



Assessing the Implementation of the Best Interests of the Child Principle in Post-Divorce Custody Determinations

Angelina Patricia Halim^{1*} & Mia Hadiati²

^{1,2} Universitas Tarumanagara
Jakarta, Indonesia

Correspondence

Angelina Patricia Halim,
Universitas Tarumanagara Jakarta,
Indonesia, Letjen S. Parman St
No.1, RT.6/RW.16, Tomang,
Grogol petamburan, West Jakarta
City, Jakarta 11440, e-mail:
angelina.205220209@stu.untar.ac.
id

How to cite

Halim, Angelina Patricia &
Hadiati, Mia. 2026. Assessing the
Implementation of the Best
Interests of the Child Principle in
Post-Divorce Custody
Determinations. *Jurnal Ilmu Hukum
Kyadiren* 8(1), 264-278.
<https://doi.org/10.46924/jihk.v8i1.474>

Original Article

Abstract

Divorce not only terminates the marital relationship between spouses but also generates significant legal consequences for children, particularly concerning child custody and the protection of their rights. This study aims to examine the legal framework governing the protection of children's rights in post-divorce custody determinations and to assess the implementation of the best interests of the child principle in judicial practice in Indonesia. The research employs a normative legal methodology using statutory, conceptual, and case approaches. Data were collected through a comprehensive review of relevant legislation, court decisions, and legal literature and were analyzed using qualitative legal analysis. The findings indicate that the protection of children's rights is firmly established within the Indonesian legal system through the 1945 Constitution of the Republic of Indonesia, the Marriage Law, the Child Protection Law, and the Compilation of Islamic Law. In determining custody arrangements, judges generally prioritize the welfare, safety, and overall development of the child in accordance with the best interests of the child principle. Nevertheless, the effective implementation of this principle continues to face several challenges, including limited legal awareness among parents and weaknesses in the enforcement of judicial decisions. Strengthening legal protection mechanisms and enhancing compliance with court rulings are therefore essential to ensuring the effective protection of children's rights following divorce.

Keywords: *Child Custody, Divorce, Child Protection, Best Interests of The Child, Legal Protection*

Abstrak

Perceraian tidak hanya mengakhiri hubungan perkawinan, tetapi juga menimbulkan konsekuensi hukum terhadap anak, khususnya terkait hak asuh dan pemenuhan hak-haknya. Penelitian ini bertujuan menganalisis pengaturan hukum perlindungan hak anak dalam penetapan hak asuh pasca perceraian serta implementasi prinsip terbaik untuk anak dalam praktik peradilan di Indonesia. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Data diperoleh melalui studi kepustakaan terhadap peraturan perundang-undangan, putusan pengadilan, serta literatur hukum yang relevan dan dianalisis secara kualitatif. Hasil kajian menunjukkan bahwa perlindungan hak anak telah diatur dalam UUD NRI Tahun 1945, Undang-Undang Perkawinan, Undang-Undang Perlindungan Anak, dan Kompilasi Hukum Islam. Hakim pada umumnya mengutamakan kesejahteraan, keamanan, dan perkembangan anak dalam menentukan hak asuh. Namun, implementasinya masih menghadapi kendala berupa rendahnya kesadaran hukum orang tua dan lemahnya pelaksanaan putusan pengadilan.

Kata kunci: *Hak Asuh Anak, Perceraian, Perlindungan Anak, Kepentingan Terbaik Bagi Anak, Perlindungan Hukum*

1. INTRODUCTION

Divorce constitutes a legal event that not only terminates the marital relationship between spouses but also generates significant legal consequences for children, who are often the most vulnerable parties affected by family dissolution. Children frequently experience psychological, social, and emotional impacts resulting from parental conflict and post-divorce disputes.¹ Consequently, the protection of children's rights in custody determinations represents a critical concern within the Indonesian family law framework.

The significance of this issue is underscored by the persistently high divorce rate in Indonesia. According to data published by the Indonesian Central Statistics Agency (BPS), approximately 394,608 divorce cases were recorded in 2024.² This trend has the potential to increase the number of child custody disputes requiring judicial intervention while ensuring that the best interests of the child remain the paramount consideration. Although divorce terminates the marital relationship, it does not extinguish parental obligations to care for, educate, protect, and financially support children until they reach adulthood.³ In practice, however, custody disputes often give rise to prolonged conflicts that may impede the effective fulfillment of children's rights.

The constitutional foundation for the protection of children's rights is established in Article 28B(2) of the 1945 Constitution of the Republic of Indonesia, which guarantees every child's right to survival, growth, development, and protection from violence and discrimination. These constitutional guarantees are further reinforced by Law No. 35 of 2014 on Child Protection and various international legal instruments, particularly the Convention on the Rights of the Child, which recognizes the principle of the best interests of the child as a primary consideration in all matters concerning children.

Within the Indonesian legal system, post-divorce child custody arrangements are primarily governed by the Marriage Law and the Compilation of Islamic Law (KHI). Nevertheless, their implementation continues to encounter substantial challenges, as judicial determinations must consider not only legal norms but also the child's psychological well-being, social environment, educational needs, and overall welfare.⁴ Therefore, a comprehensive examination of the legal framework and the effectiveness

¹ Demet Akarçay Ulutaş and Miyase Taşkıran, "Is Co-Parenting Possible After Divorce?: A Scoping Review of the Effects on Children," *İmgelem*, no. 15 (2024): 27–60, <https://doi.org/10.53791/imgelem.1491998>.

² Badan Pusat Statistik Republik Indonesia, *Jumlah Perceraian Menurut Provinsi Dan Faktor Penyebab Perceraian (Perkara)*, 2024 (Jakarta, 2025), <https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTlZwRFVUMDkjMw==/jumlah-perceraian-menurut-provinsi-dan-faktor-penyebab-perceraian--perkara---2024.html?year=2024>.

³ Arif Gosita, *Masalah Perlindungan Anak* (Bhuana Ilmu Populer, 2004); Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia* (Refika Aditama, 2014).

⁴ Nur Triyono and Asmuni Asmuni, "The Implementing Joint Custody Post Divorce In Indonesia: A Philosophical Viewpoint," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023): 313–29, <https://doi.org/10.18860/j-fsh.v15i2.24370>.

of child rights protection in post-divorce custody determinations is essential to ensure the realization of legal protection that genuinely reflects the best interests of the child.

The issue of child rights protection in post-divorce custody determinations has attracted considerable scholarly attention in family law research. While previous studies generally acknowledge that the Indonesian legal framework provides an adequate normative basis through the Child Protection Law, the Marriage Law, and the Compilation of Islamic Law, significant challenges remain in its practical implementation within judicial proceedings.

Research conducted by Ervina and Hidayat identifies a paradigm shift in judicial approaches to child custody determinations. Although Article 105(a) of the Compilation of Islamic Law traditionally favors granting custody of young children to the mother, contemporary judicial practice demonstrates a growing emphasis on evaluating each parent's actual capacity to promote the child's welfare and best interests.⁵ Similar findings were reported by Syahan Nur Muhammad Haiba and Anjar Sri Ciptorukmi Nugraheni, who observed that judges increasingly rely on substantive considerations, including child welfare, parental conduct, co-parenting capacity, and environmental stability, when determining custody arrangements.⁶

From the perspectives of both Islamic and national law, Syukri Saleh et al. conclude that the welfare of the child constitutes the primary consideration in determining *hadhanah* (child custody).⁷ However, effective implementation remains constrained by inadequate monitoring of court decisions, limited utilization of psychological assessments, and insufficient legal awareness among litigating parties. Likewise, Sevia Saputri argues that strengthening regulatory mechanisms and expanding public legal education are necessary to ensure the optimal protection and fulfillment of children's rights following divorce.⁸

Research conducted by Tsania Wardatush and Shofiatul Jannah on decisions issued by the Mojokerto Religious Court demonstrates that judges consider several factors when determining child custody, including the child's age, emotional attachment to each parent, and the mother's parenting capacity.⁹ Similarly, Maesa Dhini Astira

⁵ Ervina Ervina and Yusup Hidayat, "Studi Komparatif Hak Asuh Anak Dibawah Umur Kepada Ayah Kandung Pasca Perceraian (Putusan Perkara Pengadilan Agama)," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025): 3199–209, <https://doi.org/10.38035/jihhp.v5i4.4361>.

⁶ Syahan Nur Muhammad Haiba and Anjar Sri Ciptorukmi Nugraheni, "Penetapan Hak Asuh Anak Pasca Perceraian Berdasarkan Asas Kepentingan Terbaik Anak," *Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 2 (2024): 151–61, <https://doi.org/10.62383/aliansi.v1i2.84>.

⁷ Syukri Saleh et al., "Perlindungan Hak Asuh Anak Pasca Perceraian (Hadhanah): Perspektif Hukum Islam Dan Psikologi Anak," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 2829–38, <https://doi.org/10.61104/alz.v3i3.1748>.

⁸ Sevia Ayu Dyah Saputri and Adi Suliantoro, "Perceraian Perlindungan Hukum Terhadap Hak-Hak Anak Dalam Kasus Perceraian Di Kota Semarang," *Jurnal Hukum Lex Generalis* 5, no. 10 (2024): 1–20.

⁹ Tsania Wardatush and Shofiatul Jannah, "Dinamika Penetapan Hak Asuh Anak Pasca Perceraian Di Pengadilan Agama: Analisis Putusan Hakim Nomor 169/Pdt.G/2024/PA.Mr," 3, no. 1 (2025), <https://new-conference.unisma.ac.id/index.php/knhi/article/view/2023>.

found that custody is not automatically awarded to the mother when circumstances indicate potential risks to the child's safety, welfare, and overall well-being.¹⁰ This finding is further supported by Anastasia Tua Imelda, who reported that judges may grant custody to the father when the mother is considered unable to adequately fulfill the child's needs or provide sufficient care and protection.¹¹

Furthermore, Alika Nuraini and Rita Alfiana emphasize that legal protection for children following divorce remains suboptimal, particularly with respect to psychological and social well-being. Consequently, a more holistic approach to custody determinations is required.¹² This perspective is reinforced by Maulidiyah, who argues that the principle of the best interests of the child should be implemented through a comprehensive assessment of the child's emotional, physical, educational, and environmental needs, supported by evidence-based evaluations and expert involvement.¹³

Based on the findings of these studies, it can be concluded that previous research has primarily focused on judicial decisions, judicial reasoning, and the application of the best interests of the child principle in specific custody disputes. However, limited attention has been given to a comprehensive examination of the relationship between child protection regulations across various national legal instruments and their implementation in post-divorce custody determinations. Accordingly, this study contributes to the existing literature by offering an integrative analysis of the regulatory framework governing child protection and evaluating the effectiveness of legal protection mechanisms implemented through child custody determinations within the Indonesian legal system.

This study aims to: (1) analyze and comprehensively examine the legal framework governing the protection of children's rights in post-divorce custody determinations, including Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, Law No. 35 of 2014 on Child Protection, the Compilation of Islamic Law, and other relevant legal instruments; (2) analyze the forms of legal protection afforded to children in post-divorce custody determinations and assess the extent to which the principle of the best interests of the child has been implemented in judicial practice to ensure children's welfare, security, and optimal development; and (3) identify the challenges encountered

¹⁰ Maesa Dhini Astira, "Penetapan Hak Asuh Anak Pasca Perceraian Di Pengadilan Agama Kota Palopo" (Institut Agama Islam Negeri Palopo, 2022), <https://repository.uinpalopo.ac.id/id/eprint/7071/>.

¹¹ Anastasia Tua Imelda, "Tinjauan Yuridis Terhadap Pengalihan Hak Asuh Anak Di Bawah Umur Kepada Ayah Pasca Perceraian: Studi Putusan Nomor 1183/Pdt.G/2015/PA.Mdn" (Universitas Medan Area, 2024), <https://repositori.uma.ac.id/jspui/bitstream/123456789/27246/1/178400123%20-%20Anastasia%20Tua%20Imelda%20-%20Fulltext.pdf>.

¹² Alika Nuraini and Rita Alfiana, "Hak Asuh Anak Dalam Hukum Indonesia: Tinjauan Yuridis Serta Dampak Sosial Bagi Anak Dan Keluarga," *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (2025): 3281–89, <https://doi.org/10.57250/ajsh.v5i2.1632>.

¹³ Nur Aulia Maulidiyah, "Kebijakan Pengadilan Dalam Penentuan Hak Asuh Anak Pada Kasus Perceraian: Studi Kasus Di Oku Timur Sumatera Selatan," *Familia: Jurnal Hukum Keluarga* 6, no. 1 (2026): 1–21, <https://doi.org/10.24239/familia.v6i1.283>.

in protecting children's rights following divorce and formulate recommendations to strengthen the effectiveness of legal protection within Indonesia's family justice system.

2. RESEARCH METHODOLOGY

This study employs a normative legal research method, which conceptualizes law as a system of norms examined through statutory provisions, judicial decisions, legal principles, and doctrinal analyses.¹⁴ This method was selected because the study focuses on analyzing the legal framework governing the protection of children's rights in post-divorce custody determinations under Indonesian positive law.

The research utilizes three complementary approaches: the statutory approach, the conceptual approach, and the case approach. The statutory approach involves an examination of legal instruments governing child protection and custody, including the 1945 Constitution of the Republic of Indonesia, the Marriage Law, the Child Protection Law, and the Compilation of Islamic Law. The conceptual approach is employed to analyze relevant legal concepts, including legal protection, children's rights, hadhanah (child custody), and the principle of the best interests of the child. The case approach is conducted through an analysis of judicial decisions concerning post-divorce child custody disputes to evaluate the practical application of these legal norms and principles.

The study relies on primary, secondary, and tertiary legal materials obtained through comprehensive library research. Primary legal materials consist of legislation and judicial decisions, while secondary legal materials include legal literature, scholarly articles, and expert opinions. Tertiary legal materials comprise legal dictionaries, encyclopedias, and other supporting references.¹⁵ All legal materials were analyzed qualitatively using a prescriptive analytical method involving the classification, interpretation, and harmonization of legal norms. The analysis was further supported by grammatical, systematic, and teleological methods of interpretation to develop a comprehensive understanding of the legal protection afforded to children's rights in post-divorce custody determinations and to assess the effectiveness of its implementation within the Indonesian legal system.

3. RESEARCH RESULT AND DISCUSSION

3.1. Legal Framework for the Protection of Children's Rights in Post-Divorce Custody Determinations in Indonesia

The Indonesian legal system provides a comprehensive normative framework for the protection of children's rights following divorce. Nevertheless, the effective

¹⁴ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

¹⁵ Juan Matheus, "E-Arbitration: Digitization Of Business Dispute Resolution Pada Sektor E-Commerce Dalam Menyongsong Era Industri 4.0 Di Tengah Pandemi Covid-19," *Lex Renaissance* 6, no. 4 (2021): 692–704.

implementation of these legal protections continues to face various challenges, highlighting the need for stronger enforcement mechanisms and institutional oversight.

The constitutional foundation for the protection of children's rights in post-divorce custody determinations is established in Article 28B(2) of the 1945 Constitution of the Republic of Indonesia, which guarantees every child's right to survival, growth, development, and protection from violence and discrimination. This provision recognizes children's rights as fundamental human rights that must be safeguarded by the state. Consequently, all policies and judicial decisions concerning children, including custody determinations following divorce, must be guided by the objective of protecting and fulfilling children's rights.

Specific provisions governing child custody after divorce are contained in Law No. 1 of 1974 on Marriage. Article 41 stipulates that, upon divorce, both parents remain responsible for caring for and educating their children based on the best interests of the child. This provision reflects the principle that the dissolution of marriage does not terminate the legal relationship between parents and children. Accordingly, parental responsibilities concerning the care, education, protection, and welfare of children continue to exist despite the termination of the marital relationship.

Indonesian family law adopts a child-centered welfare approach. The primary concern is not the parents' entitlement to custody but rather their obligation to ensure the fulfillment of the child's rights and welfare. Therefore, in custody disputes, judicial consideration focuses not on the competing interests of the parents but on identifying the parent who is best positioned to safeguard the child's best interests.

For Muslim families, child custody is further regulated under the Compilation of Islamic Law (Kompilasi Hukum Islam—KHI). Article 105 provides that children who have not yet reached the age of 12 years are generally placed under the custody of their mother, while children aged 12 years or older may choose whether to reside with their father or mother. This provision reflects recognition of the significant role of mothers in early childhood care and development. From a psychological perspective, young children typically develop stronger emotional attachments to their mothers, making maternal care particularly important for ensuring emotional security and stability during early developmental stages.¹⁶

However, the provisions of Article 105 of the KHI are not applied rigidly or absolutely. In judicial practice, custody may be awarded to the father when evidence demonstrates that the mother is unable to adequately ensure the child's safety, health, education, welfare, or overall development. This finding indicates that the principle of the best interests of the child takes precedence over formal legal presumptions favoring maternal custody. Consequently, Indonesian family law places greater emphasis on the

¹⁶ Nicla Cucinella et al., "Maternal Parenting and Preschoolers' Psychosocial Adjustment: A Longitudinal Study," *International Journal of Environmental Research and Public Health* 19, no. 21 (2022): 13750, <https://doi.org/10.3390/ijerph192113750>.

actual capacity of each parent to provide care, protection, and welfare rather than solely on parental status or biological considerations.

These findings are consistent with the study conducted by Ervina and Hidayat, which identified a significant shift in judicial approaches to child custody disputes.¹⁷ Whereas custody was previously more likely to be granted automatically to the mother, contemporary judicial practice increasingly emphasizes a substantive evaluation of each parent's ability to meet the child's needs and promote the child's welfare. This development demonstrates a broader movement within the Indonesian legal system toward a more child-centered and welfare-oriented model of custody adjudication.

The legal protection of children is further reinforced through Law No. 35 of 2014 on Child Protection. This legislation affirms that every child has the right to be raised by his or her parents unless separation is justified by lawful reasons and is demonstrably in the child's best interests. In addition, the law guarantees children's rights to protection from discrimination, violence, exploitation, neglect, and other forms of inhumane treatment. These provisions reflect a comprehensive understanding of child protection that extends beyond physical safety to encompass psychological, emotional, and social well-being. As a result, the legal framework governing child custody in Indonesia seeks not only to regulate parental rights and obligations but also to ensure the holistic protection and development of children in the aftermath of divorce.

The protection of children's rights in custody determinations extends beyond the question of which parent is awarded custody and encompasses the safeguarding of a broad range of fundamental rights. Children retain the right to adequate education, healthcare, legal identity, affection, emotional support, and financial maintenance. Consequently, the parent who is not granted physical custody remains legally obligated to provide financial support and maintain a meaningful relationship with the child. This finding suggests that the concept of child custody under Indonesian law incorporates a dimension of shared parental responsibility, even when the child primarily resides with one parent.

The Indonesian legal framework has adopted the fundamental principles embodied in the Convention on the Rights of the Child (CRC), which has been ratified by Indonesia. One of the core principles of the CRC is the principle of the best interests of the child (Convention on the Rights of the Child, 1989). In the context of custody determinations, this principle requires judges to place the child's welfare and interests at the center of every decision. Judicial assessments should therefore not be based solely on formal considerations, such as parental status, but must also take into account the child's psychological, emotional, social, educational, and environmental circumstances.

¹⁷ Ervina and Hidayat, "Studi Komparatif Hak Asuh Anak Dibawah Umur Kepada Ayah Kandung Pasca Perceraian (Putusan Perkara Pengadilan Agama)."

These findings are consistent with the study conducted by Syahan Nur Muhammad Haiba and Anjar Sri Ciptorukmi Nugraheni, which identified child welfare, parental conduct, co-parenting capacity, and the quality of the parent–child emotional relationship as key factors in custody determinations.¹⁸ The present study reinforces these findings by demonstrating that such indicators represent practical manifestations of the best interests of the child principle as incorporated within the Indonesian legal system.

Despite the existence of a relatively comprehensive legal framework, the implementation of child rights protection following divorce continues to encounter significant challenges. One of the primary obstacles is the limited legal awareness among some parents regarding their continuing responsibilities toward their children after divorce. In practice, children are sometimes used as instruments in ongoing conflicts between former spouses. In certain cases, one parent restricts the child’s communication and interaction with the other parent, thereby undermining the child’s right to receive affection, care, and emotional support from both parents.

Another challenge concerns the ineffective enforcement of child support obligations following divorce. Although judicial decisions frequently impose maintenance obligations on one parent, implementation remains suboptimal due to inadequate monitoring and enforcement mechanisms.¹⁹ As a result, children’s educational, healthcare, and welfare needs are not always adequately fulfilled. This situation demonstrates that legal protection for children cannot be achieved solely through judicial decisions but also requires effective implementation and enforcement mechanisms.

From a normative perspective, Indonesian law recognizes children as independent legal subjects possessing inherent rights that warrant special protection. However, the effectiveness of such protection depends largely on the consistent application of the best interests of the child principle by judges, the willingness of parents to fulfill their legal obligations, and the availability of effective state-supported monitoring and enforcement mechanisms.

The legal framework governing the protection of children’s rights in post-divorce custody determinations in Indonesia is comprehensive and strongly oriented toward child welfare and protection. Nevertheless, the success of this framework depends not only on the existence of adequate legal regulations but also on their effective

¹⁸ Syahan Nur Muhammad Haiba and Anjar Sri Ciptorukmi Nugraheni, “Penetapan Hak Asuh Anak Pasca Perceraian Berdasarkan Asas Kepentingan Terbaik Anak.”

¹⁹ Asrori Asrori et al., “Interconnection of the Caper E-Motion System as a Guarantee of Protection of Women’s and Children’s Rights After Divorce in the Religious Courts of Bengkulu, Indonesia,” *Smart: Journal of Sharia, Tradition, and Modernity* 3, no. 2 (2023): 1–13, <https://doi.org/10.24042/smart.v3i2.20015>; Yudha Ginanjar, “Implementation of Article 45 of Law No. 1 of 1974 Concerning Marriage Related to the Fulfillment of Children’s Rights After Divorce Based on the Principle of Legal Certainty,” *Jurnal Multidisiplin Indonesia* 3, no. 9 (2024): 4309–13, <https://doi.org/10.58344/jmi.v3i9.1807>.

implementation, public legal awareness, and the commitment of all relevant stakeholders to prioritize the best interests of the child. Accordingly, the protection of children's rights following divorce should be understood as a shared responsibility among the state, judicial institutions, parents, and society to ensure the optimal fulfillment of children's rights and well-being.

3.2. Legal Protection of Children's Rights in Post-Divorce Custody Determinations and the Implementation of the Best Interests of the Child Principle

Legal protection for children in custody disputes extends beyond the determination of which parent is granted custody and encompasses the broader protection and fulfillment of children's fundamental rights. These rights include the right to parental care, education, healthcare, financial support, affection, protection from violence, and the right to maintain meaningful relationships with both parents.

The legal protection of children following divorce is grounded in the principle that divorce terminates the marital relationship between spouses but does not extinguish the legal relationship between parents and their children. Consequently, both parents continue to bear legal and moral responsibilities for meeting the child's needs and safeguarding the child's welfare. This principle is reflected in Law No. 1 of 1974 on Marriage, which stipulates that both parents remain obligated to care for and educate their children based on the best interests of the child. Accordingly, child custody should not be viewed as an exclusive right of one parent to exercise control over the child but rather as a legal mechanism designed to ensure the continuous protection and fulfillment of children's rights following divorce.

One of the primary forms of legal protection afforded to children is the right to proper care and upbringing. In judicial practice, courts are required to determine which parent is best positioned to promote the child's welfare and overall development. Such determinations are based not only on economic capacity but also on a range of other factors, including psychological well-being, emotional attachment, existing caregiving arrangements, living conditions, and each parent's ability to provide attention, guidance, and affection. This approach reflects a shift from a formalistic legal framework toward a more substantive and child-centered model that prioritizes the actual needs and welfare of the child.

The principle of the best interests of the child constitutes the cornerstone of legal protection for children in post-divorce custody proceedings. As established in the Convention on the Rights of the Child, this principle requires that the child's welfare serve as the primary consideration in all decisions affecting the child.²⁰ Accordingly,

²⁰ Convention on the Rights of the Child (1989), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

judges are expected to set aside parental interests whenever such interests conflict with the child's well-being. The ultimate objective of custody determinations is therefore not to identify a prevailing party in a legal dispute but to ensure that the child is placed in an environment that is most conducive to his or her physical, psychological, emotional, and social development.

The implementation of the best interests of the child principle within Indonesian judicial practice has evolved considerably in recent years. Although the Compilation of Islamic Law generally provides that children who have not yet reached the age of *mumayyiz* should be placed under maternal custody, judges increasingly refrain from relying exclusively on this provision. Instead, courts tend to conduct a comprehensive assessment of each parent's capacity to satisfy the child's needs and promote the child's welfare. In a number of cases, custody has been awarded to fathers where evidence demonstrated that the mother was unable to adequately safeguard the child's safety, education, health, or overall well-being. These developments indicate that the principle of the best interests of the child has become a more influential consideration than a purely normative approach based solely on parental status.

The findings of this study are consistent with those reported by Ervina and Hidayat, who identified a significant paradigm shift in child custody adjudication. Their study demonstrated that courts no longer automatically favor mothers in custody determinations but increasingly emphasize each parent's actual ability to meet the child's needs and ensure the child's welfare.²¹ This convergence of findings suggests that the Indonesian legal system is progressively adopting a more child-centered and protective approach to custody disputes.

In addition to custody arrangements, legal protection for children is also manifested through guarantees of post-divorce financial support. Children retain the right to receive adequate maintenance, including financial support for education, healthcare, and other essential needs, from both parents. This obligation persists regardless of which parent is granted custody. Consequently, child support should be understood not merely as a civil obligation imposed upon parents but as a fundamental right of the child that is essential for ensuring the child's survival, welfare, and healthy development.

Despite the existence of clear legal obligations, the enforcement of child support remains one of the most significant challenges in the protection of children following divorce. Numerous cases demonstrate that parents who are not granted custody frequently fail to comply with support obligations imposed by court decisions.²² As a result, children's educational, healthcare, and welfare needs are often inadequately

²¹ Ervina and Hidayat, "Studi Komparatif Hak Asuh Anak Dibawah Umur Kepada Ayah Kandung Pasca Perceraian (Putusan Perkara Pengadilan Agama)."

²² Ginanjar, "Implementation of Article 45 of Law No. 1 of 1974 Concerning Marriage Related to the Fulfillment of Children's Rights After Divorce Based on the Principle of Legal Certainty."

fulfilled. This situation highlights the need for stronger enforcement mechanisms to ensure compliance with judicial orders and to enhance the effectiveness of legal protection for children in the post-divorce context.

Another important dimension of legal protection concerns the child's right to receive continued affection and maintain meaningful relationships with both parents. From a developmental psychology perspective, the involvement of both parents plays a crucial role in fostering a child's emotional well-being, social development, and personality formation. Accordingly, even when custody is awarded to one parent, the child retains the right to communicate, interact, and maintain regular contact with the non-custodial parent.

These findings are consistent with the study conducted by Maulidiyah, which emphasizes that child welfare is influenced not only by economic factors but also by emotional stability and social support derived from the family environment.²³ The present study further supports this perspective by demonstrating that restricting a child's relationship with one parent may result in significant psychological consequences, including anxiety, insecurity, emotional distress, and impaired socio-emotional development.

Despite the existence of a relatively comprehensive legal framework governing the protection of children's rights, substantial challenges remain in its implementation. One of the most significant obstacles is the limited legal awareness among some parents, who continue to involve children in post-divorce conflicts. In such circumstances, the child's interests are frequently subordinated to parental disputes, resulting in the neglect of the child's emotional, psychological, and developmental needs. This situation is contrary to the fundamental objective of child protection, which requires that the child's welfare remain the primary consideration in all decisions and actions affecting the child.

Another challenge concerns the inadequate implementation and supervision of judicial decisions relating to custody and visitation rights. In certain cases, the unsuccessful party in a custody dispute refuses to comply with court orders or actively obstructs the visitation rights of the other parent. As a consequence, the legal protection established through judicial determinations cannot be effectively realized in practice. These findings indicate that the protection of children's rights cannot be achieved solely through the formulation of legal norms and judicial rulings; it also requires effective enforcement mechanisms and institutional support capable of ensuring compliance with court decisions.

The findings of this study suggest that legal protection for children following divorce should be understood as a multidimensional concept encompassing legal, psychological, social, educational, and economic dimensions. Accordingly, the application of the best interests of the child principle must be comprehensive and

²³ Maulidiyah, "Kebijakan Pengadilan Dalam Penentuan Hak Asuh Anak Pada Kasus Perceraian."

holistic, taking into account the full range of the child's needs rather than focusing exclusively on formal questions regarding parental entitlement to custody.

The principle of the best interests of the child has become the primary foundation of custody determination practices in Indonesia and has demonstrated increasingly progressive development in judicial decision-making. Contemporary courts are no longer guided exclusively by traditional assumptions that prioritize one parent on the basis of gender or formal legal status. Instead, judges increasingly evaluate the actual capacity of each parent to ensure the child's welfare, protection, and development. Nevertheless, further improvements are required to enhance the effectiveness of child protection mechanisms, particularly with respect to the enforcement of custody and support orders, the protection of children's rights to maintain relationships with both parents, and the promotion of public legal awareness regarding parental responsibilities after divorce. Consequently, the protection of children's rights following divorce should extend beyond the normative level and be effectively implemented in practice to guarantee the safety, welfare, and optimal development of children in accordance with the fundamental objectives of child protection law.

4. CONCLUSION

The protection of children's rights in post-divorce custody determinations is supported by a comprehensive legal framework consisting of the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, Law No. 35 of 2014 on Child Protection, the Compilation of Islamic Law, and various other relevant legal instruments. Collectively, these regulations establish the principle of the best interests of the child as the fundamental consideration in all custody determinations and decisions affecting children.

Legal protection for children is realized not only through the allocation of custody rights but also through the fulfillment of children's fundamental rights, including the rights to care, education, healthcare, financial support, affection, and the maintenance of meaningful relationships with both parents. In judicial practice, the principle of the best interests of the child has increasingly become the primary consideration guiding custody determinations. Nevertheless, its effective implementation continues to face several challenges, including limited parental legal awareness, non-compliance with child support obligations, and weaknesses in the enforcement of custody-related judicial decisions.

This study contributes to the advancement of family law and child protection scholarship by providing a comprehensive analysis of the legal framework governing post-divorce child custody in Indonesia. The findings may also serve as a reference for policymakers, judicial institutions, and legal practitioners in strengthening child protection mechanisms. However, this study is limited by its normative legal approach, which does not empirically examine the implementation of custody decisions in

practice. Therefore, greater attention should be directed toward strengthening monitoring and enforcement mechanisms for custody decisions, enhancing legal education and awareness among parents, and developing more effective implementing regulations. Future research is encouraged to adopt empirical or socio-legal approaches to evaluate the effectiveness of post-divorce child rights protection in both judicial practice and broader social contexts.

REFERENCES

Book

Muhaimin. *Metode Penelitian Hukum*. Mataram: Mataram University Press, 2020.

Journals

Alika Nuraini and Rita Alfiana. "Hak Asuh Anak Dalam Hukum Indonesia: Tinjauan Yuridis Serta Dampak Sosial Bagi Anak Dan Keluarga." *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (2025): 3281–89. <https://doi.org/10.57250/ajsh.v5i2.1632>.

Asrori, Asrori, Naqiyah Mukhtar, Mufliha Wijayati, and Aicha El-Hajjami. "Interconnection of the Caper E-Motion System as a Guarantee of Protection of Women's and Children's Rights After Divorce in the Religious Courts of Bengkulu, Indonesia." *Smart: Journal of Sharia, Traditon, and Modernity* 3, no. 2 (2023): 1–13. <https://doi.org/10.24042/smart.v3i2.20015>.

Ervina, Ervina, and Yusup Hidayat. "Studi Komparatif Hak Asuh Anak Dibawah Umur Kepada Ayah Kandung Pasca Perceraian (Putusan Perkara Pengadilan Agama)." *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025): 3199–209. <https://doi.org/10.38035/jihhp.v5i4.4361>.

Ginanjjar, Yudha. "Implementation of Article 45 of Law No. 1 of 1974 Concerning Marriage Related to the Fulfillment of Children's Rights After Divorce Based on the Principle of Legal Certainty." *Jurnal Multidisiplin Indonesia* 3, no. 9 (2024): 4309–13. <https://doi.org/10.58344/jmi.v3i9.1807>.

Matheus, Juan. "E-Arbitration: Digitization Of Business Dispute Resolution Pada Sektor E-Commerce Dalam Menyongsong Era Industri 4.0 Di Tengah Pandemi Covid-19." *Lex Renaissance* 6, no. 4 (2021): 692–704.

Maulidiyah, Nur Aulia. "Kebijakan Pengadilan Dalam Penentuan Hak Asuh Anak Pada Kasus Perceraian: Studi Kasus Di Oku Timur Sumatera Selatan." *Familia: Jurnal Hukum Keluarga* 6, no. 1 (2026): 1–21. <https://doi.org/10.24239/familia.v6i1.283>.

Nicla Cucinella, Rossella Canale, Maria Valentina Cavarretta, S. Ingoglia, N. M. Iannello, and Cristiano Inguglia. "Maternal Parenting and Preschoolers' Psychosocial Adjustment: A Longitudinal Study." *International Journal of*

Environmental Research and Public Health 19, no. 21 (2022): 13750.
<https://doi.org/10.3390/ijerph192113750>.

Sevia Ayu Dyah Saputri and Adi Suliantoro. "Perceraian Perlindungan Hukum Terhadap Hak-Hak Anak Dalam Kasus Perceraian Di Kota Semarang." *Jurnal Hukum Lex Generalis* 5, no. 10 (2024): 1–20.

Syahan Nur Muhammad Haiba and Anjar Sri Ciptorukmi Nugraheni. "Penetapan Hak Asuh Anak Pasca Perceraian Berdasarkan Asas Kepentingan Terbaik Anak." *Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 2 (2024): 151–61.
<https://doi.org/10.62383/aliansi.v1i2.84>.

Syukri Saleh, Maryani Maryani, Robiatul Adawiyah, and Ana Andriyani. "Perlindungan Hak Asuh Anak Pasca Perceraian (Hadhanah): Perspektif Hukum Islam Dan Psikologi Anak." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 2829–38.
<https://doi.org/10.61104/alz.v3i3.1748>.

Triyono, Nur, and Asmuni Asmuni. "The Implementing Joint Custody Post Divorce In Indonesia: A Philosophical Viewpoint." *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023): 313–29. <https://doi.org/10.18860/j-fsh.v15i2.24370>.

Tsania Wardatush and Shofiatul Jannah. "Dinamika Penetapan Hak Asuh Anak Pasca Perceraian Di Pengadilan Agama: Analisis Putusan Hakim Nomor 169/Pdt.G/2024/PA.Mr." 3, no. 1 (2025). <https://new-conference.unisma.ac.id/index.php/knhi/article/view/2023>.

Ulutaş, Demet Akarçay, and Miyase Taşkıran. "Is Co-Parenting Possible After Divorce?: A Scoping Review of the Effects on Children." *İmgelem*, no. 15 (2024): 27–60. <https://doi.org/10.53791/imgelem.1491998>.

Conference Papers

Tsania Wardatush and Shofiatul Jannah. "Dinamika Penetapan Hak Asuh Anak Pasca Perceraian Di Pengadilan Agama: Analisis Putusan Hakim Nomor 169/Pdt.G/2024/PA.Mr." 3, no. 1 (2025). <https://new-conference.unisma.ac.id/index.php/knhi/article/view/2023>.

Thesis

Anastasia Tua Imelda. "Tinjauan Yuridis Terhadap Pengalihan Hak Asuh Anak Di Bawah Umur Kepada Ayah Pasca Perceraian: Studi Putusan Nomor 1183/Pdt.G/2015/PA.Mdn." Universitas Medan Area, 2024.
<https://repositori.uma.ac.id/jspui/bitstream/123456789/27246/1/178400123%20-%20Anastasia%20Tua%20Imelda%20-%20Fulltext.pdf>.

Maesa Dhini Astira. "Penetapan Hak Asuh Anak Pasca Perceraian Di Pengadilan Agama Kota Palopo." Institut Agama Islam Negeri Palopo, 2022.
<https://repository.uinpalopo.ac.id/id/eprint/7071/>.

Books

Arif Gosita. *Masalah Perlindungan Anak*. Bhuana Ilmu Populer, 2004.

Maidin Gultom. *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*. Refika Aditama, 2014.

Reports

Badan Pusat Statistik Republik Indonesia. *Jumlah Perceraian Menurut Provinsi Dan Faktor Penyebab Perceraian (Perkara)*, 2024. Jakarta, 2025.

<https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTlZwRFVUMDkjMw=/jumlah-perceraian-menurut-provinsi-dan-faktor-penyebab-perceraian--perkara---2024.html?year=2024>.

Regulations

Convention on the Rights of the Child (1989).

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.