divorce. This study uses a normative legal method with a case approach (Case Approach) and a statutory approach (Statute Approach), as well as library research data collection techniques. Custody is in line with the basic principles in Indonesian state regulations, namely the principle of the best interests of children. The results of this study indicate the provisions of Article 105 and Article 156 of the Compilation of Islamic Law. Article 105 of the Compilation of Islamic Law, explains that the provisions of the law on child custody which automatically grant custody to the mother, must be interpreted contextually. The main parameter that must be used as a reference is the best interests of the child. If the best interests of the child are not realized, then Article 105 of the Compilation of Islamic Law must be set aside and the judge must be guided by the best interests of the child. Although Article 105 of the Compilation of Islamic Law grants custody to the mother, the panel of judges also considers the father's ability and readiness to care for the child. The panel of judges decided to divide custody proportionally. For younger children, who still need intensive attention, custody is given to the mother. However, for older children, who are more emotionally stable, custody is given to the father. The panel of judges considered that this was the best solution to ensure the welfare of both children.*

**Keywords:** *Child; Custody; Divorce; Marriage.*

## 1. Introduction

Humans are social creatures where one human being needs another human being. The term that is often known as living in pairs is a Marriage. Marriage is the nature of life that aims to have offspring to continue life. The existence of marriage forms a family. Marriage is a sacred moment that cannot be played with. In Indonesia, marriage law is regulated in Law No. 16 of 2019 Amendment to Law No. 1 of

1974.<sup>1</sup>Marriage occurs between two parties, namely husband and wife, resulting in a family, and they hope that this union will bring happiness until death do them part.<sup>2</sup>However, family happiness and for the sake of continuing the lineage, not rejecting a child is an important thing in marriage, from this, the rights of a child must be prioritized so that they can continue human life which continues to turn as time goes by.

In reality, many marriages do not run smoothly and there are always problems that arise and end in divorce. In general, divorce occurs due to incompatibility between husband and wife, such as the emergence of family problems, broken harmony, and so on. The eternal principle in the rules contained in the Marriage Law must basically be upheld and its integrity maintained. Therefore, this principle may no longer apply if in the marriage the husband and wife are no longer able to achieve harmony in the family, in which case a marriage is considered no longer able to carry out and fulfill its function as a bringer of physical and spiritual happiness to husband and wife. In the family environment, children receive protection, affection, and responsibility. Harmony and minimal family conflict are important for children's mental health. Parents play a role in shaping children's behavior, character, morals, and education through family education as the main source of values.<sup>3</sup>

The existence of marriage forms a family. Marriage is a sacred moment that cannot be played with. The family also has a vital role in involving all efforts to protect children, guarantee their rights, and create quality, noble, and prosperous children. Although many married couples long for a happy family, the reality of married life does not always match expectations, often ending in divorce. In the context of family change, it is important to maintain the protection and rights of children.<sup>4</sup> Divorce, as the end of the legally or religiously recognized bond between husband and wife, is often caused by factors such as loss of attraction, lack of trust, and incompatibility between partners, which can create disharmony in the household.<sup>5</sup>

The impact of divorce is not only felt by the divorcing couple, but also gives a psychological burden to their children, who may experience emotional problems such as feelings of shame, high sensitivity, and low self-esteem. This can affect their social interactions and create feelings of insecurity, sadness, resentment, and guilt. In the context of legal protection for children in divorce situations, it is very important to prioritize the best interests of the child, including their right to maintain a healthy relationship with both parents, receive the necessary financial support, and avoid conflicts that may

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<sup>1</sup>Rijaya. (2021). Tinjauan Yuridis Cerai Gugat Terhadap Suami Akibat Kekerasan Dalam Rumah Tangga (Studi Perkara Nomor: 563/Pdt.G/2020/PA.Ktbm).

<sup>2</sup>Azhar Basyir. (2000). Hukum Perkawinan Islam, Universitas Islam Indonesia, Yogyakarta. p.2.

<sup>3</sup>Andhika, M. R. (2021). Peran Orang Tua Sebagai Sumber Pendidikan Karakter Bagi Anak Usia Dini. *At-Ta'Dib: Jurnal Ilmiah Prodi Pendidikan Agama Islam*, 13(1), 73. <https://doi.org/10.47498/tadib.v13i01.466>

<sup>4</sup>Arizal Sastra Tjandi, A., Kasim, A., & Heridah, A. (2022). Kedudukan Hak Asuh Anak Akibat Cerai Hidup. *Jurnal Litigasi Amsir*, 9 (2), 151-159.

<sup>5</sup>Wulan Permata Sari. (2023) Hak Asuh Anak Dibawah Umur Akibat Perceraian. *Unja Journal of Legal Studies*, Vol. 1 no. 1. 181-195.

arise during the divorce process.<sup>6</sup> Legal protection, as a concept that includes preventive and repressive tools, plays a role in providing justice, order, certainty, benefit and peace in society.<sup>7</sup>

In recent years, the divorce rate in Indonesia has increased. Divorce is the termination of a marriage by court decision or at the request of one of the partners.<sup>8</sup> The divorce not only affects both parties involved, but also significantly affects the children who are part of the family. In this case, divorce becomes a way out of a marriage that is considered to no longer be able to provide physical and spiritual happiness. The Marriage Law does not contain a detailed understanding of child care.<sup>9</sup> When determining control over child custody, in general, the Religious Court Judge will use the provisions written in the Compilation of Islamic Law. In making its considerations, the panel of judges must also pay attention to other important factors that exist outside the husband and wife, such as internal factors within the child.

The Panel of Judges must always consider not only the husband's or wife's side. But also factors from outside the two disputing parties and internal factors within the child also need to be considered. In relation to this, there is a principle of the best interests of the child. This principle is also known as The Best Interest of Child where this principle must and always be used in court when faced with a custody process if both parents of the child are fighting over custody of the child. The principle of The Best Interest of Child emphasizes that the right to custody of a child must be based on the best needs for the child.<sup>10</sup>

The Indonesian state tends to apply sole custody in resolving child custody disputes.<sup>11</sup> The Marriage Law does not regulate joint custody rights specifically and in detail.<sup>12</sup> In Indonesia, the law governing divorce has included the aspect of the best interest of the child in the family court process. The principle of the Best Interest of the Child is a principle that prioritizes the best interests of the child. The Convention on the Rights of the Child, hereinafter referred to as (CRC), contains four principles of child protection, namely the principle of non-discrimination, the principle of the right to life, the principle of the Best Interest of the Child, continued life and development, and the last principle is the principle of being given the opinion of the child. The concept of the principle of the Best Interest of the Child as a procedural rule where every decision will be taken and the decision will affect a child or a certain group of children, then the decision must be taken carefully by considering the positive impacts that arise and the negative impacts, of the decision on the decision concerned. The Best Interest of the

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<sup>6</sup>Pakarti, M. H. A., Farid, D., Fathiah, I., & Mabururi, K. A.K. (2023). Perlindungan Hak Anak Dalam Perceraian Menurut Hukum Keluarga Islam. *Usroh: Jurnal Hukum Keluarga Islam* 7(2), 14-36, <https://doi.org/https://doi.org/10.19109/ujhki.v7i2.18902>

<sup>7</sup>Hasan, F., Dungga, W. A & Abdussamad, Z. (2023). Perlindungan Perempuan Dan Anak Dalam Perspektif Hukum. *Jurnal Ilmu Sosial, Humaniora Dan Seni (JISHs)*, 1(2), 317-323. <https://doi.org/https://doi.org/10.47233/jishs.v1i2.765>

<sup>8</sup>Subekti. (1994). *Pokok-pokok Hukum Perdata*. Jakarta: Intemusa, p.42.

<sup>9</sup>Rachmi, T., Dewi, N.F.K., & Kartika. (2022). *Mengenal Lebih dalam Ilmu Parenting*. Tasikmalaya: Edu Publisher.

<sup>10</sup>Tiara Ananda Rahman. (2024). "Penyelesaian Sengketa Hak Asuh Anak Setelah Perceraian: Perbandingan Antara Indonesia dan Inggris" *Jurnal USM Law Review Vol 7 No 1*: 348, <http://dx.doi.org/10.26623/julr.v7i1.8801>

<sup>11</sup>Meliani dan Indra Budi Jaya (2022). Pelaksanaan Hak Asuh Anak Bersama Terhadap Anak Dibawah Umur: Analisis Norma Hukum, "*Fastabiq: Jurnal Studi Islam* 3, no.1: 56-68, <https://doi.org/10.47281/fas.v3i1.87>.

<sup>12</sup>Rika Saraswati, Emmanuel Boputra, dan Yuni Kusniati. (2021). "Pemenuhan Hak Anak Di Indonesia Melalui Perencanaan Pengasuhan, Pengasuhan Tunggal Dan Pengasuhan Bersama," *Veritas et Justicia* 7, no.1: 166-210. <https://doi.org/10.25123/vej.v7i1.4066>

Child is a concept of basic moral theory designed to limit the scope of application or authority of adults over children.

In addition, consideration of child custody in divorce cases is often influenced by various factors, including parental capacity, economic background, and family support. However, research shows that often, the best interests of the child are neglected due to conflict between parents or inadequate understanding from related institutions regarding the psychological needs of children in divorce situations. The decision about who cares for children can affect not only life, the emotional, psychological, and social impacts of divorce can be very profound for children. In many divorce cases, children are often victims of conflict between their parents. Uncertainty about custody can cause ongoing stress for children and affect their development. Therefore, it is important to understand how the principle of the best interests of the child can be applied effectively in the divorce court process and how this can be a guide for related institutions to achieve child welfare after divorce. Based on this, this study aims to examine the implementation of the principle of the best interests of the child in divorce cases in Indonesia and to find out the legal considerations decided by the judge in determining child custody.

## **2. Research Methods**

This study uses a normative legal research method. Normative legal research is where law is conceptualized as what is written in legislation (Law in Books) or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate.<sup>13</sup> Which is perspective and uses a statutory approach (Statute Approach). Related to the type of research used is normative juridical, the problem approach method used is the Statutory Approach (Statute Approach).<sup>14</sup> Focusing on all collections of laws related to child custody and the best interests of the child, then analyzing the law both written in books, conducting a review of laws and regulations related to legal regulations and the implications of their implementation in Indonesia. There is also a Case Approach, which is a method that is carried out comprehensively in order to gain a deep understanding along with the problems faced with the aim that the problem can be resolved.<sup>15</sup> The case approach in normative research aims to study the application of legal norms or rules carried out in legal practice. This type of approach is usually used regarding cases that have received a decision.

## **3. Result and Discussion**

### **3.1. How is the principle of the best interest of the child applied in determining child custody rights in the Cibinong Religious Court decision?**

Parental divorce has a major impact on the emotional development of children, who go through stages of adaptation to societal norms as they grow physically and cognitively. Emotional needs such as affection and security are essential in managing children's emotions, which contribute to their personal and social adjustment, as well as motor and mental skills.<sup>16</sup> Parental divorce can also significantly affect a child's education by reducing motivation to learn due to lack of attention and an uncondusive home

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<sup>13</sup> Bahder Johan Nasution. (2008). *Metode Penelitian Hukum*. Bandung: Mandar Maju. p.90.

<sup>14</sup> Amiruddin dan Zainal Asikin. (2012). *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta. p.118.

<sup>15</sup> Peter Mahmud Marzuki. (2009). *Penelitian Hukum, edisi pertama, cetakan kelima*, Prenada Media Grup, Jakarta. p.10.

<sup>16</sup> Insan, R. W. A & I. K. (2020). Perkembangan Sosial Emosi Pada Anak usia Prasekolah. *Jurnal Pendidikan Dan Dakwah*, 2(2), 1-14.

atmosphere, as well as impaired concentration due to a noisy home.<sup>17</sup> On the other hand, a comfortable and calm home environment can increase a child's focus on learning.

Children are the most vulnerable and weak social creatures, therefore the process of growth and development in children needs to be seriously considered. Because ironically children are often placed in the most disadvantaged position, do not have the right to speak, and they are even often victims of violence and violations of their rights.<sup>18</sup> Children as a vulnerable group still need protection for their rights. As we know, humans are defenders of rights since birth, and among those rights there are absolute rights so that everyone needs to be protected. These rights are no exception also owned by children, but children have special rights caused by special needs due to limited abilities as a child. The limitations that the world then realized that the protection of children's rights is absolutely necessary to create a better future for humanity.<sup>19</sup>

In Indonesia, based on Article 41 of the Marriage Law, the father and mother are obliged to care for their children, if there is a dispute between them, it can be resolved in court. The provisions of this article provide the judge with the freedom to decide whether custody of the child falls to the father or mother, by considering the principle of the best interests of the child.<sup>20</sup> Law No. 23 of 2002 concerning Child Protection requires all parties to consider the best interests of the child as their primary consideration, as regulated in the explanation of Article 2 of Law No. 23 of 2002 concerning Child Protection, which states that: "what is meant by the best interests of the child is that in all actions concerning children carried out by the government, society, legislative bodies, judicial bodies, so that the best interests for the child need to be the primary consideration." If the parents are divorced, or if the parents are absent or unknown, or if the parents are unable to fulfill their duties and responsibilities, the following law provides legal certainty that the responsibility and obligations of the child's parents are legally transferred to their family.<sup>21</sup>

Referring to the Convention on the Rights of the Child, in general there are four classifications of children's rights whose purpose is to realize the value of the Best Interest of the Child principle, including: 1) The Right to Survival. The Right to Survival in this case includes the right to life and health, both physically and mentally. That basically every child has the right to maintain their survival. This means that parents are required to always supervise and care for. 2) Right to Protection (Protection Rights). The right to protection referred to here includes protection from discrimination and acts of violence that can have a negative impact on children. 3) Right to Grow and Develop (Development Rights). The right to grow and develop referred to are the rights of children stated in the convention on the rights of the child, especially regarding education (formal and non-formal) and also a decent standard of living. 4) Right to Participate (Participation Rights). The right to participate referred to is related to the involvement of children in expressing their opinions in all matters that affect the life of the child. In the laws and regulations in Indonesia, it is not clearly stated what the criteria are for what

<sup>17</sup>Hidayah, D. (2023). Akibat Hukum Putusan Majelis Hakim Yang Ditolak Oleh Pemohon Perceraian Sebelum Ikrar Talak (Analisis Putusan: 3693/Pdt.G/2019 Di Pengadilan Agama Kabupaten Kediri). *JURIH: Jurnal Ilmu Hukum*, 2(1), 88-105. Retrieved from <http://jurnal.iaih.ac.id/index.php/JURIH/article/view/8>

<sup>18</sup>Arif Gosita. (1992). *Masalah Perlindungan Anak* (Sinar Grafika). p.28.

<sup>19</sup> Areta Edgina, A.M., Agus Yudha, H & Erni Agustin. (2023). "Prinsip Kepentingan Terbaik Bagi Anak Akibat Pembatalan Perkawinan Orang Tua Sedarah". *Media Juris Vol.6*. Hlm.8, DOI:10.20473/mi.v6i1.40106

<sup>20</sup> Maryati Maryati. (2021). "Dasar Pertimbangan Hakim Menetapkan Hak Asuh Anak Kepada Suami Selaku Pemohon pada Pengadilan Agama Jambi," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3: 1299-1311, <https://doi.org/10.33087/jiubj.v21i3.1740>.

<sup>21</sup>Rahmdi Taktona. (2012). *Kepastian Hukum Terhadap Hak Anak Korban Perceraian*. Jakarta: Muwazah. p.24.

is meant by the best interests of the child. By fulfilling these rights, it can be indirectly said that all of the *'best interests'* for the child have been fulfilled.

The application of Article 105 and Article 156 of the Compilation of Islamic Law (KHI) in determining child custody in the divorce case between the Plaintiff and the Defendant in Case Number 1042/Pdt.G/2019/PA.Cbn is an important basis for the panel of judges in making their decision regarding *hadhanah* rights (child custody). The two articles regulate the basic principles regarding child custody in divorce, especially for children who have not reached the age of *mumayyiz*, KHI article 105 (a) interprets *mumayyiz* as "The limit of a child's *mumayyiz* is 12 years old".<sup>22</sup> Article 105 of the KHI stipulates that in the event of a divorce, custody of a child who is not yet *mumayyiz* automatically falls to the mother, provided that the mother is deemed capable and there are no legal obstacles that prevent her from being able to care for the child. The panel of judges upholds this principle as the main guideline, that a mother basically has a stronger emotional and psychological closeness to her children at an early age, so that she is better able to provide the attention and care they need.

In this case, the Plaintiff (mother) requested custody of the children because her two children had not reached the age of *mumayyiz*, in accordance with the provisions of Article 105 of the KHI. However, the panel of judges did not immediately grant custody to the mother, because they also considered the actual conditions in the field. Since 2017, the children have been in the care of the father (Defendant) after the couple separated de facto. The judge considered that the children grew up healthy and comfortable under the care of their father, which was carried out with the support of the family and the assistance of a caregiver. Article 156 of the KHI is also an important reference in the judge's considerations. This article emphasizes that in determining child custody, the welfare of the child must be the main priority. This welfare includes physical, mental, and emotional aspects, which the child obtains from his/her care environment. In this case, the panel of judges considered that the children had adjusted to their father's care environment, which was considered conducive and supportive of the overall development of the children.

Although Article 105 grants custody to the mother, the panel of judges also considered the Plaintiff's ability and readiness to care for the children. The Plaintiff, who works as an artist with a busy work schedule, was considered to have difficulty consistently giving full attention to the children. This was one of the factors that caused the panel of judges to reconsider who should hold custody. Based on these considerations, the panel of judges decided to divide custody proportionally. For the younger child, who still needs intensive attention, custody is given to the mother (Plaintiff), in accordance with Article 105 of the KHI. However, for the older child, who is more emotionally stable and has become accustomed to his father's environment, custody is given to the father (Defendant). The panel of judges considered that this was the best solution to ensure the welfare of both children.

That in relation to child custody disputes, judges when they see that the legal provisions of Article 105 of the KHI are not gender-just and do not comply with the conditions of today's society and do not guarantee the realization of the best interests of children, then judges in accordance with their constitutional obligations must dare to make legal discoveries or reform child custody laws. One that can be used as a basis for making legal discoveries or reforming child custody laws is by using a gender justice analysis with a *maqashid* sharia perspective when judges examine, decide, and resolve child custody disputes.

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<sup>22</sup>Abdurrahman. (2007), *Kompilasi Hukum Islam di Indonesia*, (Jakarta: Akademika Pressindo, p. 138.

That it is worth stating, referring to the Permanent Jurisprudence of the Supreme Court of the Republic of Indonesia, based on the Decision of the Supreme Court of the Republic of Indonesia No. 906 K/Sip/1973 dated June 25, 1974, which in essence states that "The interests of the child must be used as a benchmark to determine which of the parents is entrusted with the care of the child"; That likewise if referring to the Permanent Jurisprudence of the Supreme Court of the Republic of Indonesia, based on the Decision of the Supreme Court of the Republic of Indonesia No. 110 K/AG/2007 dated November 13, 2007, which in essence states that Child Custody Rights are Given to the Father, with the consideration that child care is not merely seen from who has the most right, but must see the facts of who is the most right, but must see the facts of who is the least likely to cause harm to the child, in other words, what must be prioritized is the interests of the child, not who has the most right.

This decision shows that the legal provisions on child custody that automatically grant custody of the child to the mother, as per Article 105 of the KHI, must be interpreted contextually. The main parameter that must be used as a reference is the best interests of the child. If the best interests of the child are not realized, then Article 105 of the KHI must be set aside and the judge must be guided by the best interests of the child.<sup>23</sup> Children's rights and welfare are the main things in child care. This is as explained in Article 14 of the Child Protection Law that "every child has the right to be cared for by his/her own parents, unless there is a valid reason and/or legal regulation indicating that the separation is in the best interests of the child and is the final consideration."

In the event of separation, the child still has the right to receive care, maintenance, education and protection for the growth and development process according to his/her abilities, talents and interests from both parents. The child still has the right to meet directly and receive living expenses from both parents. The explanation of Article 14 of the Child Protection Law states that the separation mentioned in this article does not eliminate the relationship between the child and his/her father and mother. Therefore, even though there is a court decision that determines one of the parents as the holder of child custody, this cannot be a reason for the parent holding custody to limit or prohibit the other parent from meeting the child.

### **3.2. What legal considerations were used by the judge in determining child custody in the Cibinong Religious Court decision Number 1042/Pdt.G/2019/PA.Cbn?**

In Decision Number 1042/Pdt.G/2019/PA.Cbn, the panel of judges considered the custody (*hadhanah*) of children who are not yet *mumayyiz*, or under 12 years of age, in accordance with the provisions of the Compilation of Islamic Law. Article 105 and Article 156 of the KHI are the main legal basis, which stipulates that the custody of children who have not reached the age of *mumayyiz* is in principle with the mother, unless there are special conditions that prevent it. The panel of judges examined both articles in the context of this divorce case. The panel of judges' first consideration relates to the condition and needs of the children. The panel emphasized that children who are not yet *mumayyiz* still need intensive attention and affection, especially from their mothers, considering the emotional and psychological factors that are important for their development. In this decision, the two children are still under the age of *mumayyiz*, so legally the custody should be given to the mother, namely the Counterclaimant, in accordance with Article 105 of the KHI.

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<sup>23</sup>Renita Ivana dan Diana Tantri Cahyaningsih. (2020). "Dasar Pertimbangan Hakim Terhadap Putusan Perceraian Dengan Pemberian Hak Asuh Anak Kepada Bapak," *Jurnal Privat Law* 8, no.2: 295-302, <https://doi.org/10.20961/privat.v8i2.48423>

Regarding issues regarding child custody, the first thing that the judge must pay attention to is the provisions in the legislation.<sup>24</sup> In implementing joint custody in Indonesia, there is a challenge, namely that there are no regulations regarding in what cases and how joint custody is implemented. Therefore, joint custody is important to be regulated in laws and regulations in Indonesia.<sup>25</sup> Child custody, Indonesian citizens are regulated by each. In the Law, child custody when parents divorce is explained in several articles such as Article 45 Paragraph (2), Article 98, and Article 105, through the legal basis and provisions that regulate it is expected that children will continue to prosper and grow as they should, even though their parents are divorced. However, Article 105 (a) of the KHI clearly states that: The custody of children who are still under 12 years old is the right of the mother. If he is an adult, so that it is given to the child's decision to determine to settle with his father or mother.<sup>26</sup>

However, the fact that the children have been cared for by the Counterclaimant since 2017 is an important point in the consideration. The judge considered that the children have grown up healthy and comfortable in the care of their father. The care was carried out with the help of the Counterclaimant's mother and a babysitter, and the children were accustomed to the living environment. Therefore, the panel of judges did not automatically grant custody to the mother, but considered the comfort and stability of the children's lives. In addition, the panel of judges considered the willingness and ability of each parent to care for their children. Although the Counterclaimant is an educated and well-mannered mother, and has a strong desire to care for her children, the Plaintiff's work as an artist with a busy schedule is considered to be able to affect her availability to care for her children full time. The panel considered that irregular working hours could limit the Plaintiff's ability to provide maximum attention to the children.

Meanwhile, the Defendant in the Counterclaim was considered a responsible father, and had been able to raise the children well. A stable home environment, family support, and adequate facilities for the children's development were the reasons why the panel of judges considered continuing to hand over custody to the father, especially for the older child. The panel of judges finally decided that custody of the younger child (not yet *mumayyiz*) would be given to the mother, in accordance with the provisions of Article 105 and Article 156 of the KHI. However, for the older child, the panel of judges decided to maintain custody of the father, taking into account the child's emotional and educational stability needs, which were already established in the father's care environment. In its decision, the panel of judges also determined that the Plaintiff in the Counterclaim must continue to provide access for the Defendant in the Counterclaim to interact with his children, so that both parties can continue to pour out affection to the children. If the mother fails to provide sufficient access to the father, then custody of the child can be transferred back to the father, as a form of balance in raising the child. If the father is unable to fulfill these responsibilities, the court may determine that the mother is also responsible for providing for her child.<sup>27</sup>

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<sup>24</sup>Angela Melani Widjaja et al., (2020). "The Application of the Best Interest of the Child Principle as a Basis for Determining Child Custody," *Unram Law Review* 4, no. 2: 163-73, <https://doi.org/10.29303/ulrev.v4i2.126..>

<sup>25</sup>Shofiatul Jannah and Roibin Roibin. (2023). "The Urgency of Determining the Post-Divorce Iddah Payment Period in Indonesia Religious Courts," *Jurnal Ius Constituendum* 8, No. 3: 424-35, <https://doi.org/10.26623/jic.v8i3.7606>.

<sup>26</sup>Umul Khair. (2020). "Pelaksanaan Hak Asuh Anak Setelah Perceraian", *Jurnal Cendekia Hukum*, Vol.5 No.2, Hlm.292. DOI:<http://doi.org/10/33760/jch.v5i2.231>

<sup>27</sup>Muhammad Irvan Hidayana. (2020). Imam Jauhari, and Azhari Yahya, "Analisis Yuridis Terhadap Aspek Perlindungan Anak Pasca Perceraian Orang Tua," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 2: 302-11. <https://doi.org/10.29303/ius.v8i2.704>.



Child welfare is greatly influenced by family circumstances. A harmonious family provides essential love and attention for child development. However, parents' busyness can hinder intense communication with children, causing their needs to be unmet. Children in families that appear intact may also experience depression and anxiety due to parental conflict. The role of parents is very important in shaping children's personalities and providing quality education. Child protection is needed to ensure their rights are maintained and protected from violence and discrimination.<sup>28</sup>

#### 4. Conclusion

Child Custody Rights Regulations in Indonesia have been regulated in the Marriage Law, KHI, and Child Protection Law. Custody is in line with the basic principles in Indonesian state regulations, namely the principle of the best interests of children. The application of Article 105 and Article 156 of the Compilation of Islamic Law (KHI) in determining child custody in a divorce case between the Plaintiff and the Defendant in Case Number 1042/Pdt.G/2019/PA.Cbn is an important basis for the panel of judges in making their decision regarding *hadhanah* rights (child custody). Both articles regulate the basic principles regarding child custody in divorce, especially for children who have not reached the age of *mumayyiz*, which is under the age of 12 years. The first consideration of the panel of judges relates to the condition and needs of the children. The panel of judges emphasized that children who are not yet *mumayyiz* still need intensive attention and affection. In this decision, both children are still under the age of *mumayyiz*, so legally the custody rights should be given to the mother, namely the Plaintiff, according to Article 105 of the KHI, but the panel of judges did not automatically grant custody rights to the mother, but considered the comfort and stability of the child's life. In addition, the panel of judges considered the willingness and ability of each parent to care for the child. The panel of judges finally decided that custody of the younger child (not yet *mumayyiz*) was given to the mother, in accordance with the provisions of Article 105 KHI. However, for the older child, the panel of judges decided to maintain custody of the father, taking into account the child's emotional and educational stability needs, which were already established in the father's care environment.

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