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Judul Makalah : Negligence in Implementing Child Custody Decisions: A Threat to Child Protection in Indonesia

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1	[IJCS] Submission Acknowledgement	10 April 2021
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4	[JSSER] Accept Submission	10 Juni 2021
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[IJCJS] Acknowledgment of a new manuscript submission

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10 April 2021

Dear Dr. Bambang Eko Turisno,

Thank you for submitting the following manuscript to the *International Journal of Criminal Justice Sciences*.

Track: Regular Track
Division: E. Editorial Board
Title: NEGLIGENCE IN IMPLEMENTING CHILD CUSTODY DECISIONS IS A REGRESSION TO CHILD PROTECTION: LEARNING FROM INDONESIA
Author(s): Bambang Eko Turisno
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Date of Manuscript Submission: 18-May-2022 (UTC)

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=====[Note]=====

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Reviewers' Reports

Reviewer 1

Your Paper Entitled *Negligence In Implementing Child Custody Decisions Is A Regression To Child Protection: Learning From Indonesia* is a good attempt to examine the issue of child custody after the dissolution of the marriage of the parents. This seems to be the research objective of this paper, but it is not mentioned distinctly except the last few sentences in the introduction. Please mention it in the Abstract along with other elements like method, findings, and implications for research and practice.

The first section of your paper is introduction which also contains review of previous studies. This section lacks an effective background study. A robust research requires a lengthy and relevant rationale starting with an introduction/ research background, followed by theoretical and empirical discussions of definitions, theoretical studies, and then reaching the research objectives/ hypotheses etc. This is lacking in this paper. I'd suggest breaking this introduction into two parts: background information and problems statement/ research objectives. This would help with finding space to explain the rationale of this research and also to discuss some definitions/ problems in order to make a stronger rationale for this research.

Likewise, the author is required to revise all other sections. The methodology section must give more specific information about research design, and data collection/analysis methods. It's still unclear how the author made use of the data collected from the primary and secondary legal materials, journals, research results, books, and proceedings. What did you do to triangulate the data extracted from these sources? The results and discussion section cannot be one section. Results must contain findings of the research, explained through tables, figures, etc, for easy understanding. Discussion is a separate section which summarizes main results and give references to previous research which agree or disagree with your findings. The conclusion must contain limitations, recommendation for future research and implications for research and practice.

Finally, the language of the paper is very naïve, simple and plain essay-like. This means that the author has used very simple language, short sentences, even the choice of words does not give the impression of any investigations. You are required to take the help of a language expert before resubmission.

On the whole, the focus of the paper is topical as the author consistently talks about the problem under study.

Decision: Accepted after revision

Reviewer 2

The paper lacks a coherent and organized structure. A good research paper requires background, rationale, research objectives, conceptual framework, literature review, results, discussion, etc. Please add all these elements. In addition, there are grammatical and language mistakes (vernacular Indonesian English) which dissuade the concentration while reading. A clear effect of the vernacular language is evident at several places e.g. *mumayyiz*, *hadhanah*, etc. You are required to give English equivalents of all these words. Check for typographical errors and grammatical mistakes in the whole paper.

The author(s) need to review the article in line with the style of the journal. Currently, you have only Introduction, methods, results and discussion. Our format requires:

- Abstract – should highlight: purpose, method, findings, and implications for research and practice.
- Introduction: This section should have a background and historical data; rationale of the study. It may contain a problems statement: highlighting the issue of the study; a conceptual framework showing how you would take up the research forward. The author can also include a few research questions highlighting the objectives of this research e.g. lack of research, not much attention paid on the subject and how this research aimed to fill the research gap.
- Literature review : previous theoretical, historical and empirical studies
- Research Methodology: comprising research design, and data analysis
- Results: This section contains findings of the research, explained through tables, figures, etc.
- Discussion . Discussion is a separate section. Do not merge with results. This section must contain summary of main results and give references to previous research which agree or disagree with your findings
- Conclusion The conclusion must contain limitations, recommendation for future research and implications for research and practice.

Decision: Revision required

Reviewer 1

No	Review	Respond
1	Abstract revision (objective, method, finding, and implication)	
2	Lack of background information and problem statement/ research objective	Introduction has been modified to fulfill the requirements, adjusting the background information and strengthening the problem statement/research objective
3	Unclear methodology	Normative approach is chosen to describe the lack of legal protection on children's right
4	Divide result and discussion into two separate section	Adjustment has been made which separate result and discussion into separate section
5	Language	

Reviewer 2

No	Review	Respond
1	Coherency and Structure	Has been modified according to reviewer's input
2	Structure and section	Section has been adjusted to: Abstract Introduction Literature review Research Methodology Results Discussion Conclusion
3	Addressing vernacular language	vernacular language has been justified by explanation since there's no English equivalent to these words



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Request Fast Track Review

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15 Mei 2021

To: Criminal Justice Journal <ijcjournal@gmail.com>

Dear editors, here we submit the results of improving our articles according to the suggestions of reviewers. We have attached the results of the repair to this email. Thank you for your attention.

Best regards

1 **NEGLIGENCE IN IMPLEMENTING CHILD CUSTODY DECISIONS IS A**
2 **REGRESSION TO CHILD PROTECTION**

3

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51 **ABSTRACT**

52 Marriage aims to form a family. Marriage cannot be separated to obtain offspring or children.
53 Children are essential for a family that raises children's rights from the relationship between
54 parents and children. The child legally has a civil relationship with both parents, so rights and
55 obligations arise between the father, mother, and child. Parents are obliged to nurture and
56 educate their children until adulthood. He still has the right to children even if his parents'
57 marriages are broken. Mother or father remains obliged to care for and educate their children,
58 even if a divorce has occurred. Therefore, it is necessary to study the Custody of children,
59 which is related to the Custody of children when the marriage of both parents is broken. The
60 study results showed that the Judge, in his decisions, determined the granting of child custody
61 based on the child's interests. Against decisions on child custody, there are several obstacles.
62 The implementation of the decisions of the Court concerning the Custody of children who
63 intentionally do not comply voluntarily in the order filed execution to the Court and
64 petitioned for the revocation Licensing Authority custody of the child, which may be
65 requested dwangsom. **It is anticipated that the House of Representatives and the Government**
66 **will work together to draft a statutory regulation that safeguards children who are the victims**
67 **of negligent parenting due to divorce.**

68 **Keywords:** Child Custody, Divorce, Child Protection, Family Law, Contempt of Court,
69 Legal Protection.

70

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72 concerning this article's research, authorship, and publication.

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74 gratitude.

75

76 **INTRODUCTION**

77 To dominate the parents ends with the marriage dissolution due to divorce and the emergence
78 of guardianship to be given to one of the parents. As a result of divorce, there is also the
79 emergence of obtaining custody of children (Fineman, 1988). If the child is not, mumayyiz is
80 the right of the mother. When there is a dispute about the control of children, the Court gives
81 its decision. Both mother and father remain obliged to care for and educate their children
82 solely based on the child's interests (Ilyas, 2019).

83 The aspects of child protection after parental divorce are: Children have the right to
84 maintenance from both parents even if divorced (Eldar-Avidan et al., 2009). Child care aims
85 to protect children from harmful things to themselves and their future from the environment
86 (Daniel et al., 2011). The cost of maintaining and educating the child becomes the father's
87 responsibility (Seltzer, 1991). Philipus M Hadjon states that legal protection is the protection
88 of dignity and worth and the recognition of the human rights of the subject of law based on
89 the legal provisions of arbitrariness. Furthermore, Hadjon classifies two forms of legal
90 protection for the people based on their means: preventive and repressive protection (Hadjon,
91 1987).

92 Research on child protection in decisions custody has been conducted previously. For
93 example, a study conducted by Joan B. Kelly in 1994 (Kelly, 1994). The study entitled "The
94 Determination of Child Custody" briefly reviews the history of child custody decisions and
95 describes the current custodial arrangements in the United States. It examines how parents
96 and courts decide custody and access and the changing visitation patterns in recent decades.
97 The authors discuss the impact of legal reform and the implementation of newer dispute
98 resolution and educational interventions and then make recommendations for policy and
99 practice.

100 The research was conducted by Lyn R. Greenberg et al. in 2004 (Greenberg et al., 2004). The
101 study entitled "Ethical Issues in Child Custody and Dependency Cases Enduring: Principles
102 and Emerging Challenges" underscores the need for judges and lawyers to understand the
103 ethical and professional standards underlying competent mental health practice in forensic
104 cases. The practices of mental health professionals who provide Court-related services may
105 substantially impact the validity of their professional opinions, the effectiveness of services
106 provided to children and families, and the development and adjustment. The authors suggest
107 that core ethical and clinical issues be considered by all psychologists working in the context
108 of custody disputes. These professional practice recommendations are also expected to be
109 useful for lawyers and judicial officers in assessing the quality of the opinions of mental
110 health professionals.

111 Joan S. Meier et al. conducted the research in 2010 (Meier et al., 2019). The study, entitled
112 "Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations",
113 aimed to ascertain whether empirical evidence suggests that parental alienation, such as
114 parental alienation syndrome, is gender-biased in practice and outcomes. Second, this study
115 seeks to explore outcomes in detention/abuse litigation based on gender and different types of
116 harassment. An analysis of more than 2,000 court opinions confirmed that the Court was
117 sceptical of the mother's claims of harassment by the father; This scepticism is most
118 extraordinary when mothers claim child abuse. The findings also confirmed that cross-
119 paternity claims of parental alienation increased (almost doubled) court rejection of maternal
120 harassment claims and lost maternal custody of fathers accused of harassment. In comparing
121 court responses when fathers accused mothers of harassment, significant gender differences
122 were identified. Finally, this study relied only on electronically published opinions in the case
123 of child custody; this has resulted in an invaluable database that identifies ten years of

124 published cases involving exile, harassment and custody while coding party claims and
125 defences, outcomes, and other critical factors based on gender and parental status.

126 The research was conducted by Mansari et al. in 2018 (Mansari et al., 2018). The study
127 entitled "Child Custody Rights After Divorce of Parents in the Decision of a Judge of the
128 Court of Syar'iyah Banda Aceh" aims to determine the basis of the Judge's judgment in
129 determining the childcare juridical review and legal consequences on the determination of
130 child custody after divorce. This normative research uses primary legal materials in Law No.
131 1 of 1974, secondary legal materials in Judge's decisions and tertiary legal materials in legal
132 dictionaries and encyclopedias. Data presentation is done descriptively and using qualitative
133 data analysis methods. The results showed that the Judge's consideration to determine the
134 child's caregiver after divorce is the existence of a demand from the plaintiff/defendant
135 (petitioner/defendant), through the vertex decision, in the child's best interests. The
136 designation of the mother or father as the child's caregiver is not contrary to the applicable
137 laws and regulations as long as it guarantees the best interests of the child and both the
138 mother and the father have the right to care for the child even if the mother is more entitled to
139 care for him. It is advised to the Judge that in deciding, the babysitter should not only pay
140 attention to the gender of the parents but must ensure the child's best interests. It is
141 recommended that policymakers use this study as a reference in formulating new policies,
142 and it is recommended that parents not fight for custody of children if they cannot take care
143 of them properly.

144 Research conducted by R. Jangkung Surya Waspada and Dona Budi Kharisma in 2020
145 (Waspada & Kharisma, 2020). The study entitled "Juridical Study of Child Custody
146 Regulations as a Result of Divorce from Mixed Marriages Reviewed from International Civil
147 Law" aims to determine the regulation of child custody in divorce because of a divorce
148 between a husband and wife where one party is an Indonesian Citizen, and the other party is a

149 Foreign Citizen. This study is empirical law research that is descriptive with a qualitative
150 approach. The data collection technique used is to conduct interviews with Sleman District
151 Court Judges and study documents or library materials. Based on the results of research and
152 discussion, it can be seen that the problems that arise in mixed divorce are where the divorce
153 lawsuit is filed, the struggle for custody of the child, and the child's citizenship. In resolving
154 child custody issues from mixed divorces, Indonesian judges use Indonesian national law,
155 which gives children the right to choose with whom they want to be adopted. Judges are
156 based on the needs of the child first. Children also acquire limited dual citizenship as long as
157 they are under 18 (eighteen) years or before marriage. Children 18 (eighteen) years old or
158 married must choose one of their parents' nationalities.

159 Their research was conducted by Renita Ivana and Diana Tantri Cahyaningsih in 2020 (Ivana
160 & Cahyaningsih, 2020). The research entitled "The Basis of Judge's Consideration on
161 Divorce Decision by Granting Child Custody to Father" aims to determine the basis of
162 Judge's consideration of Divorce Decision by Granting Child Custody to Father. This legal
163 research is normative legal research that is prescriptive. The research approach uses the Legal
164 approach and the case approach. Legal material collection techniques are used to study
165 documents or literature materials. The study results explained that the Judge's judgment that
166 emerged from the six Divorce Decisions that the author studied put forward the principle of
167 best interests for the child; the judge gave custody of the minor to the father; this is not by the
168 rules of the applicable legislation because the child under the age of custody is in the hands of
169 the mother. Nevertheless, because of the mother's bad behaviour, abandoning the child,
170 forgetting her responsibilities as a mother. So that it becomes the basis of the Judge's
171 consideration in deciding on the granting of custody of the minor to the father.

172 Research conducted by José Félix Muñoz Soro and Carlos Serrano-Cinca in 2021 (Soro &
173 Serrano-Cinca, 2021). The research entitled "A model for predicting court decisions on child

174 custody" focuses on the provision of joint or single custody is very important for the lives of
175 children and parents. This paper first models the factors that explain the Court's decision to
176 grant custody of the child and then tests the predictive capacity of the proposed model. We
177 conducted empirical studies using data from 1,884 court decisions, identifying and labelling
178 factual elements, legal principles, and other relevant information. Soro and Serrano-Cinca
179 developed a neural network model that included eight factual findings, such as the
180 relationship between parents and their economic resources, children's opinions, and
181 psychological reports on types of custody. Soro and Serrano-Cinca performed temporal
182 validation using later cases compared with a training sample for prediction. Soro and
183 Serrano-Cinca obtained easy-to-apply decision rules with decision tree techniques. Our
184 system predicts court decisions with over 85% accuracy.

185 Even though this is a matter of more significance than determining who will have custody of
186 the children following a divorce, none of the studies that have been conducted in the past has
187 investigated the issue of negligence on the part of those who are awarded child custody. It is
188 not uncommon to go through complex legal remedies that take a long time. This ultimately
189 creates a protracted situation for violations of children's rights, even though there are
190 typically regulations that govern the transfer of child custody. However, having to go through
191 these legal remedies is not uncommon. When it comes to marriage and divorce, children's
192 rights cannot be denied for any reason, regardless of the gender of the custody holder or who
193 has more rights. However, the child's rights, including how he or she can thrive to their full
194 potential and obtain what they want, should take precedence over all of these other
195 considerations. What it is that he must get.

196 This paper identifies the factors that best predict joint custody, which is useful for parents,
197 attorneys, and prosecutors. Parents should be aware of these findings before venturing into
198 the courtroom. Divorce has consequences for the custody of children whose implementation

199 is hindered. Several cases show that a court decision granting custody of a child to one of the
200 parents was not implemented. This paper examines the protection of child custody after the
201 dissolution of the marriage of both parents due to divorce. So the purpose of this writing is to
202 cover child custody after divorce. In the implementation of child custody after divorce, there
203 are defaults and obstacles in the implementation of child custody decisions after divorce,
204 which requires improvement in the fulfilment of child custody to achieve protection of rights
205 foster care after the divorce of both parents is discussed in this study.

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223 **LITERATURE REVIEW**

224 It is common knowledge in social circles that child custody battles often result in heated
225 arguments between the parents of the child's parent(s), putting the child in the middle of the
226 conflict (Bruch, 2006). Continued exposure to overt and covert forms of parental conflict will
227 be the strongest predictor of whether or not children can successfully adjust to the breakdown
228 of their family, even though most children will adjust to their parent's divorce. Most children
229 living in high-conflict families continue to be subjected to their parents' anger, hostility, and
230 contempt for the other parent. These negative emotions frequently remain amid additional
231 strains brought on by adjustments in the children's day-to-day life (i.e., changes at home,
232 changes at school, economic factors). The conflict between parents can also serve as a
233 moderating factor in parenting because it can divert parents' attention away from the
234 requirements of their children (Cao et al., 2022).

235 There are still many questions to be answered and misconceptions to dispel regarding the
236 parents who have custody battles over their children (Tymchuk & Feldman, 1991). Even
237 though significant resources in the form of social services are provided to these families, the
238 conflict continues for many of them. In order to have a complete understanding of the factors
239 that influence child protection investigations in cases involving disputes over child custody, it
240 is necessary to have a comprehensive understanding of the variables. Better informed data on
241 these responses can promote changes in structure and the delivery of services, which will
242 ultimately reduce the burden of suffering placed on children and the children of families
243 caught up in these disputes (Forslund et al., 2022).

244 Put in the legal system governing child custody in Indonesia, the term "custody" refers to the
245 arrangement known as mumayyiz. In addition, it is also known by the name "hadhanah." The
246 activity known as "child care" or "Hadhanah" consists of providing emotional support,
247 physical care, and educational opportunities for children until they become adults or can care
248 for themselves (Hamsir & Sastrawati, 2021). The husband and wife are equally responsible

249 for their children's care and upbringing, including their physical health, spiritual
250 development, and academic progress. It is said that the age limit is mummayiz, which in this
251 study is defined as a child who has reached the age of 12 years (Zur Raffar et al., 2021).
252 Therefore, a child who is not yet mummayiz is a child under the age of 12 years and whose
253 custody rights are extended to the child's mother. There are a variety of different opinions
254 regarding the age limit. The age limit is said to be mummayiz. Even though at that time, the
255 child was in the care of the mother, it does not mean that the father was absolved of
256 responsibility; the responsibility that is being referred to here is the responsibility to provide
257 financially for the child. After the child reaches the age of 12, at that time, the child can
258 choose whom he will be raised next, and this is where the law renders the father's initial
259 obligation null and void. When the child is in the mother's care, the father is still obligated to
260 fulfil the financial rights of the child. However, after the child reaches the age of 12, this
261 obligation is null and void. Regarding the laws and regulations in Indonesia, this situation
262 prevails concerning the custody of children and the protection of children's rights (Devy &
263 Muliadi, 2020).

264 In addition, regarding hadhanah and mumayyiz, according to Al-Shana'ny, hadhanah is the
265 act of caring for a child who is unable to be independent and cannot protect himself from
266 everything that can cause him harm and put him in danger. Mumayyiz is the act of caring for
267 a child who can be independent and protect himself. In the meantime, according to Sayyid
268 Sabiq, hadhanah means to take care of children who are still young, whether they are male or
269 female, or who are grown but not yet tamyiz, can protect themselves from something that
270 hurts and destroys them, can educate themselves physically and spiritually. Their minds can
271 stand independently to face life's challenges and assume responsibility. In addition, the term
272 hadhanah within the Indonesian legal system has become a permanent term used for the

273 position of a child whose management is "disputed" in court as a result of a live divorce
274 between the husband and the wife (mother and father) (Firdausia, 2020).
275 In addition, the responsibility of maintenance, which includes supervision and service in
276 addition to the provision of a living, is sustainable until the child reaches the legal age limit as
277 a mumayyiz who can stand on his own. This responsibility includes the provision of a living.
278 In the Compilation of Islamic Law, Article 105 (a), it is stated that the age limit for a child to
279 be considered a mumayyiz is 12 years old. In the meantime, Law Number 1 of 1974
280 concerning Marriage states that a child is considered to be mumayyiz if he or she has married
281 or reached the age of 18 years old (Ilyas, 2019). What is meant by education is the obligation
282 of parents to provide education and instruction that allows the child to become a human being
283 who has the ability and dedication to life equipped with abilities and skills by the child's
284 innate talent, which he will develop amid Indonesian society as the basis for life. This is
285 meant by "education" and his means of subsistence after he was exonerated from his duties as
286 a parent. Because Indonesia refers to or is bound by Islamic law in determining child custody,
287 these terms, hadhanah and mumayyiz, will be discussed extensively throughout this study.

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297 **RESEARCH METHODS**

298 This research is legal research with a normative juridical approach. A normative science of
299 law has a particular way sui generis; this is legal (juridical) research with a different method,
300 unlike other studies (Marzuki, 2017). The legal research method is a systematic way of
301 conducting research. To avoid getting caught up in the mistakes that generally occur in legal
302 research by imposing the empirical research format in the social sciences on normative
303 research, it is essential to know and find the type of research one of the components in
304 research methods (Kumara, 2021). Because the accuracy of the research method will
305 significantly affect the process and results of legal research. The data used are secondary data
306 derived from primary and secondary legal materials. The primary legal material used is
307 various laws and regulations related to post-divorce custody and child protection. While the
308 secondary legal materials used are journals, research results, books, and proceedings related
309 to this research topic.

310 Based on the purpose of the research to be achieved, it begins by reviewing all the available
311 data from various sources, namely documentation and data obtained from the library. By
312 reducing the data, the data obtained from the library and summarised by selecting the main
313 things and arranging more systematically to be easy to control. In this case, the author
314 analyses qualitative data, which were analysed with a descriptive analysis method. This
315 method is used to describe objectively to improve the fulfilment of child custody to achieve
316 custody protection after both parents' divorce.

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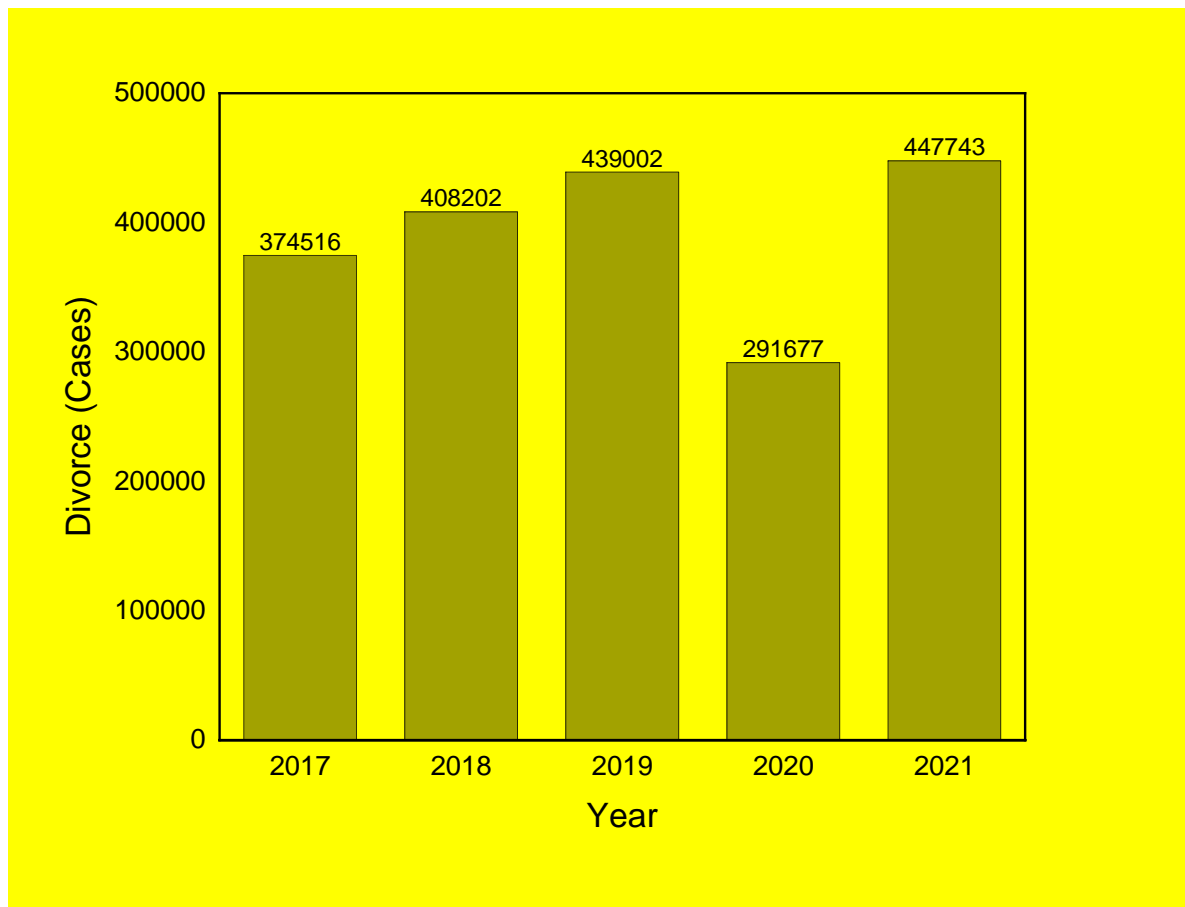
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322 **RESULTS**

Number of Children Left Behind After Their Parents Get a Divorce in Indonesia

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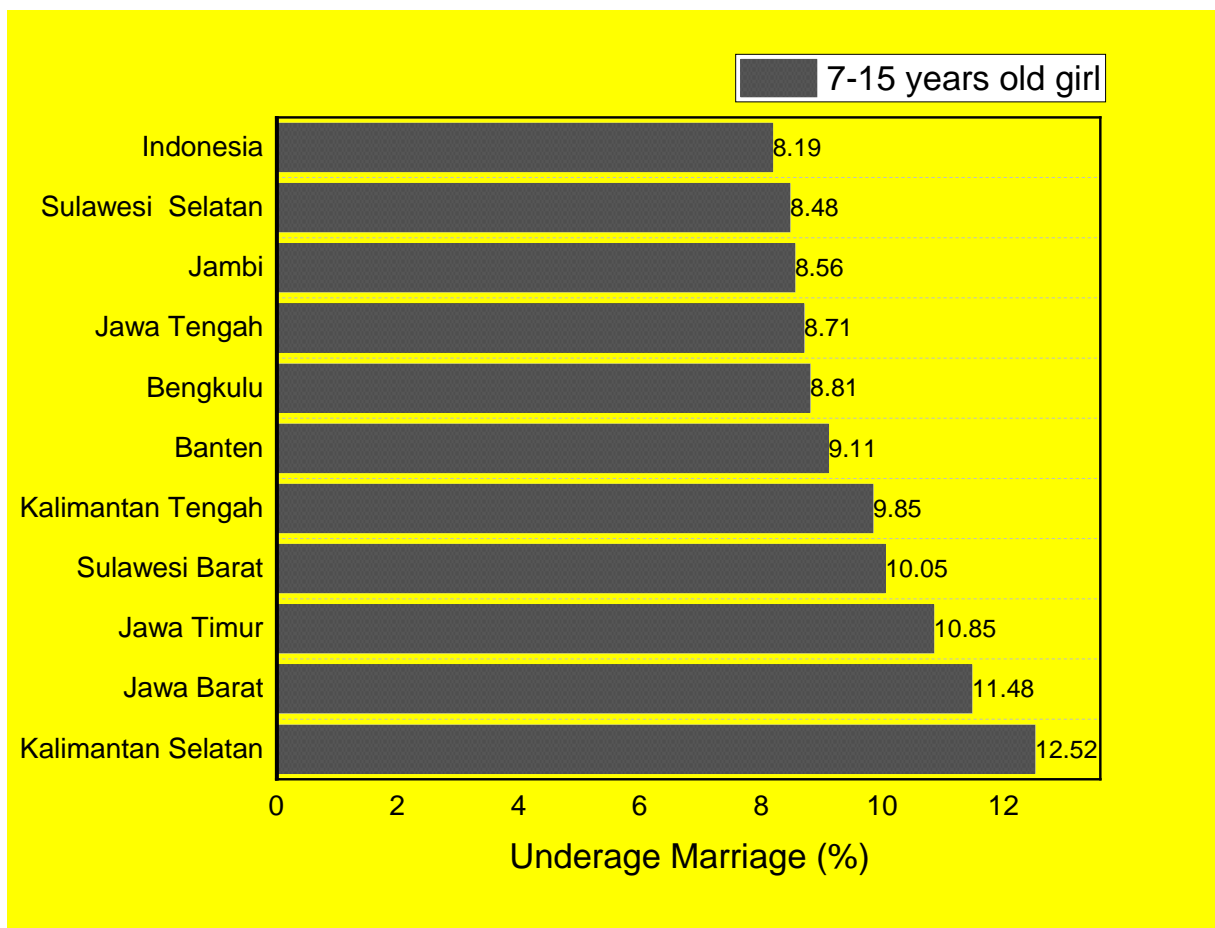
325 The number of divorce cases in the country reached 447,743 in 2021, as stated in the data
326 from Statistics Indonesia. This represents a growth of 53.50 per cent in comparison to the
327 number of divorce cases in 2020, which reached 291,677. According to this report, the
328 number of divorce petitions filed by wives far exceeds those filed by husbands. A total of
329 337,343 cases, or 75.34 per cent of divorces, occurred due to divorce. These cases were cases
330 in which the wife had filed a lawsuit against the husband, and the Court had determined the
331 case. In the meantime, the talak divorce accounted for 110,440 instances or 24.66 per cent of
332 all divorces. The talak divorce refers to cases in which the husband submitted the petitions
333 for the divorce, and the Court decided.

334 West Java is expected to have 98,088 divorce cases in 2021, making it the province with the
335 most significant number of divorce cases overall. East Java and Central Java came in second

336 and third place, respectively, with 88,235 and 75,509 instances. In 2021, disagreements and
337 conflicts will continue to be the leading cause of divorce, accounting for 279,205 instances.
338 The majority of people who file for divorce do so for financial reasons. However, there is one
339 party that does so due to domestic violence, which leads to polygamy. During the last five
340 years, there has been a general trend toward fluctuations in the number of divorce cases
341 throughout the country. The year 2021 saw the most significant number of people filing for
342 divorce, while the year 2020 saw the fewest. The number of people filing for divorce has
343 risen from 2017 to 2019.

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345 **Relationship to Marriages Initiated by Minors**



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347 There are still a significant number of women in Indonesia who marry at a young age for
348 various reasons, including cultural norms, economic pressures, and other factors that are not

349 ideal. Marriage is legal only if the man and the woman are 19 years old, as stipulated by Law
350 Number 16 of 2019 concerning Marriage Amendments to Law Number 1 of 1974. This law
351 was passed in response to Law Number 1 of 1974, which initially governed marriage.
352 According to the results of the National Socio-Economic Survey (SUSENAS) Kor 2020, 8.19
353 per cent of Indonesian women tied the knot for the first time between the ages of 7 and 15.
354 In South Kalimantan, the proportion of women who tied the knot for the first time at a
355 younger age than the national average reached 12.52 per cent in 2020. Nevertheless, a 13.18
356 per cent drop can be seen when comparing this figure to the previous year's. West Java had
357 11.48 per cent of the country's total population of women who got married for the first time
358 between the ages of 7 and 15, making it the province with the highest proportion of young
359 brides. After that, East Java came in second with 10.85 per cent, West Sulawesi came in third
360 with 10.05 per cent, and Central Kalimantan came in last with 9.855 residents.
361 Next, the rate of underage marriage in Banten's female population is 9.11 per cent. After that,
362 Bengkulu comes in at 8.81 per cent, followed by Central Java at 8.71 per cent, Jambi at 8.56
363 per cent, and South Sulawesi at 8.48 per cent, respectively.

364

365 **Number of Abandoned Children Due to Divorce**

366 In 2020, the Ministry of Social Affairs of Indonesia reported that 67,368 children in
367 Indonesia were neglected. It is the responsibility of the provincial as well as the district and
368 city governments to ensure that every social agency can provide social rehabilitation for
369 children who have been neglected.

370 A kid aged 0-21 is considered to be abandoned if he or she has suffered physical or emotional
371 abuse at the hands of his or her parents or family or if the child has been removed from the
372 care of his or her parents or family.

373 There is a correlation between marriages contracted by minors and increased divorce rates,
374 and child abandonment due to the divorce. In the age range of 10 to 17 years, approximately
375 99.26 per cent of young women have not married, 0.70 per cent are married, and 0.04 per
376 cent are divorced or divorced. 36.62 per cent of young women between the ages of 10 and 17
377 got married when they were 15 or younger. Marriages between people who are not yet adults
378 or who have not reached puberty are typically considered to involve children. This is not by
379 Article 7 of Law No. 1 from 1974.

380 In general, married life ought to be complete and harmonious, but things will not always go
381 smoothly in practice. Divorce or death are two potential causes of separation in a couple's
382 lives. In situations where solely the biological father provides considerable care for the child,
383 children who live with their biological mothers experience an effect known as the loss of the
384 child's motherhood. This is especially true for young girls and toddlers. The presence of a
385 biological mother is essential for toddlers, particularly infants who are still required to
386 consume breast milk. When a young lady approaches puberty, she has already begun to
387 experience her monthly period and tends to become reluctant to talk or communicate with her
388 father. This is because of the physiological changes that occur at this time.

389 The 2009-2018 MSBP Susenas show the percentage of children aged 0-17 years who are not
390 yet married and live with their biological father. When it comes to time, the fact that the
391 father has a job means that the children spend less time together. However, there are times
392 when the father figure is needed, such as when children start school where other children are
393 accompanied by their fathers while he is not. Because of this, the results of the MSBP
394 Susenas show this percentage. Only about 2% of children are currently living with their
395 biological fathers. The percentage of boys who live with their biological fathers is 2.59 per
396 cent, which is 2.59 per cent higher than the percentage of girls who did so in 2018, which was
397 2.42 per cent. In the meantime, if you look at the location, you will notice that fewer children

398 live with their biological fathers in urban areas, which is 2.37 per cent, as opposed to rural
399 areas, where the percentage is 3.15 per cent (2.68 per cent).

400 Women who have to raise their children without the presence of a husband or father figure,
401 either as a result of separation or divorce from their husbands or because their husbands have
402 passed away, are the ones who are most likely to be familiar with the term "single mother" or
403 the role of a single mother. The mother, who also serves as the community's pillar of support,
404 takes on an increasingly heavy responsibility, one that is not just financial but also social as
405 well as emotional. The mother will fulfil all of her children's requirements, such as providing
406 them with an education, clothing, and food, and will also take on the role of a father to
407 safeguard her children. When it comes to parenting, children who solely spend their time with
408 their biological mother will have a less balanced experience. One example is when the child's
409 biological mother is the only person who can care for him since his biological father cannot
410 do so because he is ill, works outside the home, or has some other disability. Nevertheless,
411 this position of the single mother can also show up in households with still a father and a
412 mother present.

413 Between 2009 and 2018, there was a general trend toward increasing the number of children
414 living with their biological moms. It was 5.61 per cent in 2009 and continued to rise until it
415 reached 8.34 per cent in 2018. Children living with their biological mothers are more likely to
416 be found in rural areas when compared to children living in urban areas. In 2009, the
417 percentage of children living with their biological mothers in rural areas was 5.82 per cent.
418 Since then, it has increased to 6.77 per cent and is expected to continue rising until it reaches
419 8.38 per cent in 2018. This is because many parents in metropolitan regions are employed,
420 particularly their moms.

421 When assessed according to gender, more girls than boys live with other families. The
422 percentage of girls living with other families was 5.59 per cent in 2009 and 5.45 per cent in

423 2012, but it dropped to 4.69 per cent in 2015 before climbing up to 4.95 per cent in 2018. On
424 the other side, some children do not live with either of their parents; the percentage of
425 children who live with other families in rural areas is significantly higher than that of children
426 who live with other families in urban areas (5.77 per cent). This is due to unavoidable
427 circumstances, such as the difficulty in hiring a babysitter and the expensive cost of child
428 care, as well as the various reasons for trusting grandparents to look after children or the large
429 number of people who work outside of the village, either in the city or abroad. It requires
430 extra care and distinct contact with children with these disorders so that these youngsters do
431 not receive violence from their environment or associate with people who cause them to get
432 into trouble.

433 Parenting is one factor that impacts a child's growth and development, particularly during
434 crucial periods, which occur between the ages of 0 and 8. Loss of good parenting, such as
435 divorce, loss of parents for either a temporary or permanent period, natural disasters, and
436 several other traumatic situations will significantly impact their physical and mental health.
437 According to Sears (1957), parenting is a relationship between parents and children that
438 involves the expression of attitudes, values, interests, and beliefs held by the parents and the
439 conduct exhibited by their children in parenting and training. Sociologically speaking, this
440 encounter is part of an indivisible group of occurrences that, whether it is done on purpose or
441 not, help youngsters get ready for the next phase of their lives. Therefore, the interpersonal
442 and intrapersonal interactions of the people who are around the child give the activity of
443 parenting its unique colour.

444 **DISCUSSION**

445 **Child Custody After Divorce, Default And Obstacles In The Implementation Of Child**
446 **Custody Decisions After Divorce**

447 One of the legal relationships in society is marriage as an inner bond between a man and a
448 woman as husband and wife to form a family (household) that is happy and eternal based on
449 the Almighty God (Tobing, 2018). Marriage is valid when performed according to the laws of
450 religion and belief and recorded; there is no longer a variety of laws in determining the
451 legality of a marriage. Marriage is essential in human life, both for individuals and groups
452 (Haeri, 2014). With lawful marriage, intercourse between men and women occurs honourably
453 by man's position as a dignified being. Mixing married life is built in an atmosphere of
454 serenity, peace and happiness, and the love between husband and wife and their children
455 (Herawati, 2016).

456 Marriage aims to form a happy, lasting, prosperous family (Randles, 2016). Marriage in
457 Islam aims to fulfil the desire to create a happy family based on love and affection and obtain
458 legitimate offspring in society by following the provisions that the Shari'ah has set—forming
459 a family and having children or descendants between the purpose of marriage. The legitimate
460 child will carry on the lineage and develop the tribes of the human race (Burhanudin, 2018).

461 A man with a woman as husband and wife bound by marriage has various legal
462 consequences, namely the emergence of rights and obligations among those who belong to
463 the family environment, namely the husband's marital power (Idy, 2019). The husband is the
464 head of the family and is responsible for his wife and children. For the children they give
465 birth to, parents are obliged to nurture and educate their children as best they can until the
466 child marries or can stand on his own. Children who have not reached the age of 18 and have
467 never been married are under the authority of their parents (Putra, 2016).

468 Marriages sometimes have to break up because of divorce (Flowerdew & Al-Hamad, 2004;
469 Rheinstein, 1955). Divorce is the last action taken after taking the path for peace efforts and
470 repair (Gottman & Silver, 1995; Johnston & Campbell, 1999). There is no way and for the
471 sake of happiness that can be expected after the divorce. In the event of a divorce, the

472 severance of the marital relationship between husband and wife, the legal consequences on
473 the child's status, maintenance, education, and financing (Mashhour, 2005). The relationship
474 between husband and wife is severed with the dissolution of marriage due to divorce, but the
475 relationship between parents and children remains unchanged. The father and mother still
476 bear obligations for the cost of education maintenance (Cohen, 1987). The obligation of
477 parents to nurture and educate their children as best they can until the child is married or able
478 to stand on his own does not end with his parent's divorce. A man and a woman who caused
479 the child's birth must be responsible for the child's survival, growth, and development. The
480 right to child custody is a human right that must be protected (Nowak, 2005).

481 The child has a legal relationship with both his father and his mother, in the sense that both
482 parents must care for and educate the child, and there is the child's right to be cared for by
483 both parents (Amato, 1994). For children born in a legal marriage, the parents are primarily
484 responsible for realising the child's spiritual, physical and social well-being (Desai, 2010).

485 Parents must nurture and educate their children as best they can until they marry or stand on
486 their own (Steinberg, 2001).

487 In particular, parental authority is obligated to educate and nurture their children. Parents are
488 responsible for nurturing and educating their children as best they can (Goldstein, 1976).

489 Every parent's responsibility is to care for, maintain and educate so that a child can grow and
490 prosper. Maintenance means providing housing, food, clothing and care if the child is sick.

491 Education means educating the child to become a social being. The central part of this
492 Parent's obligation is to send the child to school to work later (Epstein, 1987).

493 The maintenance and education of a minor child by the father or mother who exercises
494 parental authority must be done in the child's best interests. Fathers or mothers who exercise
495 parental authority are not allowed to do as they please for their benefit. The cost must be
496 commensurate with the parents' ability unless the child has his or her wealth and income. The

497 child does not have the right to demand an education that his parents usually cannot bear
498 (Goldstein et al., 1996; Lansdown, 2002).

499 Some terms are used to refer to the rights of the child, which are the obligations of the
500 parents. The term custody child is to nurture and educate a child or hadhanah, defined as the
501 activity of nurturing, nurturing and educating children until they are adults or able to stand on
502 their own. The power of parents to nurture, act, nurture, build, protect, and develop and
503 develop children by their religion and abilities, talents, and interests is called the Parent's
504 Authority. Regarding what is meant by child care in Indonesia, there is no explanation, nor is
505 there any law or legal provision that regulates child care explicitly (Hafsah, 2016; Ipendang,
506 2015).

507 In the UK, various terms are used such as "guardianship", "custody", "care", and "control".
508 Then the "legal custody", "physical custody", "actual custody", and "joint custody". Various
509 terms are confused by their terminology, which implies that they overlap. Custody means the
510 care, treatment, "care", monitoring, treatment, care; "control" means monitoring and control;
511 "guardianship" means the authority or duty of a guardian (Folberg & Graham, 1979; White,
512 1980). Further, "legal custody" is defined as: "so many obligations and powers (rights) of the
513 parents concerning the person of a child (including as to the place and manner in which he
514 will spend his time)" (DiFonzo, 2014). Then, "actual custody" (care and control) is defined as
515 the Parent's right to have the child explicitly, including its obligations. Then "joint legal
516 custody" means that both parents have the same right to decide on the child; no one has a
517 superior right over the other (Seltzer, 1998). "Physical custody" means the right and
518 obligation of a parent to provide "a home" for the child and to make day-to-day decisions
519 while the child is with them (Fox & Blanton, 1994; Singer & Reynolds, 1987).

520 Custody of children in Islamic law in Indonesia as stipulated in Article 105 Compilation of
521 law Islamicis also in Malaysia used the term hadhanah. Hadhanah, if not child mumayyiz, is

522 the mother's right. Nevertheless, some think it is the child's right to receive hadhanah. A right
523 on the part of the woman he has, and he can refuse or claim it if he likes. In the hadhanah, the
524 rights of the father, the child, and the mother are included. If the family is in harmony, the
525 rights are three to each other. Nevertheless, in a dispute, the child's rights are a top priority
526 (Nasution et al., 2021; Rahim et al., 2020).

527 Hadhanah's primary purpose is to nurture and care for minors which both parents do. On the
528 shoulders of both parents lies the obligation to perform the task. The bond of cooperation
529 between the two can only be realised if both parents are still bound in the marital relationship.
530 In such an atmosphere, although the task of hadhanah will be done more by the mother, the
531 role of a father can not be ignored, both in meeting all the needs that facilitate the task of
532 hadhanah, and in creating a peaceful atmosphere in the household where children are raised
533 and raised (Afriyani, 2021; Ahmad, 2014; Annisa et al., 2019).

534 Hadhanah is a part of the control (power) of parents, which consists of:

- 535 1. Hadhanah, taking care of the child (person) who is not an adult, which includes taking
536 care of his body, providing shelter, providing education and so on;
- 537 2. Wilayat al-mal, preserving the child's wealth and interests concerning that wealth.

538 The father must do Wilayat al-mal, and if he does not exist, the father is replaced by the
539 father. The power of the al-mal region lasted until the child could be said to be a rasjid, who
540 could take care of his wealth own. By separating the two, it can be said that hadhanah is the
541 primary right of the mother, and territory is the primary right of the father. The main purpose
542 is to provide welfare to the child from both parents. Separating the hadhanah from the
543 territory(guardianship), thus ensuring the father remains responsible for the child's welfare as
544 long as the child is under the mother's care. The fact that the father remains the child's legal
545 guardian means that he helps strengthen the mother in carrying out the child's maintenance.

546 Everyone who gets married, of course, expects the marriage to be intact forever. However,
547 due to unavoidable circumstances, the marriage can end in a divorce, that is, the dissolution
548 of the marriage when the parties are still alive based on a bond that can be justified and
549 determined by a court decision that affects the children. Numerous studies report differences
550 between boys and girls in the effects of parental divorce, although more recent studies do not
551 appear to find such differences (Earp et al., 2012; Wallerstein & Lewis, 2004).

552 With a divorce, the impact is not just momentary for both parents but a lifelong impact on
553 their children. According to Fagan and Churchill (Fagan & Churchill, 2012), divorce
554 detrimentally impacts individuals and society in numerous other ways; religious practice:
555 Divorce diminishes the frequency of worship of God and, Religious practice: Divorce
556 diminishes the frequency of worship of God and Recourse to Him in prayer. Education:
557 Divorce diminishes children's learning capacity and educational attainment. The marketplace:
558 Divorce reduces household income and deeply cuts individual earning capacity. Government:
559 Divorce significantly increases crime, abuse and neglect, drug use, and the costs of
560 compensating government services. Health and well-being: Divorce weakens children's
561 health and longevity. It also increases behavioural, emotional, and psychiatric risks, including
562 suicide. The obligation of parents to nurture and educate their children as best they can until
563 the child is married or able to stand on their own does not end with the parents' divorce. The
564 relationship between husband and wife is severed with the dissolution of marriage due to
565 divorce, but the relationship between parents and children remains unchanged. The father and
566 mother still bear obligations for the cost of education maintenance.

567 With the father and mother no longer bound in a marital relationship, or if both are divorced,
568 then the party entitled to obtain hadhanah for the child, there are two periods: The period
569 before Mumayyiz, namely from birth to age 12 (twelve) years, is the mother At that time in
570 most cases a child is not yet mumayyiz, has not been able to distinguish between what is

571 helpful and harmful for him. At this time, the mother is considered more entitled to the child.
572 The mother better understands the child's needs at that time and is more able to show her love
573 when the child is in dire need of the mother's love.

574 The custody of a child who has not been mumayyiz mother is more entitled to take care of
575 him if the following requirements can be met, namely: who performs hadhanah must have
576 reached puberty, sane, not disturbed memory; have the ability and willingness to care for and
577 educate the child; can be trusted to hold hadhanah to ensure the child's care better; if the one
578 who performs hadhanah is the birth mother, it is required that she does not marry another
579 man.

580 Mumayyiz period, Son of mumayyiz means already has the power to
581 distinguish (subordinate vermogen). By this time, the child has distinguished between
582 harmful and beneficial. Therefore, he is given the right to determine whether his attitude will
583 follow the mother or the father. Children who are mumayyiz have the right to choose to get
584 hadhanah from their father or mother. The child can choose which of the two parents he will
585 follow.

586 When his mother died, he was replaced by women in a straight line from the mother. His
587 mother was the mother (his grandmother), and if he also died, he was replaced by his mother
588 again (the grandmother's mother). Only if the ancestors in this maternal line do not exist then,
589 the father of the child has the power to perform hadhanah, and if the father has also died, he
590 is replaced by women in a straight line upward from the father. His mother (father's
591 grandmother), then his mother's mother (father's grandmother). If they too have died, the
592 hadhanah is performed by the child's sister concerned. The holders of hadhanah positions
593 who will replace them are blood relatives according to the sideline from the mother; women
594 who are blood relatives according to the sideline from the father. Suppose the hadhanah

595 holder turns out to be unable to guarantee the physical and spiritual safety of the child. In that
596 case, the hadhanah rights can be transferred to other relatives who have hadanah rights.

597 Parents whose marriages break up due to divorce are obliged to nurture and educate their
598 children as best as possible until the child marries or can stand on his own. In a divorce, both
599 mother and father remain obliged to maintain and educate their children solely based on the
600 child's interests. Each child has the right to be cared for by his or her parents.

601 A child will not be separated from his parents against the child's wishes unless such
602 separation is necessary for the child's best interests. The right of hadhanah of a child who has
603 not been mumayyiz is the right of his mother; it is a regulatory rather than coercive provision.
604 The core criterion as a measure is the realisation of the best benefits for the child. Fathers and
605 mothers both have a personality or good personalities and do not contradict the three aspects
606 of the personality of people who take care of children, namely the aspects of morals, ethics,
607 religion, and health. Thus, its application must return to the introductory provisions or
608 normative origin, namely, the custody of a child aged six years and 11 months has not
609 mumayyiz the right of the mother.

610 The custody of an 8 -month -old child is given to the mother, and to anticipate if in the future
611 the father or someone else takes the child against the law, then punishing the father or anyone
612 who controls the child should be punished for handing over the child to the mother. The
613 father has always been of good character and has never been involved in crime, but as long as
614 the mother raises the child, he never visits to provide for them. This fact shows that the father
615 should be judged not to perform his duty to support his children.

616 For the realisation of the child's best interests, in determining the child's custody based on
617 morality, health, and the ability to care for and maintain the child. Child custody must also be
618 oriented on maintaining five main things: maintaining the child's religion, maintaining the

619 child's soul, maintaining the child's intellect, maintaining the child's offspring, and
620 maintaining the child.

621 Determining who is entitled to custody of the child should come first is in the child's interest,
622 not who is most entitled. A 6-year-old child is given to be under his father's care (hadhanah).
623 The child will suffer more if he has to go with his mother because the child's mother often
624 travels abroad, and it is not clear who the child should be with, while the fact is that now the
625 child is calm and peaceful with his father.

626 For the sake of the child, the hadhanah of a 7-year-old child is under his father with
627 consideration; the child's mother is a celebrity/public figure who is very busy with her work,
628 often going home in the morning and the afternoon, even until night so if the child is set
629 under the mother's hadhanah then the child receives less attention and affection from the
630 mother. The father should allow the mother to meet with the child and come with him on
631 school holidays or agreed days. The mother has the right to visit/visit and help educate and
632 pour her love as a mother into her child.

633 The Supreme Court of the Republic of Indonesia has granted Jurisprudence: The child's
634 interests should be used as a benchmark to determine which of the parents is entrusted with
635 the child's care. In terms of the child, it is said that the child's interests are given priority in
636 all cases. Provisions respect the right of a child separated from one parent or both parents to
637 permanently maintain a personal and direct relationship with both parents. There is a basis
638 for respecting the child's opinion. Respect for the child's right to participate and express his
639 or her opinion in decision-making, especially concerning matters that affect their lives. The
640 child's best interests will be a primary consideration in all actions—best for the child.

641 Father as the holder of custody and care (hadhanah) of a child aged seven years three
642 months. The right of custody of a minor is the right of the mother. Mother is the holder of

643 custody and care (hadhanah) to the child's mother, aged three years seven months. At his
644 age, the child's mental condition is compassionate and easily influenced by the surrounding
645 behaviour. Simply for the sake of the child's mental development because the mother has
646 done an evil deed or immorality, namely taking photos with other men that can affect the
647 child's soul, so it is feared that it will have a more significant influence on the first child.

648 Children who are mumayyiz have the right to choose to get hadhanah from their father or
649 mother. In order to facilitate the management of the school and the needs of his children,
650 their two children, aged 17 and 16, did not mind, and both children desired to be under the
651 guardianship, care and care of the father. The child can choose which of the two parents he
652 will join. Both children are United States citizens and reside in Taiwan, and will continue
653 their schooling in the United States.

654 **Child Protection Efforts Against Default And Obstacles In The Implementation Of** 655 **Child Custody Decisions After Divorce**

656 The definition of protection in law is a form of service that must be provided by law
657 enforcement or security officers to provide a sense of security, both physical and mental, to
658 victims and sanctions from threats. Harassment, terror, and violence from any party provided
659 at the investigation stage, prosecution, and upon examination in Court (Chinkin, 1994;
660 Humphreys & Thiara, 2003; Zimmerman et al., 2011).

661 Legal protection is to protect the human rights of others, and such protection is given to the
662 public to enjoy all the rights provided by law. In other words, legal protection is a variety of
663 legal efforts given by law enforcement officers to provide a sense of security, both mentally
664 and physically, from interference and threats from any party (Cross, 1999; Howse & Mutua,
665 2001).

666 Philipus M Hadjon (Hadjon, 1987), in his book, mentions the means of legal protection there
667 are two kinds, namely as follows: Means of Preventive Legal Protection. In this preventive
668 legal protection, legal subjects can file objections or opinions before a government decision
669 takes a definitive form. The purpose is to prevent disputes. Protection legal Preventive means
670 a lot for government actions based on freedom of action. With the protection of preventive
671 law, the Government is encouraged to be careful in deciding based on discretion. Not much is
672 regulated about legal means of protection for the preventive people, but in this preventive
673 legal protection, we can find preventive means in the form of objections (Inspraak). Means of
674 Repressive Legal Protection Repressive legal protection aims to resolve disputes. The
675 handling of this repressive legal protection is done by the General Court and the
676 Administrative Court. The principle of the legal protection of actions is Government based
677 on and originates from the concept of recognition and protection of human rights. According
678 to western history, the birth of concepts of recognition and protection of human rights is
679 directed to restrictions and the imposition of public obligations. And Government. At the
680 same time, the second principle underlying the legal protection of government actions is the
681 principle of the rule of law. Associated with the recognition and protection of human rights,
682 the recognition and protection of human rights takes a central place and can be linked to the
683 purpose of the rule of law.

684 Article 1, number 2 of Law Number 23 of 2002 as amended by Law Number 35 of 2014 on
685 Child Protection. It can be understood that child protection is all activities to guarantee and
686 protect children and their rights to live, grow, develop, and participate optimally by human
687 dignity, and receive protection from violence and discrimination. Child protection aims to
688 ensure the fulfilment of children's rights to live, grow, develop, and participate optimally by
689 the dignity and worth of humanity, and receive protection from violence and discrimination
690 for the realisation of quality, moral, and prosperous Indonesian children. The implementation

691 of child protection is based on Pancasila and the Constitution of the Republic of Indonesia in
692 1945, as well as the basic principles of the Convention on the Rights of the Child.

693 Considering some principles mentioned above, it can be understood that the implementation
694 of legal protection given to children aims to ensure a good and decent child's livelihood to
695 encourage the growth and development of children as expected. Included in this is protecting
696 children who are victims due to parental divorce. Children who are victims of divorce from
697 both parents retain legal protection and have a civil relationship.

698 Filed a new lawsuit to obtain custody of the child. The preparation of a lawsuit to obtain
699 custody of children in the Religious Court can be done simultaneously with the divorce
700 lawsuit when filing a divorce lawsuit, a request or demand for custody of the child (this
701 method is called quantisation). Both ways to file a lawsuit, the choice is up to the plaintiff
702 himself (Norra et al., 2017).

703 To simplify and speed up the process of completing the trial, it would be better if the letter is
704 not combined with a divorce dispute or custody dispute child. Each Parent (father and
705 mother) still has the right of parental custody of the child (legal custody) as well as the right
706 of custody, care and maintenance and education of the child (physical custody). So not
707 happen again after the post-divorce decision, before the divorce, to talk about the division of
708 property and the provision of Gono Gini alimony for the child's life, alimentation, education,
709 maintenance, and care.

710 After a court decision with permanent legal force, the party who does not obtain custody but
711 controls the child does not want to hand over the child. The child becomes an "object" that
712 must be executed. Children are not in the form of goods but human beings as a whole.

713 Executing children as human beings cannot be carried out by force; it requires a persuasive
714 and wise attitude from the executors. In principle, the execution of handing over a child to
715 another parent is not allowed to be carried out by force. Kept away from forced submission

716 minimises the attitude of arrogance and egocentric parents (Father, Mother), considering it is
717 expected that execution can be carried out adequately based on humanity and justice in the
718 child's best interests.

719 Nevertheless, they must prioritise the child's best interests, not for himself. An egocentric
720 attitude is an attitude of wanting to win for the sake of the parents themselves, not caring for
721 the good of the future life of their children. Executed remains obstructive.

722 The mechanism for implementing Custody Rights for Children is in the best interests of
723 children who need to get the broadest possible opportunity for physical, mental and social by
724 providing guarantees on the fulfilment of their rights. It is necessary to guarantee the creation
725 of the Administration of Justice to uphold a just law and improve the culture of law in the life
726 of society and the nation. To execute the custody decision, if deemed necessary, the Judge
727 may order the Ministry of Social Affairs to conduct a "Social Research" to find out the life
728 background of the Executor (Father, Mother) and family and children to be handed over to
729 the Execution applicant.

730 Court decisions are carried out about humanitarian values and the values of justice.

731 Execution of the Court's decision on Legal Custody or Physical Custody is not complied with
732 voluntarily. After the winning party's decision is applied for execution to the Court, the court
733 decision should be carried out in civil cases conducted by clerks and clerks led by the
734 chairman of the Court. The Court's Chairman shall supervise the implementation of court
735 decisions that have acquired permanent legal force.

736 The Court determines the appointment of parental custody of the child with time to visit.

737 Parties who do not obtain custody, but control the child, do not give the child the opportunity
738 to meet with his parents. The right to meet with one of the parents who is not the holder of

739 custody of the child as a right to visit(access rights) is a fundamental right for the child and
740 the Parent to meet and legally communicate with his child.

741 Parents who obtain physical custody must provide an opportunity for the parents of the father
742 or mother of his children to meet and stay in touch with their sons, and vice versa, the right of
743 children to stay in touch with both Parents. In some cases, students do not have permission,
744 and forbidden to meet their biological father or receive a phone call is also prohibited. Not
745 giving the father or mother access to socialising with their children results in a very negative
746 impact on the child.

747 A parent who has been given Parental Custody to his child must have been considered by the
748 Judge as a good and wise Parent to be given Physical Custody. If it turns out that the Parent
749 does not comply with the order contained in the court order, which has permanent legal force
750 and has been requested to be executed by the Court, then the Parent who obtained the
751 Physical Custody can be revoked. Revocation of Parental Custody Rights over Children can
752 be implemented immediately (Uitvoerbaar Bij Voorraad) to carry out the decision, even if
753 there is a match or appeal. Parents are given to others (father or mother) but are still required
754 to give their children the opportunity to meet and socialise with Parents who have been
755 deprived of custody.

756 The decision of the Court that has the force of law remains on the Parental Custody Authority
757 for many children who are unexecutable is not implemented. Parties who other than do not
758 have/do not obtain Physical Custody do not comply with the decision of the Court by not
759 wanting to hand over the child. Similarly, the party who obtained the Physical Custody
760 willfully fails to comply with the decision of the Court Court. The decision that did not
761 comply willfully fails to comply with a ruling court that the fundamental rights of children to
762 visit parents in touch with (Omgangsrecht -Visitation Rights) was violated. Violated has top
763 such provisions until now there are no regulations on issuing sanctions.

764 In order for the person to be severely punished and not playful in complying with and
765 implementing and fulfilling the Judge's decision voluntarily in the principal sentence, the
766 convicted person is given an additional punishment to pay a sum of money other than that
767 mentioned in the principal sentence or dwangsom. The application of dwangsom must be
768 filed in a lawsuit; a judge ex officio cannot decide. Dwangsom (forced money) and decisions
769 can be implemented immediately as one of the petitions in a divorce lawsuit (Ainun, 2021).

770 Each Parent is expected not to violate the Court Decision. In order to better ensure the
771 creation of the best environment for the administration of justice to uphold law and justice
772 based on Pancasila, it is necessary to make a law that regulates the action of acts, behaviour,
773 attitudes and speech that can degrade and undermine the dignity and the honour of the
774 Judiciary.

775 Some argue that there is a Contempt of Court in a broad sense, including them or the losing
776 defendants and then not wanting to carry out the judge's orders that have been considered. If
777 those who get Parental Custody Rights (Legal Custody or Physical Custody) do not comply
778 with the Court's decision which has permanent legal force by prohibiting or not allowing
779 their child to meet and stay in touch with their parents (father or biological mother), then the
780 parent who does not comply with the Court's decision, has ignored the Court's Decision, has
781 committed an act of humiliation, undermines the authority, the dignity of honour, a judicial
782 body called the Contempt Of Court. It insults the judiciary's authority, dignity, and honour. In
783 order to better ensure the creation of the best possible atmosphere for the administration of
784 justice in order to uphold law and justice, it is necessary to enact a law that regulates the
785 action, behaviour, attitude and speech that can degrade and undermine the authority, dignity
786 and honour of the judiciary. It is necessary to have a law concerning the contempt of Court,
787 which regulates action against actions, behaviour, attitudes and disobedience, or words that
788 can demean and undermine the authority, dignity and honour of the Judicial Body so that

789 non-compliance with court decisions on child custody is needed as a contempt of court
790 action. It will take a long time to enact a law concerning the contempt of the Court; therefore,
791 it is proposed that the Supreme Court of the Republic of Indonesia be willing to pre-regulate
792 it in a Supreme Court Regulation.

793 After a divorce, sometimes both parents claim each other has neglected their obligations as
794 parents, accusing not of caring for children, which continues concerning the transfer of
795 children against the law (child abduction) by one of the parents—usually done by parents
796 who do not obtain custody of the child but only obtain access rights. The illegal transfer of
797 control of a minor from his habitual residence to a place other than this can endanger the
798 child. Physically as well as psychologically. The action of a parent who does not have the
799 right to take his child away to the point of disregarding the rights that should be received by
800 the child as regulated in Article 9 paragraph (1) and Article 11 of the Child Protection Law.
801 The child is taken away to a place of hiding, not schooled and positioned in the home
802 constantly; the child's right to education and teaching is in the framework of his personal
803 development and level by his interests and talents. Children are kept away from their social
804 life, set aside the right to rest and use free time, associate with peers, play, recreation, and
805 create according to their interests, talents and level of intelligence to develop themselves.
806 Children continue to waver in the struggles of their parents until, as a result, it becomes one
807 of the causes of violence against children, including the abduction, abduction and abuse of
808 children by their biological parents. It is not uncommon for one of the parents to complain to
809 the authorities or the Police to be processed into a case of "Child abduction" committed by
810 the mother or father. His dispute is eventually filed in Court as a criminal case. Law
811 Enforcement: Police, prosecutors, and judges do not apply the provisions that have been in
812 extended force to be used as a legal basis to resolve cases/ cases related to parental custody
813 of children. Enforcement Law Needs to enforce that children meet directly and have regular

814 personal contact with their parents, which is the child's right. Legal indicates that the decision
815 is in the best interests of the child. The right of a child separated from one or both parents to
816 maintain a personal and direct relationship permanently with both parents unless this is
817 contrary to the best interests of the child concerned is a right that must be respected by
818 Law enforcement applies the provisions that have long been in force to be used as a legal
819 basis to resolve cases/ cases related to parental custody of children. They are further
820 accommodated in Government policy. For the Government as a policymaker, it is necessary
821 to improve the Children's Rights Regulations, especially on the education of minors and
822 guardianship and custody of children whose marriages are broken. So that the child rights
823 there are no longer obstacles in the fulfilment of his rights, especially to the fulfilment of the
824 child's rights when the marriage of both parents is broken.

825 In a divorce in general, either early, pre-divorce, or in the process or post-divorce, for
826 couples who have already had children, each tends to "fight over their child," both the wife
827 and the husband, which has a very negative impact against the child, against the child himself
828 will experience trauma. The child becomes the "object" of disputes between mother and
829 father, resulting in the child being a victim of violence and mistreatment by his biological
830 parents. The effect on a child's attitude or acceptance of divorce depends on the child's
831 age. The earlier a child is deprived of an average parent-child relationship, and the more
832 likely abnormalities will occur in the child's psychic development. Solutions concern the
833 child to behave and act as accurately as possible.

834 If the parents influence each other on the child, there can also be a "betrayed feeling".
835 Suppose the process lasts long enough, then in experiencing domestic conflict. In that case,
836 the impact of split loyalty (split loyalty) unfair children are faced with choices because the
837 child does not expect separation between his parents. The child tends to blame himself (self-
838 blaming). The child feels part of the cause of the divorce of both parents. His parents, on the

839 other hand, the child is in a situation of great physical and psychological suffering as
840 contested the parents. Hence, the children remain standing as the object of the victims due to
841 domestic violence.

842 Ignorance that does not give the right Such a child will negatively affect child development,
843 resulting in physical and psychological stress for the child. Therefore, the Government needs
844 to focus on children in dispute with their parents regarding Parental Custody Rights Over
845 Children. Together with the relevant agencies and institutions and all elements of society, the
846 role is to synergise in providing protection and fair legal certainty for children who are
847 victims of the implementation of Parental Custody Rights for Children (Siswanto, 2020).

848 The presence of a child is invaluable in a household, both for the child's parents and other
849 members of society. A man and a woman bound in marriage as husband and wife want their
850 marriage to be happy and lasting and to have children. Obtaining offspring is legitimate
851 among the purposes of marriage. Children born in lawful marriage are the second
852 generation, the next generation of their parents. Children as God's deposit are future assets
853 and the successor of the relay of generations for future civilisations whose rights need to be
854 protected in personal development and accordance with the level of interests and talents.

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878 **CONCLUSION**

879 With the dissolution of the marriage due to divorce, the parents (mother or father) remain
880 obliged to maintain and educate their children based on the child's interests. Parents must
881 nurture and educate their children until adulthood or married. With the father and mother no
882 longer bound in a marital relationship, or if both are divorced, then the party entitled to
883 obtain hadhanah for the child, not Mumayyiz, from the time of birth to the age of 12 (twelve)
884 years is the mother. The child mumayyiz has the right to determine whether his attitude will
885 follow the mother or the father. If there is a dispute over the child's custody, the Court gives
886 a decision and can revoke the custody of the child.

887 The Court gave a verdict in custody that either mother or father leaves solely in the child's
888 interests. The Judge in the civil court lawsuit Licensing Authority to tackle Foster parents to

889 their children shall hear that of a child because the child has a right to be consulted,
890 especially about determining the child's life later on. Regarding the Court's decision on child
891 custody, there are objections and obstacles to implementation. The Court's decision was not
892 implemented by one of the parties. Children's Rights to stay in touch with both parents is not
893 observed by parents concerned and vice versa. Parents of children who receive the Right
894 Power Foster must allow parents to father or mother to meet and socialise with their son.
895 There are obstacles to execution and no sanctions for those who do not implement the court
896 decision. Execution of the Court's decision on the right of custody of a child who is
897 deliberately not complied with voluntarily to be requested for execution to the Court and
898 applied for revocation of the right of custody of the child as well as possible to request
899 dwangsom.

900 It is anticipated that the House of Representatives and the Government will work together to
901 draft a statutory regulation that safeguards children who are the victims of negligent
902 parenting due to divorce. It is anticipated that further researchers will continue this research,
903 particularly those whose primary focus is on protecting children from the adverse effects of
904 divorce-related neglect in parenting. We are aware that this research has limitations, most of
905 which are associated with the selected research technique, which is normative juridical,
906 which only investigates in the context of the study of laws. This deficiency will reflect those
907 individuals who use a more comprehensive research strategy, mainly while producing a
908 study on the same subject.

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It's my pleasure to inform you that, after the peer review, your paper, “**NEGLIGENCE IN IMPLEMENTING CHILD CUSTODY DECISIONS IS A REGRESSION TO CHILD PROTECTION**” has been ACCEPTED to publish with **International Journal of Criminal Justice Sciences (ISSN: 0973-5089) (Scopus Indexed, Scimago Q3 and WoS-ESCI)**. It will be published on 30th July 2022. I believe that our collaboration will help to accelerate the global knowledge creation and sharing one step further. Please do not hesitate to contact me if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Jaishankar', with a long horizontal flourish underneath.

K. Jaishankar
Editor- in- Chief





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Negligence in Implementing Child Custody Decisions: A Threat to Child Protection in Indonesia

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Abstract

The main objective of marriage is not only to form a family or to obtain offspring or children, but also to raise, nurture and educate children until adulthood. The children still have the right to care and education even if their parents' marriages are broken through a divorce. This study examines this issues of negligence in implementing the child custody decisions passed lawfully after a divorce or dissolution of marriage. This study adopted a legal research design with a normative juridical approach. The data for the current study was derived from primary and secondary legal material. The research procedure involved reviewing all the available data from legal documentation and library archives. The findings revealed that there is a non-compliance of the decisions of the court concerning the custody of children. The study recommends the need to guarantee the creation of the administration of justice to uphold a just law and improve the culture of law in the life of society and the nation. The Indonesian government should also draft statutory regulations that safeguards children who are the victims of negligent parenting due to divorce.

Keywords: Child Custody, Divorce, Child Protection, Family Law, Contempt of Court, Legal Protection.

Introduction

Marriage is a legal relationships in a society that is an inner bond between a man and a woman as husband and wife to form a family (household), happy and eternal based on the Almighty God (Tobing, 2018). Marriage is valid when performed according to the laws of religion and belief and recorded; there is no longer a variety of laws in determining the legality of a marriage. Marriage is essential in human life,

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both for individuals and groups (Haeri, 2014). Mixing married life is built in an atmosphere of serenity, peace and happiness, and the love between husband and wife and their children (Herawati, 2016). Marriage aims to form a happy, lasting, prosperous family (Randles, 2016). Marriage in Islam aims to fulfil the desire to create a happy family based on love and affection and obtain legitimate offspring in society by following the provisions of Shari'ah—forming a family and having children or descendants as the purpose of marriage. The legitimate child will carry on the lineage and develop the tribes of the human race.

A man with a woman as husband and wife bound by marriage has various legal consequences, namely the emergence of rights and obligations among those who belong to the family environment, namely the husband's marital power. The husband is the head of the family and is responsible for his wife and children. For the children they give birth to, parents are obliged to nurture and educate their children as best they can until the child marries or can stand on his own. Children who have not reached the age of 18 and have never been married are under the authority of their parents. Parents must nurture and educate their children as best they can until they marry or stand on their own (Steinberg, 2001). In particular, parental authority is obligated to educate and nurture their children. Parents are responsible for nurturing and educating their children as best they can (Goldstein et al., 1996). Every parent's responsibility is to care for, maintain and educate so that a child can grow and prosper. Parents whose marriages break up due to divorce are obliged to nurture and educate their children. In a divorce, both mother and father remain obliged to maintain and educate their children solely based on the child's interests. Each child has the right to be cared for by his or her parents.

Marriages sometimes have to break up because of divorce (Flowerdew & Al-Hamad, 2004; Rheinstein, 1955). Divorce should be the last action after taking the path for peace efforts and repair (Gottman et al., 1995; Johnston & Campbell, 1999). There is no way and for the sake of happiness that can be expected after the divorce. In the event of a divorce, the severance of the marital relationship between husband and wife, there are legal consequences on the child's status, maintenance, education, and financing (Mashhour, 2005). The relationship between husband and wife is severed with the dissolution of marriage due to divorce, but the relationship between parents and children remains unchanged. The father and mother still bear obligations for the cost of education and maintenance of the child (Cohen, 1987). The obligation of parents to nurture and educate their children as best they can until the child is married or able to stand on his own does not end with his parent's divorce. A man and a woman who caused the child's birth must be responsible for the child's survival, growth, and development. The right to child custody is a human right that must be protected (Nowak, 2005).

It is common knowledge that after divorce or parents' separation, there is a battle for the child's custody, which often results in heated arguments between both parents, putting the child in the middle of the conflict (Bruch, 2006). Continued exposure to overt and covert forms of parental conflict is the strongest predictor of whether or not children can successfully accept the breakdown of their family, even though most children do so and accept their parent's divorce. Most children living in high-conflict families continue to be subjected to their parents' anger, hostility, and

contempt for the other parent. These negative emotions frequently remain amid additional strains brought on by adjustments in children's day-to-day life (i.e., changes at home, changes at school, economic factors). The conflict between parents can also serve as a moderating factor in parenting because it can divert parents' attention away from the requirements of their children (Cao et al., 2022).

There are still many questions to be answered and misconceptions to dispel regarding the parents who fight custody battles for their children (Tymchuk & Feldman, 1991). Even though significant resources in the form of social services are provided to these families, the conflict continues for many of them. In order to have a complete understanding of the factors that influence child protection investigations in cases involving disputes over child custody, it is necessary to have a comprehensive understanding of the variables. Better informed data on these responses can promote changes in structure and the delivery of services, which will ultimately reduce the burden of suffering placed on children and the children of families caught up in these disputes (Forslund et al., 2022). The aspects of child protection after parental divorce are: Children have the right to maintenance from both parents even if divorced (Eldar-Avidan et al., 2009). Child care aims to protect children from harmful things to themselves and their future from the environment (Daniel et al., 2011). The cost of maintaining and educating the child becomes the father's responsibility (Seltzer, 1998). Hadjon (1987) states that legal protection is the protection of dignity and worth and the recognition of the human rights of the subject of law based on the legal provisions of arbitrariness.

Furthermore, there can be two forms of legal protection for the people based on their means: preventive and repressive protection (Hadjon, 1987). In the UK, various terms are used such as "guardianship", "custody", "care", and "control". Then the "legal custody", "physical custody", "actual custody", and "joint custody". Various terms are confused by their terminology, which implies that they overlap. Custody means the care, treatment, "care", monitoring, treatment, care; "control" means monitoring and control; "guardianship" means the authority or duty of a guardian (Folberg & Graham, 1979; White, 1980). Further, "legal custody" is defined as: "so many obligations and powers (rights) of the parents concerning the person of a child (including as to the place and manner in which he will spend his time)" (DiFonzo, 2014). Then, "actual custody" (care and control) is defined as the Parent's right to have the child explicitly, including its obligations. Then "joint legal custody" means that both parents have the same right to decide on the child; no one has a superior right over the other (Seltzer, 1991). "Physical custody" means the right and obligation of a parent to provide "a home" for the child and to make day-to-day decisions while the child is with them (Fox & Blanton, 1994; Singer & Reynolds, 1987).

Even though this is a matter of more significance than determining who will have custody of the children following a divorce, none of the past studies has investigated the issue of negligence on the part of those who are awarded a child's custody. This ultimately creates a protracted situation for violations of children's rights, even though there are typical regulations that govern the transfer of a child's custody. However, having to go through these legal remedies is not uncommon. When it comes to marriage and divorce, children's rights cannot be denied for any reason, regardless of the gender of the custody holder or who has more rights. However, a child's rights,

including how he or she can thrive to their full potential and obtain what they want, should take precedence over all of these other considerations.

This paper identifies the factors that best predict joint custody, which is useful for parents, attorneys, and prosecutors. Parents should be aware of these findings before venturing into the courtroom. Divorce has consequences for the custody of children whose implementation is hindered. Several cases show that a court decision granting custody of a child to one of the parents was not implemented. This paper examines the protection of child custody after the dissolution of the marriage of both parents due to divorce. So the purpose of this paper was to cover a child's custody after divorce. In the implementation of a child's custody after divorce, there are defaults and obstacles in the implementation of the child custody decisions after divorce, which requires improvement in the fulfilment of a child's custody to achieve protection of rights foster care after the divorce of both parents is discussed in this study.

Literature Review

- *The meaning of a child's custody*

The Indonesian Law mandates that the husband and wife are equally responsible for their children's care and upbringing, including their physical health, spiritual development, and academic progress. In the Indonesian legal system governing a child's custody, the term "custody" refers to the arrangement known as *mumayyiz*. In addition, it is also known as "child care" or *hadhanah* meant to provide emotional support, physical care, and educational opportunities for children until they became adults or can care for. In addition, *hadhanah* is the act of caring for a child who is unable to live independently and who cannot protect himself from everything that can cause him harm and put him in danger.

Mumayyiz is the act of caring for a child who can be independent and protect himself. There are a variety of different opinions regarding the age limit. The age limit under *mumayyiz* as defined in legal documents is 12 years (Zur Raffar et al., 2021); therefore, a child who is not yet eligible for *mumayyiz* is a child under the age of 12 years and whose custody rights are extended to the child's mother. Even though during the time when the child is in the care of the mother, it does not mean that the father is absolved of all responsibility. The responsibility here refers to providing financial responsibility to the child. After the child reaches the age of 12, the child can choose by which parent he will be raised next, and this is where the law renders the father's initial obligation null and void. When the child is in the mother's care, the father is obligated to fulfil only the financial rights of the child. However, after the child reaches the age of 12, this obligation is null and void. Regarding the laws and regulations in Indonesia, this situation prevails concerning the custody of children and the protection of children's rights

The principle of *hadhanah* also means to take care of children who are still young, whether they are male or female, or who are grown but not yet *tamyiz*, or the ones who can protect themselves from something that can hurt and destroy them; or the ones who can educate themselves physically and spiritually; who can stand independently to face life's challenges and assume responsibility. In addition, the term *hadhanah* within the Indonesian legal system, has become a permanent term used for the position

of a child whose management is "disputed" in court as a result of a live divorce between the husband and the wife (mother and father) (Firdausia, 2020).

The responsibility of maintenance, which includes supervision and service in addition to the provision of a living, is sustainable until the child reaches the legal age limit as a *mumayyiz* who can stand on his own. This responsibility includes the provision of a living. The Compilation of Islamic Law, Article 105 (a) stated that the age limit for a child to be considered a *mumayyiz* is 12 years old. In the meantime, Law Number 1 of 1974 concerning Marriage, states that a child is considered to be *mumayyiz* until he or she gets married or reaches the age of 18 years old (Ilyas, 2019). Additionally, it is also the obligation of parents to provide education and instruction that allows the child to become a human being, to acquire the abilities and skills and to develop innate talent, which will help him in the rest of his life.

- *Previous studies*

There is no dearth of research on child protection and decisions regarding a child's custody. A study by Joan B. Kelly entitled "The Determination of Child Custody" briefly reviewed the history of a child's custody decisions and describes the current custodial arrangements in the United States. It examined how parents and courts decided custody and access and the changing visitation patterns in recent decades. The author discussed the impact of legal reform and the implementation of newer dispute resolution and educational interventions and then made recommendations for policy and practice (Kelly, 1994). In another study, Greenberg et al. (2004) underscored the need for judges and lawyers to understand the ethical and professional standards underlying competent mental health practice in forensic cases. The practices of mental health professionals who provided court-related services may substantially impact the validity of their professional opinions, the effectiveness of services provided to children and families, and the development and adjustment. The authors suggested that core ethical and clinical issues be considered by all psychologists working in the context of custody disputes. These professional practice recommendations were also expected to be useful for lawyers and judicial officers in assessing the quality of the opinions of mental health professionals.

Meier et al. (2019) examined whether any empirical evidence suggested that parental alienation, or a parental alienation syndrome, was gender-biased in practice and outcomes. Second, this study sought to explore outcomes in detention/abuse litigation based on gender and different types of harassment. The study analyzed more than 2,000 court opinions and found that the Court was skeptical of the mother's claims of harassment by the father. This skepticism was most extraordinary when mothers claimed the child abuse. The findings also confirmed that cross-paternity claims of parental alienation increased (almost doubled) court rejection of maternal harassment claims and lost maternal custody of fathers accused of harassment. In comparing court responses when fathers accused mothers of harassment, significant gender differences were identified. Finally, this study relied only on electronically published opinions in the case of child custody. This resulted in an invaluable database that identifies ten years of published cases involving exile, harassment and custody while coding party claims and defense, outcomes, and other critical factors based on gender and parental status.

Mansari et al. (2018) aimed to determine the basis of the Judge's judgment in determining the childcare juridical review and legal consequences on the determination of child custody after divorce. This normative research used primary legal materials stated in Law No. 1 of 1974, secondary legal materials in Judge's decisions and tertiary legal materials in legal dictionaries and encyclopedias. Data presentation was done descriptively using qualitative data analysis methods. The results showed that the Judge's consideration to determine the child's caregiver after divorce was the existence of a demand from the plaintiff/defendant (petitioner/defendant), through the vertex decision, in the child's best interests. The designation of the mother or father as the child's caregiver was not contrary to the applicable laws and regulations as long as it guaranteed the best interests of the child and both the mother and the father have the right to care for the child even if the mother was more entitled to care for him. The Judge's verdict also included the suggestion that the babysitter should not only pay attention to the gender of the parents but must ensure the child's best interests. It was also recommended that policymakers should formulate more stringent policies and parents should not fight for custody of children if they cannot take care of them properly.

Waspada and Kharisma (2020) examined the regulations regarding a child's custody in divorce because of a divorce between a husband and wife where one party was an Indonesian Citizen, and the other party was a foreign citizen. This study was empirical based on legal research, descriptive with a qualitative approach. The data was collected through interviews with Sleman District Court Judges and triangulated through study documents and library material. The study concluded that the problems that arise in mixed divorce are where the divorce lawsuit involved two citizenships and the child's citizenship is to be determined. To resolve the issue of the child's custody in a mixed divorce, Indonesian judges apply the Indonesian national law, which gives children the right to choose which parent would adopt them. Children also acquire limited dual citizenship until they reach 18 (eighteen) years age or before their marriage. Children of 18 (eighteen) years age or married must choose one of their parents' nationalities.

In another research, (Ivana & Cahyaningsih, 2020) determined the basis of Judge's consideration of divorce decision by granting the child's custody to the father. Being a normative legal prescriptive research, the study used the case based approach. The study findings explained that the Judge's judgment was based on the principle of best interests for the child; the judge gave custody of the minor to the father; which was not in accordance with the applicable legislation because a minor child is in the mother's custody. Nevertheless, because of the mother's bad behavior known to the court, who had abandoned her child and forgotten her responsibilities as a mother. This had become the basis of the Judge's consideration in granting the custody of the minor child to the father.

Another research conducted by Soro and Serrano-Cinca (2021) focused on the provision of joint or single custody, seen as very important for the lives of children and parents. This paper first modeled the factors that explained the Court's decision to grant custody of the child and then tested the predictive capacity of the proposed model. The study used data from 1,884 court decisions by identifying and labelling factual elements, legal principles, and other relevant information. The study

developed a neural network model that included eight factual findings, such as the relationship between parents and their economic resources, children's opinions, and psychological reports on types of custody. The study also performed temporal validation using later cases compared with a training sample for prediction and obtained easy-to-apply decision rules with decision tree techniques.

Research Methods

This study adopted a legal research design with a normative juridical approach. In the domain of law, a normative with a legal (juridical) approach is a different method, unlike other domains. A normative legal research method is also a systematic way of conducting empirical research to avoid getting caught up in the mistakes that generally occur in legal research. In social sciences, the normative research also helps to know and find the type of components required to carry out the research. Such an accuracy of research method significantly affects the process and results of legal research.

The data for the current study was derived from primary and secondary legal material. The primary legal material comprised various laws and regulations related to post-divorce custody and child protection while the secondary legal material used were journals, research results, books, and proceedings related to the research topic.

The research procedure involved reviewing all the available data from various sources, namely legal documentation. During the process, the data was reduced and summarized by selecting main components and arranging more systematically. The data analysis method involved qualitative analysis method which enabled the objective analyses of the situation faced by parents regarding a child's custody after divorce.

Results

The number of divorce cases in Indonesia reached 447,743 in 2021, as stated in Figure 1. This represents a growth of 53.50 per cent in comparison to the number of divorce cases in 2020, which reached 291,677. Moreover, the number of divorce petitions filed by wives far exceeded those filed by husbands. As per record, a total of 337,343 or 75.34 per cent of all divorce cases decided by the court were filed by wives against husbands and a total of 110,440 instances or 24.66 per cent were the divorce cases in which the husband submitted the divorce petitions and the Court passed the verdict.

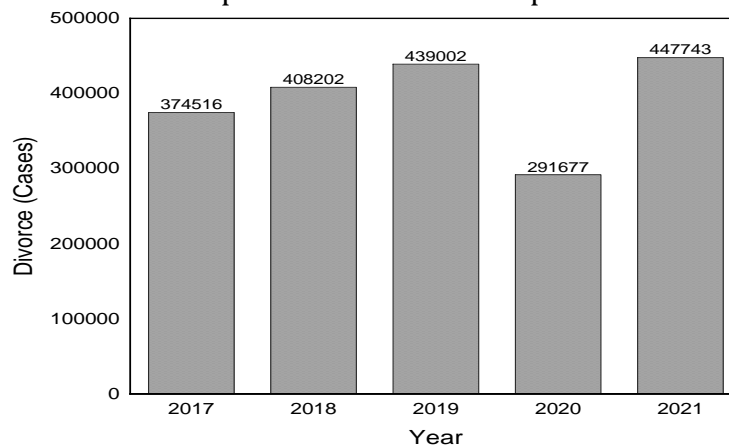


Figure 1: Number of Divorce cases in Indonesia, 2017-2021

Source: Statistics Indonesia

West Java alone reported 98,088 divorce cases in 2021, making it the province with the most significant number of divorce cases. East Java and Central Java came at second and third places with 88,235 and 75,509 instances respectively. In 2021, disagreements and conflicts continued to be the leading cause of divorce, accounting for 279,205 instances. The majority of people who filed for divorce did so for financial reasons. However, there were a few cases filed due to domestic violence and polygamy. During the last five years, there had been a general trend toward fluctuations in the number of divorce cases throughout the country. However, the year 2021 saw the most significant number of people filing for divorce, while the year 2020 saw the fewest (Figure 1)

There are a significant number of women in Indonesia who marry at a young age for various reasons, including cultural norms, economic pressures, and other factors that are not ideal. Marriage is legal only if the man and the woman are 19 years old, as stipulated by Law Number 16 of 2019 concerning Marriage Amendments to Law Number 1 of 1974. This law was passed in response to Law Number 1 of 1974, which initially governed marriage. According to the results of the National Socio-Economic Survey (SUSENAS) Kor 2020, and as stated in Figure 2, a huge number of marriages of minors in Indonesia were reported. For instance, 8.19 per cent of Indonesian women tied the knot for the first time between the ages of 7 and 15. In South Kalimantan, the proportion of women who tied the knot for the first time at a younger age than the national average reached 12.52 per cent in 2020. Nevertheless, a 13.18 per cent drop can be seen when comparing this figure to the previous year's. West Java had 11.48 per cent of the country's total population of women who got married for the first time between the ages of 7 and 15, making it the province with the highest proportion of young brides. After that, East Java came in second with 10.85 per cent, West Sulawesi came in third with 10.05 per cent, and Central Kalimantan came in last with 9,855 residents The rate of underage marriage in Banten's female population was 9.11 per cent, followed by Bengkulu at 8.81 per cent, Central Java at 8.71 per cent, Jambi at 8.56 per cent, and South Sulawesi at 8.48 per cent (Figure 2).

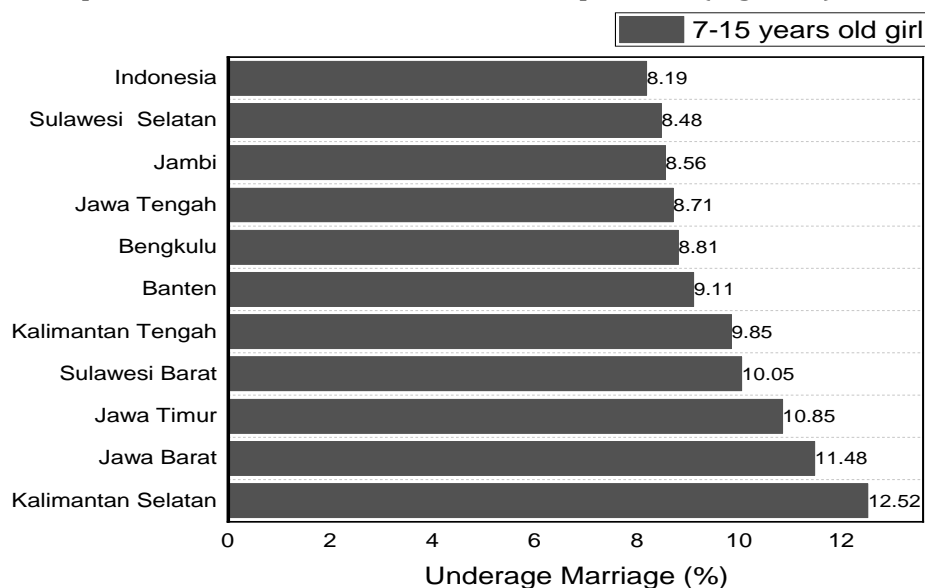


Figure 2 The percentage of Marriages of Minors in Indonesia

In 2020, the Ministry of Social Affairs of Indonesia reported that 67,368 children in Indonesia were neglected. It is the responsibility of the provincial as well as the district and city governments to ensure that every social agency can provide social rehabilitation for children who have been neglected. A child aged 0-12 is considered to be abandoned if he or she has suffered physical or emotional abuse at the hands of his or her parents or family or if the child has been removed from the care of his or her parents or family.

There is a correlation between marriages contracted by minors and increased divorce rates, and child abandonment due to the divorce. In the age range of 10 to 17 years, approximately 99.26 per cent of young women have not married, 0.70 per cent are married, and 0.04 per cent are divorced or divorced. However, 36.62 per cent of young women between the ages of 10 and 17 got married when they were 15 or younger. Marriages between people who were not yet adults or who had not reached puberty were typically considered to involve children. This was noted vide Article 7 of Law No. 1 of 1974.

In general, married life ought to be complete and harmonious, but things will not always go smoothly in practice. Divorce or death are two potential causes of separation in a couple's life. In situations where solely the biological father provides considerable care for the child, children who live with their biological mothers also experience an effect known as the loss of the child's motherhood. This is especially true for young girls and toddlers. The presence of a biological mother is essential for toddlers, particularly infants who are still required to consume breast milk. When a young woman approaches puberty, she has already begun to experience her monthly period and tends to become reluctant to talk or communicate with her father. This is because of the physiological changes that occur at this time.

The 2009-2018 MSBP Susenas show the percentage of children aged 0-17 years who were not yet married and live with their biological father. When it came to time, the fact that the father had a job meant that the children spent less time together. However, there were times when the father figure was needed, such as when children started school where other children were accompanied by their fathers. Only about 2% of children are currently living with their biological fathers. The percentage of boys who live with their biological fathers is 2.59 per cent, which is 2.59 per cent higher than the percentage of girls who lived in 2018, which was only 2.42 per cent. In the meantime, if you look at the location, you will notice that fewer children lived with their biological fathers in urban areas, which was 2.37 percent, as opposed to rural areas, where the percentage was 3.15 per cent (2.68 per cent).

Women who have to raise their children without the presence of a husband or a father figure, either as a result of separation or divorce from their husbands or because their husbands had passed away, were the ones who were most likely to be familiar with the term "single mother" or the role of a single mother. The mother, who also served as the community's pillar of support, took on an increasingly heavy responsibility, one that was not just financial but also social as well as emotional. The mother fulfilled all of her children's requirements, such as providing them with education, clothing, and food, and also took on the role of a father to safeguard her children. When it came to parenting, children who solely spent their time with their biological mother had a less balanced experience. One example was cited when the

child's biological mother was the only person who could care for him since his biological father could not do so because he was ill, worked outside the home, or had some other disability. Nevertheless, this position of the single mother also showed up in households where both the father and the mother were present.

Between 2009 and 2018, there was a general trend toward increasing the number of children living with their biological mothers. It was 5.61 percent in 2009 and continued to rise until it reached 8.34 percent in 2018. Children living with their biological mothers were more likely to be found in rural areas when compared to children living in urban areas. In 2009, the percentage of children living with their biological mothers in rural areas was 5.82 per cent. Since then, it increased to 6.77 per cent and expected to continue rising until it reached 8.38 per cent in 2018. This was because many parents in metropolitan regions were employed, particularly the mothers.

When assessed according to gender, more girls than boys lived with other families. The percentage of girls living with other families was 5.59 per cent in 2009 and 5.45 per cent in 2012, but it dropped to 4.69 per cent in 2015 before climbing up to 4.95 per cent in 2018. On the other side, some children did not live with either of their parents; the percentage of children who lived with other families in rural areas was significantly higher than that of children who lived with other families in urban areas (5.77 per cent). This was due to unavoidable circumstances, such as the difficulty in hiring a babysitter and the expensive cost of child care, as well as the various reasons for trusting grandparents to look after children or the large number of people who worked outside of the village, either in the city or abroad. It required extra care and distinct contact with children with these disorders so that these youngsters did not receive violence from their environment or associate with people who caused them to get into trouble.

Parenting was one factor that impacted a child's growth and development, particularly during crucial periods, which occurred between the ages of 0 and 8. Loss of good parenting due to causes such as divorce, loss of parents for either a temporary or permanent period, natural disasters, and several other traumatic situations significantly impacted their physical and mental health. According to Soro and Serrano-Cinca (2021), parenting was a relationship between parents and children that involved the expression of attitudes, values, interests, and beliefs held by the parents and the conduct exhibited by their children in parenting and training. Sociologically speaking, this encounter was a part of an indivisible group of occurrences that, whether it was done on purpose or not, helped youngsters get ready for the next phase of their lives. Therefore, the interpersonal and intrapersonal interactions of the people who were around the child gave the activity of parenting its unique color.

Discussion

The findings of the study reveal that a child has a legal relationship with both his father and his mother, in the sense that both parents must care for and educate the child, and there is the child's right to be cared for by both parents (Amato, 1994). For children born in a legal marriage, the parents are primarily responsible for realizing the child's spiritual, physical and social well-being (Desai, 2010). Everyone who gets married, of course, expects the marriage to be intact forever. However, due to

unavoidable circumstances, the marriage can end in a divorce, that is, the dissolution of the marriage when the parties are still alive based on a bond that can be justified and determined by a court decision that affects the children.

Numerous studies report differences between boys and girls in the effects of parental divorce, although more recent studies do not appear to find such differences (Earp et al., 2012; Wallerstein & Lewis, 2004). With a divorce, the impact is not just momentary for both parents but a lifelong impact on their children. According to Fagan and Churchill (2012), divorce detrimentally impacts individuals and society in numerous other ways. For instance, in religious practices, divorce diminishes the frequency of worship of God and recourse to Him in prayer. In education, divorce diminishes children's learning capacity and educational attainment. In the marketplace, divorce reduces household income and deeply cuts individual earning capacity. In government, divorce significantly increases crime, abuse and neglect, drug use, and the costs of compensating government services. In health and well-being: divorce weakens children's health and longevity. It also increases behavioral, emotional, and psychiatric risks, including suicide.

The obligation of parents to nurture and educate their children as best they can until the child is married or able to stand on their own does not end with the parents' divorce. The relationship between husband and wife is severed with the dissolution of marriage due to divorce, but the relationship between parents and children remains unchanged. The father and mother still bear obligations for the cost of education maintenance. With the father and mother no longer bound in a marital relationship, or if both are divorced, then the party entitled to obtain *hadhanah* for the child, there are two periods: The period before *Mumayyiz*, namely from birth to age 12 (twelve) years, is the mother. At that time in most cases, a child is not yet *mumayyiz*, has not been able to distinguish between what is helpful and harmful for him. At this time, the mother is considered more entitled to the child. The mother better understands the child's needs at that time and is abler to show her love when the child is in dire need of the mother's love.

A child will not be separated from his parents against the child's wishes unless such separation is necessary for the child's best interests. The right of *hadhanah* of a child who has not been *mumayyiz* is the right of his mother; it is a regulatory rather than coercive provision. The core criterion as a measure is the realization of the best benefits for the child. For the custody of a child who has not been *mumayyiz*, the mother is more entitled to take care of him if the following requirements can be met, namely: who performs *hadhanah*, who must have reached puberty, who must be sane and does not have a disturbed memory; have the ability and willingness to care for and educate the child; can be trusted to hold *hadhanah* to ensure the child's care better; if the one who performs *hadhanah* is the biological mother, it is required that she does not marry another man. The *mumayyiz* period means the time duration until the child is able to distinguish between harmful and beneficial. Therefore, he is given the right to determine whether his attitude will follow the mother or the father. Children who are *mumayyiz* have the right to choose to get *hadhanah* from either their father or mother.

The child can choose which of the two parents he will follow. However, if his mother dies she must be replaced by another woman from the maternal lineage, e.g.,

the grandmother. But if the grandmother has also died, and if no ancestors in the maternal line exists, the father of the child has the power to perform *hadhanah*. If the father has also died, he is replaced by a woman in the paternal line namely father's mother or father's grandmother. If they too have died, the *hadhanah* is performed by the child's sister concerned. The holders of *hadhanah* positions who will replace them are blood relatives according to the sideline from the mother or women who are blood relatives according to the sideline from the father. In the worst cases, if the *hadhanah* holder turns out to be unable to guarantee the physical and spiritual safety of the child, the *hadhanah* rights can be transferred to other relatives who have *hadhanah* rights.

Determining who is entitled to custody of the child should come first is in the child's interest, not who is most entitled. If the father as the holder of custody and care (*hadhanah*) of a minor child, the right of custody of a minor is the right of the mother. Mother is the holder of custody and care (*hadhanah* for a minor child. At his age, the child's mental condition is compassionate and easily influenced by the surrounding behavior. However, if the mother has done an evil deed or indulged in immorality, which can affect the child's soul, and it is feared that it will have a more significant influence on the first child, for the sake of the child's mental development, the custody can be given to the father. Similarly, if the custody of a minor child is given to the mother, and the mother often travels abroad, or she is a celebrity/public figure who is very busy with her work, often going home in the morning and the afternoon, even until night, and as a result the child receives less attention and affection, the custody can be given to the father. The father should allow the mother to meet with the child and come with him on school holidays or agreed days. The mother has the right to visit/visit and help educate and pour her love as a mother into her child. In all such situations, the father must always be of good character and should never be involved in crime, and he should be able to perform his duty to support his children.

Regarding what is meant by child care in Indonesia, there is no explanation, nor is there any law or legal provision that regulates child care explicitly (Hafsah, 2016; Ipendang, 2015). Custody of children in Islamic law in Indonesia as stipulated in Article 105 Compilation of law Islamicis also used the term *hadhanah*. Nevertheless, some think it is the child's right to receive *hadhanah*. In the *hadhanah*, the rights of the father, the child, and the mother are included. If the family is in harmony, the rights are held by all the three. Nevertheless, in a dispute, the child's rights are a top priority (Nasution et al., 2021; Rahim et al., 2020). *Hadhanah* is a part of the control (power) of parents, which consists of: first, *hadhanah*, taking care of the child (person) who is not an adult, which includes taking care of his body, providing shelter, providing education; and, second, *wilayat al-mal*, preserving the child's wealth and interests concerning that wealth. The father must do *wilayat al-mal*, and if he does not exist, the father is replaced by the mother. The power of the *al-mal* lasts until the child is said to be a *rasjid*, who could take care of his wealth on his own. By separating the two, it can be said that *hadhanah* is the primary right of the mother, and territory is the primary right of the father.

The main purpose is to provide welfare to the child from both parents. Separating the *hadhanah* from the territory (guardianship), thus ensuring the father remains

responsible for the child's welfare as long as the child is under the mother's care. The fact that the father remains the child's legal guardian means that he helps strengthen the mother in carrying out the child's maintenance. Maintenance means providing housing, food, clothing and care if the child is sick. Education means educating the child to become a social being. The central part of this parent's obligation is to send the child to school to work later (Epstein, 1987). The maintenance and education of a minor child by the father or mother who exercises parental authority must be done in the child's best interests. Fathers or mothers who exercise parental authority are not allowed to do as they please for their benefit. The cost must be commensurate with the parents' ability unless the child has his or her wealth and income. The child does not have the right to demand an education that his parents usually cannot bear (Goldstein et al., 1996; Greenberg et al., 2004; Ipendang, 2015).

Often after a divorce, both parents claim each other has neglected their obligations as parents, accusing not of caring for children, which continues concerning the transfer of children against the law (child abduction) by one of the parents—usually done by parents who do not obtain custody of the child but only obtain access rights. Such illegal transfer of control of a minor from his habitual residence to a place other than this can endanger the child physically as well as psychologically. The action of a parent who does not have the right to take his child away to the point of disregarding the rights that should be received by the child as regulated in Article 9 paragraph (1) and Article 11 of the Child Protection Law. If a child is taken away to a place of hiding, not schooled and positioned in the home constantly, the child's right to education and teaching is in the framework of his personal development and level by his interests and talents. The same regulation applies if the children are kept away from their social life, set aside the right to rest and use free time, associate with peers, play, recreation, and create according to their interests, talents and level of intelligence to develop themselves.

Children continue to waver in the struggles of their parents until, as a result, it becomes one of the causes of violence against children, including the abduction, abduction and abuse of children by their biological parents. It is not uncommon for one of the parents to complain to the authorities or the Police to be processed into a case of "Child abduction" committed by the mother or father. His dispute is eventually filed in Court as a criminal case. Law Enforcement: Police, prosecutors, and judges do not apply the provisions that have been in extended force to be used as a legal basis to resolve cases/ cases related to parental custody of children. Enforcement Law Needs to enforce that children meet directly and have regular personal contact with their parents, which is the child's right. Legal indicates that the decision is in the best interests of the child. The right of a child separated from one or both parents to maintain a personal and direct relationship permanently with both parents unless this is contrary to the best interests of the child concerned is a right that must be respected by

Law enforcement applies the provisions that have long been in force to be used as a legal basis to resolve cases/ cases related to parental custody of children. They are further accommodated in Government policy. For the Government as a policymaker, it is necessary to improve the Children's Rights Regulations, especially on the education of minors and guardianship and custody of children whose marriages are

broken. So that the child rights there are no longer obstacles in the fulfilment of his rights, especially to the fulfilment of the child's rights when the marriage of both parents is broken. In a divorce in general, either early, pre-divorce, or in the process or post-divorce, for couples who have already had children, each tends to "fight over their child," both the wife and the husband, which has a very negative impact against the child, against the child himself will experience trauma. The child becomes the "object" of disputes between mother and father, resulting in the child being a victim of violence and mistreatment by his biological parents. The effect on a child's attitude or acceptance of divorce depends on the child's age. The earlier a child is deprived of an average parent-child relationship, and the more likely abnormalities will occur in the child's psychic development. Solutions concern the child to behave and act as accurately as possible.

If the parents influence each other on the child, there can also be a "betrayed feeling". Suppose the process lasts long enough, then in experiencing domestic conflict. In that case, the impact of split loyalty (split loyalty) unfair children are faced with choices because the child does not expect separation between his parents. The child tends to blame himself (self-blaming). The child feels part of the cause of the divorce of both parents. His parents, on the other hand, the child is in a situation of great physical and psychological suffering as contested the parents. Hence, the children remain standing as the object of the victims due to domestic violence. Such a negligence will negatively affect child development, resulting in physical and psychological stress for the child. Therefore, the Government needs to focus on children in dispute with their parents regarding parental custody rights over children. together with the relevant agencies and institutions and all elements of society, the role is to synergize in providing protection and fair legal certainty for children who are victims of the implementation of Parental Custody Rights for Children.

The definition of protection in law is a form of service that must be provided by law enforcement or security officers to provide a sense of security, both physical and mental, to victims and sanctions from threats. Harassment, terror, and violence from any party provided at the investigation stage, prosecution, and upon examination in Court (Chinkin, 1994; Humphreys & Thiara, 2003; Zimmerman et al., 2011). Legal protection is to protect the human rights of others, and such protection is given to the public to enjoy all the rights provided by law. In other words, legal protection is a variety of legal efforts given by law enforcement officers to provide a sense of security, both mentally and physically, from interference and threats from any party (Cross, 1999; Howse & Mutua, 2000).

Hadjon (1987), in his book, mentions the means of legal protection there are two kinds, namely as follows: Means of Preventive Legal Protection. In this preventive legal protection, legal subjects can file objections or opinions before a government decision takes a definitive form. The purpose is to prevent disputes. Protection legal Preventive means a lot for government actions based on freedom of action. With the protection of preventive law, the Government is encouraged to be careful in deciding based on discretion. Not much is regulated about legal means of protection for the preventive people, but in this preventive legal protection, we can find preventive means in the form of objections (Inspraak). Means of Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of this repressive legal protection is done by the General Court and the Administrative Court. The principle of the legal protection of actions is Government based on and originates from the concept of recognition and protection of human rights. According to western history, the birth of concepts of recognition and protection of human rights is directed to restrictions and the imposition of public obligations. At the same time, the second principle underlying the legal protection of government actions is the principle of the rule of law. Associated with the recognition and protection of human rights, the recognition and protection of human rights takes a central place and can be linked to the purpose of the rule of law.

The Supreme Court of the Republic of Indonesia has granted Jurisprudence: The child's interests should be used as a benchmark to determine which of the parents is entrusted with the child's care. Article 1, number 2 of Law Number 23 of 2002 as amended by Law Number 35 of 2014 on Child Protection, it can be understood that child protection means to guarantee and protect children and their rights to live, grow, develop, and participate optimally by human dignity, and receive protection from violence and discrimination. In terms of the child, it is said that the child's interests are given priority in all cases. Provisions respect the right of a child separated from one parent or both parents to permanently maintain a personal and direct relationship with both parents. There is a basis for respecting the child's opinion. Respect for the child's right to participate and express his or her opinion in decision-making, especially concerning matters that affect their lives. The child's best interests will be a primary consideration in all actions—best for the child.

Child protection aims to ensure the fulfilment of children's rights to live, grow, develop, and participate optimally by the dignity and worth of humanity, and receive protection from violence and discrimination for the realization of quality, moral, and prosperous Indonesian children. The implementation of child protection is based on Pancasila and the Constitution of the Republic of Indonesia in 1945, as well as the basic principles of the Convention on the Rights of the Child. Considering some principles mentioned above, it can be understood that the implementation of legal protection given to children aims to ensure a good and decent child's livelihood to encourage the growth and development of children as expected. Included in this is protecting children who are victims due to parental divorce. Children who are victims of divorce from both parents retain legal protection and have a civil relationship.

The either parent can file a lawsuit to obtain custody of the child. The preparation of a lawsuit to obtain custody of children in the Religious Court can be done simultaneously with the divorce lawsuit when filing a divorce lawsuit, a request or demand for custody of the child (this method is called quantization). Both ways to file a lawsuit, the choice is up to the plaintiff himself. To simplify and speed up the process of completing the trial, it would be better if the divorce dispute and the custody dispute is not combined. Each parent (father and mother) still has the right of parental custody of the child (legal custody) as well as the right of custody, care and maintenance and education of the child (physical custody). However, if there is a dispute over the child's custody, the court gives a decision and can revoke the custody of the child. The Court gives the custody verdict in favor of either mother or father is solely in the child's interests.

Regarding the Court's decision on child custody, there may be objections and obstacles to implementation. Sometimes, one of the parties may not be willing to implement the court's decision and the child's right to stay in touch with both parents may not be observed by parents concerned and vice versa. After a court decision with permanent legal force, the party who does not obtain custody but controls the child does not want to hand over the child. These are obstacles in execution and no sanctions are allowed for those who do not implement the court decision. Execution of the Court's decision is the right of custody of a child which is deliberately not complied with. The child however becomes an "object" that must be executed though children are not in the form of goods but human beings as a whole. Executing children as human beings cannot be carried out by force; it requires a persuasive and wise attitude from the executors. In principle, the execution of handing over a child to another parent is not allowed to be carried out by force. It is expected that execution should be carried out adequately based on humanity and justice in the child's best interests.

Each parent is expected not to violate the court decision. In order to ensure the creation of the best environment for the administration of justice and to uphold law and justice based on Pancasila, it is necessary to make a law that regulates the action of acts, behavior, attitudes and speech that can degrade and undermine the dignity and the honor of the judiciary. Some argue that there is a contempt of court by the losing defendants, not wanting to carry out the judge's orders that have been considered. If those who get Parental Custody Rights (Legal Custody or Physical Custody) do not comply with the Court's decision which has permanent legal force by prohibiting or not allowing their child to meet and stay in touch with their parents (father or biological mother), then the parent who does not comply with the Court's decision, has ignored the Court's Decision, has committed an act of humiliation, has undermined the authority, the dignity of honor, and amount to contempt of court. It insults the judiciary's authority, dignity, and honor. In such a state of non-compliance of the court's verdict, there is a need to have a law concerning the contempt of Court, which regulates action against actions, behavior, attitudes and disobedience, or words that can demean and undermine the authority, dignity and honor of the Judicial Body so that non-compliance with court decisions on child custody is termed as a contempt of court. It will take a long time to enact a law concerning the contempt of the Court; therefore, it is proposed that the Supreme Court of the Republic of Indonesia be willing to pre-regulate it in a Supreme Court Regulation.

Conclusion

The presence of a child is invaluable in a household, both for the child's parents and other members of society. A man and a woman bound in marriage as husband and wife want their marriage to be happy and lasting and to have children. Obtaining offspring is legitimate among the purposes of marriage. Children born in lawful marriage are the next generation of their parents. Children as God's deposit are future assets and the successor of the relay of generations for future civilizations whose rights need to be protected in personal development and accordance with the level of interests and talents.

However, in the event of a marriage dissolution or a divorce, the term for taking the custody of a child is defined as *hadhanah*, an activity of nurturing and educating

children until they are adults or able to stand on their own. It refers to the power of parents to nurture, act, nurture, build, protect, and develop and develop children by their religion and abilities, talents, and interests is called the Parent's Authority. *Hadhanah's* primary purpose is to nurture and care for minors by both parents. The bond of cooperation between the two can only be realized if both parents are still bound in the marital relationship. In such an atmosphere, although the task of *hadhanah* will be done more by the mother, the role of a father cannot be ignored, both in meeting all the needs that facilitate the task of *hadhanah*, and in creating a peaceful atmosphere in the household where children are raised (Afriyani, 2021; Ahmad, 2014; Annisa et al., 2019).

While giving the verdict of divorce cases, the court determines the parental custody of the child. Parties who do not obtain custody, but control the child, do not give the child the opportunity to meet with his parents. The right to meet with one of the parents who is not the holder of custody of the child as a right to visit (access rights) is a fundamental right for the child and the parent to meet and legally communicate with his child. Parents who obtain physical custody must provide an opportunity for the parents of the father or mother of his children to meet and stay in touch with their children, and vice versa, the right of children to stay in touch with both parents. A parent who has been given parental custody to his child must have been considered by the Judge as a good and wise parent to be given physical custody. If it turns out that the Parent does not comply with the order contained in the court order, which has permanent legal force and has been requested to be executed by the Court, then the Parent who obtained the Physical Custody can be revoked. revocation of parental custody rights over children can be implemented immediately to carry out the decision, even if there is a match or appeal. Parents are given to others (father or mother) but are still required to give their children the opportunity to meet and socialize with Parents who have been deprived of custody.

Court decisions are carried out about humanitarian values and the values of justice. However, the execution of the court's decision on legal custody or physical custody is not complied with voluntarily. The decision of the Court that has the force of law remains on the parental custody authority for many children who are unexecutable is not implemented. parties who other than do not have/do not obtain physical custody rights do not comply with the decision of the court by not wanting to hand over the child. Similarly, the party who obtained the physical custody rights willfully fails to comply with the decision of the court. decide. The mechanism for implementing custody rights for children is in the best interests of children who need to get the broadest possible physical, mental and social opportunity by providing guarantees on the fulfilment of their rights.

The study recommends the need to guarantee the creation of the administration of justice to uphold a just law and improve the culture of law in the life of society and the nation. To execute the custody decision, if deemed necessary, the Judge may order the Ministry of Social Affairs to conduct a "Social Research" to find out the life background of the Executor (Father, Mother) and family and children to be handed over to the Execution applicant. It is anticipated that the Indonesian government will work to draft a statutory regulation that safeguards children who are the victims of negligent parenting due to divorce. It is anticipated that further researchers will continue this

research, particularly those whose primary focus is on protecting children from the adverse effects of divorce-related neglect in parenting. We are aware that this research has limitations, most of which are associated with the selected research technique, which is normative juridical, which only investigates in the context of the study of laws. This deficiency will reflect those individuals who use a more comprehensive research strategy, mainly while producing a study on the same subject

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