



The Role of Fathers in Post-Divorce Parenting: A Case Study in the Panyabungan Religious Court

Peran Ayah dalam Pengasuhan Pasca Perceraian: Studi Kasus di Pengadilan Agama Panyabungan

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Abstract

This study analyzes the judge's decision on the Decision of the Panyabungan Religious Court Number 306/Pdt.G/2018/PA. PYB who gives custody of children (*hadhanah*) to the father after divorce. In general, such a ruling is considered a departure from the conventional practice where custody of minors usually falls to the mother. Using a normative legal research approach, this study aims to uncover the legal basis and judges' considerations (*ratio decidendi*) in making these decisions. Secondary data, consisting of court rulings as primary legal material and related legal literature as secondary legal material, were collected through documentation studies and analyzed descriptively-analytically. The results of the study showed that the judge's decision was based on the principle of child's best interest, which was evidenced by factual evidence at the trial regarding the eligibility of the father as a caregiver, regardless of the child's age. This study makes an important contribution in understanding the flexibility and progressiveness of legal interpretation by judges in order to prioritize the welfare of children in the context of divorce decisions.

Kata Kunci:

Keputusan Hakim; Hak Asuh Anak (*Hadhanah*); Peran Ayah, Pengadilan Agama; Kesejahteraan Anak.

Abstrak

Studi ini menganalisis keputusan hakim dalam Putusan Pengadilan Agama Panyabungan Nomor 306/Pdt.G/2018/PA. PYB yang memberikan hak asuh anak kepada ayah setelah perceraian. Secara umum, putusan tersebut dianggap menyimpang dari praktik konvensional di mana hak asuh anak biasanya jatuh kepada ibu. Dengan menggunakan pendekatan penelitian hukum normatif, studi ini bertujuan untuk mengungkap dasar hukum dan pertimbangan hakim (*ratio decidendi*) dalam membuat keputusan tersebut. Data sekunder, yang terdiri dari putusan pengadilan sebagai bahan hukum primer dan literatur hukum terkait sebagai bahan hukum sekunder, dikumpulkan melalui studi dokumentasi dan dianalisis secara deskriptif-analitis. Hasil penelitian menunjukkan bahwa keputusan hakim didasarkan pada prinsip kepentingan terbaik anak, yang dibuktikan dengan bukti faktual di persidangan mengenai kelayakan ayah sebagai pengasuh, terlepas dari usia anak. Studi ini memberikan kontribusi penting dalam memahami fleksibilitas dan progresivitas interpretasi hukum oleh hakim untuk memprioritaskan kesejahteraan anak dalam konteks keputusan perceraian.

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INTRODUCTION

Background of the Problem

The increase in divorce cases in 2024, which is estimated at 399,921, is a social phenomenon in Indonesia that continues to increase, bringing significant legal and social impacts, especially custody issues or Düsseldorf (Mutiara et al., 2024). This is an important part of the divorce process and family complications so that it requires legal action by one of the parties to get legal custody of the child. In traditional traditions, custody is often given to the mother, especially when she is still *Mumayyiz*. This decision is not without basis, because KHI in article 105 letter a and the jurisprudence of the Supreme Court (Adjani & Salam, 2023; Ardilia et al., 2025; Kiara & Bakri, 2022; Rachmawati et al., 2022). The basis of this policy is that children at this age really need attention and affection, which is instinctively more than the mother. The judiciary in Indonesia in this case shows a significant shift, because custody is no longer automatically given to the mother, but also considers the role and propriety of a father. This is a commitment of the court in prioritizing the welfare of children (Ervina & Hidayat, 2025).

The position of the father is in an important position in the post-divorce for the growth and development of the child (Sumarti & Wahyuni, 2010). Because fathers play an important role in the family, including after divorce, namely as a provider of needs, protectors, decision makers, educators, and mother's companions (Fauzan, 2021; Insan, 2021). The duty of a father is to educate his children to live the outside world, social life, teach about values, leadership, and responsibility and discipline. This reality is what positions Indonesia in the third position in the world's fatherless phenomenon that must be taken seriously. The absence of a father physically and emotionally will have a bad impact on the child's mentality (Astuti, 2016) This impact can be seen with vulnerability to depression, delinquency, lack of confidence, poor emotional control, and limiting oneself to children's social relationships. In fact, previous studies have found that fathers' involvement in parenting has a very strong influence on girls' psychological development, life satisfaction, and children's confidence. The father's participation in the parenting stage can overcome the problem of rational and emotional thinking of children which have a direct impact on children's social relationships (Astuti, 2016).

The judicial practice that is willing to give custody to a father is not only considered as a legal technicality but also a recognition and the necessity of the father's active involvement in the mental and social development of the child so that this reality opposes the traditional role of the gender related to post-divorce custody. On the other hand, this decision shows the development in the justice system considering the principle of the best interests for children (Ervina & Hidayat, 2025) This reality encourages judges to consider that custody is held by fathers who are able to provide a stable, nurturing, and beneficial environment for the development of children compared to mothers even if the child is still young. This evolution shows the overreach of legal interpretation towards pragmatic socio-legal adaptation aimed at creating child welfare.

This reality is the background for the researcher to analyze the Decision of the Penyabungan Religious Court Number 306/Pdt.G/2018/PA. PYB key case (Febry Alamsyah Lubis, 2019). This decision gives custody of the child explicitly with the child's age still *Mumayyiz* which is an exception to the general provisions of KHI that position mothers as a priority. This research will provide a concrete overview of legal considerations and factors that influence judges' decisions in the local context of the Penyabungan Religious Court.

This study aims to analyze the framework of child custody in Indonesia in a positive and Islamic legal framework, identifying the conditions and determining factors that may result in fathers obtaining custody after divorce. Examining in detail the Decision of the Panyabungan Religious Court Number 306/Pdt.G/2018/PA. PYB, related to the facts, considerations, and decisions of the judge. Explores the mental and social impact of fathers' involvement in post-divorce parenting on child well-being. And formulate the challenges fathers face in post-divorce parenting and offer legal and practical solutions.

Identification of the Problem

In the context of divorce, child custody is one of the primary issues that must be resolved by the courts. When a divorce occurs, one party, usually the parent, must be awarded custody of the children involved. However, the process of determining custody is often challenging and fraught with complex legal considerations. In Indonesia, although legal tradition tends to grant custody to the mother, courts often grant custody to the father based on more flexible legal principles, such as "the best interests of the child." Several factors influence these decisions, including changes in legal interpretation, family circumstances, and the roles of both parents in parenting. Therefore, it is important to understand the various issues related to post-divorce childcare. The problems identified in this study are:

1. Increase in Divorce Cases and Its Impact on Childcare. By 2024, the number of divorce cases in Indonesia is estimated to reach 399,921, indicating a rapidly growing social phenomenon. One of the main impacts of divorce is the issue of child custody, which is often a source of dispute. Although traditionally child custody is given to the mother, there is a tendency in some cases to grant custody to the father.
2. Shifts in the Implementation of Child Custody Rights After Divorce. Based on the Islamic Law Code (KHI) and Islamic law, custody of children under the age of 12 is generally granted to the mother. However, in court practice, there has been a shift where judges are awarding custody to fathers based on the principle of "the best interests of the child," even if the child is still under 12 years old.
3. The Role of Fathers in Post-Divorce Parenting. Fathers play a crucial role in childcare, including after divorce. Fathers not only serve as providers, but also as protectors, educators, and companions for their children. A father's absence can have psychological and social impacts on children, impairing their mental and emotional development.
4. Judicial Decisions That Deviate from General Provisions. Several court decisions granting custody to fathers, despite contradicting the general provisions of the Compilation of Islamic Law (KHI), demonstrate flexibility in the application of the law. These decisions raise questions about the legal basis and considerations underlying these decisions.

Research Question

In this research, several questions emerge as a basis for delving deeper into the issue of child custody after divorce. Each divorce case presents different dynamics, and therefore, it is important to understand how courts determine child custody based on existing legal principles. In this context, the principle of "best interests of the child" is the primary basis, but its application can be very flexible, depending on the circumstances of each case. Therefore, it is important to identify key questions that can help answer how judges make custody decisions, as well as how factors such as the role of the father and mother, and the application of positive law and Islamic law, influence the final outcome of these decisions. The research questions that will be discussed further are as follows:

1. How do religious courts in Indonesia decide child custody after divorce, particularly when custody is awarded to the father even though the child is still under the legal age of 18?
2. What are the legal basis and considerations for judges in awarding custody to fathers in divorce cases that do not conform to the general rule that prioritizes the mother as the primary caregiver?
3. What is the role of fathers in childcare after divorce, and how does this affect the child's physical, mental, and emotional development?
4. How is the principle of "best interests of the child" applied by judges in deciding child custody, particularly in cases involving serious allegations against a parent or circumstances affecting the suitability of one parent as a caregiver?
5. To what extent do positive law (the Marriage Law and the Child Protection Law) and Islamic law (the Compilation of Islamic Law) interact in determining child custody decisions after divorce?

THEORITICAL AND CONCEPTUAL FRAMEWORK

Theoretical Framework

The theoretical framework in this study refers to the basic principles that form the basis for determining child custody after divorce. The primary focus is on the application of the principle of the best interests of the child, as well as the interaction between Islamic law and Indonesian positive law in determining custody, with an emphasis on the important role of fathers in childcare after divorce.

The Principle of the Best Interests of the Child

The principle of the "best interests of the child" is the primary basis for all legal decisions related to child custody. This concept emphasizes not only the physical protection of the child but also encompasses the emotional and mental well-being of the child involved in the divorce. In practice, this principle requires the court to consider various aspects that can affect the child's development, such as the physical condition, emotional environment, and social and economic stability of the parent(s) caring for the child.

This principle is adopted in many international and national laws, including the Child Protection Law (No. 23 of 2002) in Indonesia, which emphasizes the importance of protecting children's rights in all aspects of their lives. The same principle is reflected in the jurisprudence of the Supreme Court, which makes the best interests of the child the

primary consideration in every decision involving children, including in divorce cases. Therefore, courts are obligated to ensure that decisions made, whether regarding custody or other forms of care, support the child's healthy and harmonious development.

Islamic Law (KHI) and Indonesian Positive Law

In the context of Indonesian law, child custody after divorce is regulated by both Islamic law and positive law. The Compilation of Islamic Law (KHI), which serves as a legal guideline for religious courts in Indonesia, stipulates that custody of children under the age of 12 is generally granted to the mother. This is based on the belief that mothers are better able to provide the care and affection children need at an early age. Article 105 of the KHI explicitly states that the mother holds primary custody of children under the age of 12, with exceptions that may arise under certain circumstances, such as if the mother is unable to meet the child's physical or emotional needs. However, within the context of Indonesian positive law, there are other regulations that provide the court with more in-depth considerations regarding the child's welfare. The Marriage Law (No. 1 of 1974) and the Child Protection Law allow the court to award custody to the father if evidence indicates that the father is better able to provide a more stable, safe, and supportive environment for the child's development. Therefore, although Islamic law generally grants custody to the mother, Indonesian positive law allows for custody to be granted to the father, based on the principle of the child's best interests.

The Role of Fathers in Childcare

In recent decades, the concept of the father's role in childcare has received increasing attention in family psychology studies. Father involvement theory emphasizes the importance of fathers' active role in their children's lives, including after divorce. Fathers' caregiving is not limited to their role as breadwinners, but rather includes their involvement in providing emotional support, educating, and protecting the child. Active paternal involvement can have a significant positive impact on children's psychological well-being, including strengthening their emotional stability and their ability to cope with changes or crises in their lives. Research shows that paternal involvement in post-divorce parenting is crucial for a child's character development, self-confidence, and social skills. Children who have a strong emotional connection with their fathers tend to have healthier social relationships, greater self-confidence, and better ability to cope with life's challenges. Therefore, in some divorce cases, courts award custody to fathers if they are proven to be able to provide better care for the child and meet the child's psychological and emotional needs, which are crucial for their development.

By integrating these principles, this study aims to explore how various factors—such as the father's role, the principle of the child's best interests, and the interaction between Islamic law and positive law—fluence court decisions regarding child custody after divorce.

Conceptual Framework

The conceptual framework in this study connects several key concepts focused on court decisions regarding post-divorce child custody. Post-divorce child custody is a decision made by the court to determine who is responsible for the care and education of a child

after the parent divorce. In this case, the primary consideration is who is best able to provide a stable and supportive environment for the child. Although mothers are traditionally the primary choice for the care of young children, courts may award custody to fathers if evidence indicates that the father is better able to create conditions conducive to the child's development.

The child's welfare, or "best interest of the child," is the primary principle underlying every child custody decision. Factors considered include the child's physical and emotional well-being, the child's relationship with both parents, and the social and economic stability of the community in which the child will live. Child welfare also encompasses the child's right to an environment free from violence and abuse, which is particularly important in some divorce cases.

The role of fathers in post-divorce parenting is gaining increasing attention, as fathers serve not only as economic providers but also as caregivers providing emotional support, education, and protection for children. Although the mother's role in parenting is often more dominant, this study emphasizes that fathers also have a significant influence on a child's psychological and social development. Therefore, in some cases, child custody is awarded to the father if evidence indicates that the father is better able to meet the child's needs.

Judicial discretion is a crucial aspect in determining child custody decisions, where judges are given the freedom to make decisions based on specific considerations in each case. In this regard, the court relies not only on existing law but also evaluates the family's circumstances, the evidence presented, and the characteristics of each parent. This discretion allows the court to tailor custody decisions to the specific circumstances of the child and parents, especially when the decision deviates from existing general provisions.

By integrating these four concepts, this study will explore how these factors interact and influence court decisions in determining child custody after divorce. Furthermore, this study will also discuss how the principle of "the best interests of the child" is applied in the context of Indonesian law, which combines positive law and Islamic law.

METHODOLOGY

This research uses a qualitative approach with the type of normative legal research (or literature research). This approach was chosen because its main focus is to analyze secondary data in the form of legal documents, without involving interviews or field observations. The data used is secondary data consisting of judges' decisions from the Panyabungan Religious Court as primary data, as well as relevant primary, secondary, and tertiary legal materials. Data is collected through documentation study techniques that involve identifying, classifying, and analyzing the content of documents. All data is then analyzed descriptive-analytically through the stages of data reduction, data presentation, and conclusion drawing to understand how the judge interprets and applies the law in divorce cases.

RESULTS AND DISCUSSION

Legal Framework for Child Custody in Indonesia Marriage Law (Law No. 1 of 1974 and its Amendments)

The changes experienced by Law Number 1 of 1974 concerning Marriage have become the main legal basis in regulating child custody in Indonesia. Article 41 letter (a) of the Marriage Law expressly states that after divorce, both mothers and fathers are still

obliged to maintain and educate their children. This obligation must be carried out solely in the best interests of the child (Alfiana & Muswara, 2025; Fitrianti, 2017; Kumalasari, 2025; Siswanto & Putri, 2021). In the event of a dispute regarding child custody, the court has the authority to decide who is entitled to custody (Ervina & Hidayat, 2025; Keluarga, 2019; Kholis Bidayati, n.d.).

Article 45 of the Marriage Law emphasizes the maintenance and education of children well until they reach adulthood or are married by their parents, even if they are already in a state of divorce. This gives the impression that divorce cannot be the cause of the loss of parental responsibility for their children. However, parental power of attorney can be partially or completely revoked under certain conditions. This issue is explained in article 49 of the Marriage Law, that one or both parents can be deprived of their power over one or more children for a certain period of time at the request of the other parent, the child's family in a straight line upwards, adult siblings, or an authorized official, by a decision of the Court. This can happen if the parent in question is very negligent in his obligations to his child or behaves very badly. However, even if the parents' power is revoked, they are still obliged to provide maintenance to the child (Ardilia et al., 2025; Sabrina et al., 2025; Yulianti et al., 2020).

Compilation of Islamic Law (KHI)

In addition to Law Number 1 of 1974, there are also substantive legal guidelines that are deliberately drafted and formulated in an effort to fill the legal gaps whose implementation is enforced by religious courts, namely the Compilation of Islamic Law (KHI) related to marriage, inheritance, and waqf cases. So that this KHI becomes the basis in cases that enter the Religious Court. Where in Article 105 letter (a) in general the Compilation of Islamic Law states that the maintenance of an immature child /*Mumayyiz* or not yet 12 years old is the right of the mother. This provision is taken based on the belief that children at an early age will need care and affection from their mothers. However, this right can be lost or revoked in certain circumstances. Where, article 156 of the KHI stipulates that if the mother dies, her position can be replaced by a woman in the maternal line, then the father, and so on (Ervina & Hidayat, 2025). On the other hand, revocation of custody can also occur if a mother violates the requirements *Düsseldorf* or cannot guarantee the physical and spiritual safety of the child, this statement is stated in Article 156 letter c of the KHI (Ali, 2017). A situation that can also cause the loss of custody of a mother is when she remarries another man who is not the child's *mahram*. This is used as an excuse because there is a concern that the child will not get full affection from his stepfather.

If the child has reached the age of 12 years or *mumayyiz*, the child has the right to choose who he or she will live with, with this mother or father regulated directly in the compilation of Islamic Law. Because in this provision, the recognition of a child's maturity in determining the choice of place where he and his father or mother can be done at the age of 12. However, there is something that cannot be negotiated or changed, namely that the financial responsibility remains in the hands of the father which includes the cost of maintenance and education of the child, this obligation includes maintenance and clothing. This is in accordance with the words of Allah SWT in Q.S Al-Baqarah verse 233 where this verse explains that a father's responsibility to his child until he is 21 years old or adult and independent either in a complete family condition or divorced.

Child Protection Law (Law No. 23 of 2002 and its Amendments, Law No. 35 of 2014)

In the child protection law, children's rights are comprehensively strengthened. Where article 14 of Law No. 23 of 2002 states that the right of children to be cared for by their own parents unless there is a valid reason and/or rule that shows that separation is in the best interests of the child and has become the last consideration. So the ability to separate is only in very emergency conditions and must be for the good of the child. Then what is included in the rights of children, children have the right to be protected from all bad acts, be it in the form of cruelty, violence and neglect as stated in Article 13 of Law No. 23 of 2002. So that if all these acts turn out to be the perpetrators of parents or caregivers, severe legal action can be taken as a sanction. Meanwhile, in the case of divorce, Article 29 paragraph (2) of Law No. 35 of 2014 states that the child has the right to choose to follow one of his parents in the event of a divorce.

If we pay attention to the child protection law, it will be seen that the law is in accordance with the law *lex specialis* which prioritizes the principle of the best interests of children. So that it allows deviations from the rules of the Compilation of Islamic Law that prioritize mothers. Especially if the mother's actions and omissions can endanger the safety and welfare of the child. Although in Article 105(a) of the KHI in general provides custody of children who have not yet *Mumayyiz* to mother, (Ervina & Hidayat, 2025; Kiara & Bakri, 2022) However, many cases show that fathers often get custody, even for very young children. The Child Protection Law explicitly emphasizes the child's right to protection from harm (Hukum Terhadap Korban Kekerasan Seksual et al., 2022) and states that any separation from parents must be solely in the best interests of the child.

In the law there is a name called the principle of *lex specialis derogate legi generali* with the meaning that "special law overrides general law, in this child protection law, this principle is applied, because the child protection law is considered more specific than other rules. So it can be seen in this Interaction that although the KHI provides the *default* rule, the Child Protection Act provides the main and supreme principle of child welfare and protection. When the mother's behavior (e.g., negligence, abuse, mental instability, or baseless accusations deemed defamatory) directly threatens the child's physical or mental safety and development, the *lex specialis* principle allows the judge to prioritize the protection of the child over the KHI's general preference for the mother. This authorizes the court to transfer custody to a more appropriate parent, who is often the father, indicating the application of dynamic and adaptive legal instruments in which child protection serves as the main guiding principle.

The Principle of "The Best Interest of the Child"

The fundamental foundation related to child custody in Indonesia is the principle of the best interests of children. The scope of this principle is the physical, mental, and emotional well-being of the child, as well as the child's right to maintain the relationship between the two parents. In the Supreme Court's Jurisprudence, it clearly explicitly states that the main considerations in *hadhanah* are the welfare and best interests of children, not merely normative most entitled or have priority as Jurisprudence Number 110 K/AG/2007. This picture shows that the language of the judge's duty in making decisions is to find the best solution that benefits the child, even if it deviates from the general rules.

Definition and Concept of *Hadhanah*

The concept of *Hadhanah*, or child custody in Islamic law, is rooted in the principles of family upbringing and the moral obligations of parents. It emphasizes the importance of nurturing and protecting children, in line with Islamic values that prioritize family responsibility and offspring well-being. *Hadhanah* is not only a legal framework but also a spiritual and ethical commitment to ensure childcare in a nurturing environment. *Hadhanah* refers to the custody and care of children, usually given to the mother, this reflects the Islamic view that the mother is best suited for early childhood parenting. This concept comes from various Islamic hadiths and jurisprudence, which highlight the role of mothers in providing emotional and physical support during the formative years of a child (Setyawati et al., 2024). *Hadhanah* is seen as a divine responsibility, where parents are expected to fulfill their roles with love, respect, and dedication. This practice is related to the broader theme of family parenting in Islam, emphasizing the moral and spiritual dimensions of raising children (Setyawati et al., 2024).

Hadhanah In fiqh, it is defined as the care of minors, providing for their every need, and guarding them from everything that can hurt and damage them (Fitria & Azzahra, 2025; Ghufron & Ali, 2020). According to the book *Al-Iqna* by Imam Al-Khotib Ash-Syirbiny, *Düsseldorf* involves educating individuals who are not yet independent in their affairs about what is good for them and protecting them from harm, even if they are old and insane. It also includes a commitment to bathe, provide clothing, and care for them. In essence, *Düsseldorf* is an effort to raise, nurture, and educate children until they are adults or able to stand on their own (Suryantoro, 2024), involves both physical (day-to-day care) and legal (the right to make decisions about children). Caregivers must protect children from various dangers in their lives.

Modern interpretations of *Hadhanah* also take into account the dynamics of the evolving family structure and the need for shared parenting responsibilities. Scholars argue for a balanced approach that respects traditional values while accommodating the changes of contemporary society (Muzakkir et al., 2023). While *Hadhanah* primarily focuses on maternal custody, some argue for a fairer distribution of parenting roles, which reflect changing social norms and the importance of both parents in a child's life. This perspective encourages dialogue about the adaptability of Islamic principles to modern family dynamics.

Table 1. Comparison of Child Custody Provisions in the Marriage Law and KHI

Aspects	Law No. 1 of 1974 (Marriage Law)	Compilation of Islamic Law (KHI)	Brief Description
Post-Divorce Parental Obligations	Article 41(a), Article 45	Article 104(1)	Both parents are still obliged to maintain and educate the child for the best interests of the child, as well as bear the child's living expenses to be independent, even if the marriage breaks down.
Custody of <i>Children Not Yet Mumayyiz</i> (<12 years old)	Regulated by the court based on the child's best interests (Article 41(a)).	Article 105(a): Maternal rights, except under certain conditions.	In general, it is given to mothers because they are considered more capable of giving attention at an early age. However, the court may decide otherwise in the best interests of the child.
Custody of <i>Mumayyiz Children</i>	Regulated by the court based on the child's best	Article 106: The child has the right to choose.	Children have the right to choose who they want to live with, and this choice is

(>=12 years)	interests (Article 41(a)). The ex-husband is obliged to provide living expenses and/or determine the obligations for the ex-wife (Article 41(c)).	Article 104(1): The father is responsible for all maintenance costs.	considered by the judge.
Alimony Obligations	Article 49: Revocation if the parents neglect their obligations or behave badly.	Article 156(c): Revoked if the caregiver is unable to ensure the physical/spiritual safety of the child or violates the conditions of <i>hadhanah</i> .	The father has primary financial responsibility for the child's maintenance and education, regardless of who holds custody.

Conditions and Determining Factors for Granting Custody to Fathers

General Criteria for Maternal Custody and Its Exclusions

In general, the mother is the primary custodian holder for the minor *Mumayyiz* (under 12 years old). This is based on the view that mothers are considered more capable of providing the affection and attention that children need at that age.(Kurnia et al., 2022) This view is also supported by the Hadith of the Prophet Muhammad PBUH which states that a mother has more rights over her child, as long as she is not married again (Suryantoro, 2024). However, this principle is not absolute. An exception occurs if the mother does not qualify as a *Düsseldorf* or deemed unworthy, which can cause custody to pass to other parties, including the father.(Mutiara et al., 2024) The court will consider a variety of factors to determine whether the transfer of custody to the father is in the best interests of the child.

Positive Legal Factors That Allow Fathers to Obtain Custody

In Indonesian positive law, several conditions and factors can be the basis for the court to grant custody to the father:

1. **Maternal Negligence or Misbehavior:** If the mother neglects her obligations or behaves badly towards the child, custody can be revoked under Article 49 of the Marriage Law. Examples of relevant cases include mothers who leave their children to remarry, lack of attention due to cell phone addiction, *Nusyuz* (wife's disobedience), or even adultery (Mutiara et al., 2024).
2. **Mother's Mental Condition:** Mothers who suffer from psychological disorders or depression that make them unable to take care of children effectively can be the reason for transferring custody to the father (Ervina & Hidayat, 2025). The court will prioritize a stable environment for the child.
3. **Mother's Inability to Ensure the Child's Safety:** Article 156 letter c of the KHI states that if the custody holder cannot guarantee the physical and spiritual safety of the child, custody can be revoked. This includes situations where the environment the mother provides is unsafe or detrimental to the child's development.
4. **Father's Economic Ability:** Although the father is generally responsible for child support, the father's economic ability to provide for the child's needs in a stable manner, including education and health, is an important consideration for the

court. The court will ensure that the custodian party has sufficient resources to support the child's growth and development.

5. Father's Good Faith: Fathers who show good faith in parenting, such as taking good care of children, attending school, and providing religious education, can be a strong determining factor for judges. Witness testimony that supports the father's good behavior can facilitate the judge's decision.
6. Emotional Closeness of the Child to the Father: If the child is emotionally closer and feels comfortable and safe with the father, this is an important consideration for the court, even for minors *Mumayyiz* if there is strong evidence of the child's comfort with the father (Ervina & Hidayat, 2025).
7. Children's Desires (for *Mumayyiz*): Children who have *Mumayyiz* (12 years and older) have the right to choose who they want to live with, and this option is highly considered by the judges (Ervina & Hidayat, 2025).
8. Evidence and Testimony: Witness testimony that supports the father's ability and good faith, as well as proving the mother's negligence or incompetence, is very important in the evidentiary process in court. Strong evidence can change the course of custody decisions.

Factors of Islamic Law That Allow Fathers to Obtain Custody

In Islamic law, several conditions also allow the father to obtain custody:

1. Mother Died: If the mother dies, custody of the child passes to the mother's (grandmother's) lineage, then the father, and so on in the order stipulated in Article 156 of the KHI (JR et al., 2023).
2. Mother Remarried: In Islamic law, if the mother remarries a man who is not the child's *mahram*, custody can pass to the father or other entitled relatives (Praja et al., 2024). The main concern is that the mother's attention will be divided or the child will not get the full affection of the stepfather, which can affect the child's well-being.
3. Maternal Incapacity (Condition *Hadhin*): Book *Kifayatul Akhyar* outlining the seven conditions of a *Düsseldorf* (caregiver) in Islamic law: reasonable, independent, Muslim (for Muslim children), maintaining honor, trustworthiness, free from a spouse (not remarried), and having a decent place to live. (Salsalbila et al., 2022) Violation of any of these conditions can void the mother's custody. For example, if the mother is unreliable or her behavior does not conform to religious and social norms, custody may be transferred.

The legal framework, in particular the KHI and judicial interpretations, demonstrates a pragmatic application of the principles of Islamic law, in which the "best interests of the child" (*Maqashid Shari'ah*) may override the general provisions of maternal custody, especially when the mother's behavior or circumstances pose a risk to the child's welfare or fate. Although KHI Article 105(a) generally states the mother's right to custody of a child who has not yet *Mumayyiz* (Ervina & Hidayat, 2025), many cases show the father got custody for a variety of reasons, including maternal negligence, bad behavior, remarriage, or mental problems. (Muttiara et al., 2024) Court rulings in favor of fathers often explicitly link their decisions to the goals of Islamic sharia (*Maqashid Shari'ah*), in particular *Hifzh al-Nafs* (Self-Defense), *Hifzh al-'Aql* (maintenance of reason), and *Hifzh al-Nasab* (maintenance of the *nasab*/descendants). For example, the decision to give custody to the biological father rather than the mother's relatives is considered to maintain the clarity of the child's fate (Dalimunthe & Ananda, 2024).

This shows that the judicial system does not adhere to a single literal interpretation of Islamic law, but rather applies a more holistic and teleological approach. When the mother's actions or circumstances threaten the fundamental rights and well-being of the child as defined by the *Maqashid Shari'ah* (safety, intellectual development, and clarity of *nasab*), these broader purposes provide justification for transferring custody to the father, even if the child is still a child. It highlights the flexibility and adaptability inherent in Islamic jurisprudence when applied through the lens of child welfare paramount.

Judge's Discretion in Deciding Custody Cases

Judges' decisions in custody cases vary widely and depend on the facts and specific context of each case at hand (Ervina & Hidayat, 2025). Judges have broad discretion to determine the "best interests of the child." Factors considered include the parent's ability to provide stability and ongoing care (such as safe housing, secure education, and an environment that supports the child's healthy development), active involvement in the child's life, emotional closeness between the child and the parent, and the physical and mental condition of both parents. Parents who are proven to be always present and involved in the child's daily activities have a greater chance of obtaining custody (Ervina & Hidayat, 2025).

This significant judicial discretion, while aimed at achieving the "best interests of the child," introduces an element of uncertainty and potential inconsistency among different courts or judges, thus demanding strong legal representation and clear evidentiary standards. Many sources explicitly state that the judge's decision varies based on the facts and context of a particular case (Ervina & Hidayat, 2025). This discretion is exercised within the framework of the broad principle of "the best interests of the child." While this discretion is crucial for tailoring decisions to each child's unique needs, it inherently leads to a level of uncertainty or complete lack of predictability in legal outcomes for divorced parents. In contrast to rigid rules, discretionary decisions are more susceptible to the nuances of evidence presentation and judicial interpretation. For legal practitioners and parents involved in custody disputes, this means that only citing general law provisions or rules *Default* (such as KHI 105a) is not enough. The outcome relies heavily on the specific factual narrative constructed, the quality and credibility of the evidence presented (e.g., witness testimony about parental behavior, child comfort), and the judge's subjective assessment of the "best interests" in that unique context. This underscores the importance of thorough case preparation, strong evidence support, and the strategic use of legal counsel (Yulianti et al., 2020). To navigate these complex discretionary decisions, and also highlight potential areas for further standardization or clearer guidelines for judges to improve consistency without sacrificing flexibility.

Table 2. Conditions of Giving Custody to Fathers (Positive Law vs. Islamic Law)

Condition/ Factors	Positive Legal Basis (Marriage Law, Child Protection Law, Jurisprudence)	Basis of Islamic Law (KHI, Fiqh, <i>Maqashid Shari'ah</i>)	Brief Description
Mother's Negligence	Article 49 of the Marriage Law; Supreme Court jurisprudence (if the mother is negligent in taking care of the child).	Section 156(c) of the KHI (if the caregiver does not guarantee the safety of the child).	Mothers do not fulfill basic parenting obligations, such as providing sufficient needs or attention.
Mother's Bad Behavior	Article 49 of the Marriage Law (very bad behavior); Court Decisions (e.g.,	<i>Hadhin</i> conditions (maintaining	Mothers exhibit behaviors that harm children physically,

	<i>nusyuz</i> , adultery, false accusations).	honor, trust); <i>Maqashid Shari'ah (Hifzh al-Nafs, Hifzh al-'Aql).</i>	mentally, or morally.
Mother's Mental Condition	Court Decisions (e.g., Psychological Disorders, Depression).	<i>Hadhin (common sense)</i> requirements.	The mother is mentally or emotionally unstable and therefore unable to provide effective nurturing.
Inability to Ensure Child Safety	Article 14 of the Child Protection Law; Article 29(2) of the Child Protection Law; SEMA 1/2017.	Article 156(c) of the Criminal Code; <i>Maqashid Shari'ah (Hifzh al-Nafs).</i>	The environment or care provided by the mother endangers the physical or spiritual child from harming her.
Mother Died	It is not specifically regulated in the Marriage Law, but the court will determine.	Article 156 of the KHI (the right to transfer to the maternal lineage, then the father).	Custody was transferred due to the death of the mother.
Mother Remarries	Supreme Court Jurisprudence (if the mother remarries the non-mahram of the child).	<i>Hadhin Requirements</i> (free from spouse).	Mothers remarry, feared that attention will be divided or children will be uncomfortable with their stepfather.
Father's Economic Ability	Court Decision (considering the father's ability to provide for him).	Article 104(1) of the KHI (father is obliged to bear maintenance).	Fathers are financially able to meet the material and educational needs of children.
Dad's Good Faith	Court Decision (evidenced by testimony).	<i>Hadhin</i> (trustworthiness, good manners).	The father shows commitment and positive behavior in parenting.
Children's Emotional Closeness	Court Decision (the child feels comfortable and safe with the father).	It is not specifically regulated, but in line with the principle of <i>child welfare</i> .	Children have strong emotional bonds and feel better cared for by their fathers.
Children's Desires (<i>mumayyiz</i>)	Article 29(2) of the Child Protection Law (children have the right to vote).	Article 106 of the KHI (children have the right to vote).	Children who are 12 years old and older can express their choice.
Revocation of Custody	Article 49 of the Marriage Law (at the request of other parties).	Article 156(c) of the KHI (at the request of relatives).	Legal process to transfer custody from one party to another.

Case Study: Religious Court Decision of Panyabungan Analysis of Decision Number 306/Pdt.G/2018/PA. PYB

Decision of the Panyabungan Religious Court Number 306/Pdt.G/2018/PA. The PYB is an important case that illustrates how courts can transfer custody of a child under the

age of mumayyiz to the father, even though the general provisions of the KHI prioritize the mother.

Case Facts:

1. Parties involved: The Plaintiff is Asmawati binti Amrin Lubis (mother), and the Defendant is Mohammad Rosadi alias Sundung bin Asnawi (father) (Febry Alamsyah Lubis, 2019).
2. Divorce: The couple officially divorced on July 10, 2018, as recorded in the Divorce Deed Number: 198/AC/2018/PA. Squirming.
3. Children: They have four children: Tiara Fitri Damayanti (female, born 19 December 2002), Sindy Asyifa Afikah (female, born 22 July 2006, living with the Plaintiff), Anggia Nurul Maulida (female, born 29 September 2012, living with the Defendant), and Aiyra Shalihatunnisa (female, born 18 August 2017, living with the Plaintiff). The third child, Anggia Nurul Maulida, who was about 6 years old at the time of the verdict (under *the age of mumayyiz*), became the main focus of the custody dispute because she lived with her father.
4. Plaintiff's Allegations: The mother accused the father of sexually abusing the third child (Anggia) by inserting a sharp object into his vagina. This accusation is based on the child's voice recording containing the confession.
5. Defendant's Defense: The father denies the allegations, claiming them to be defamation. He explained that Anggia had complained of vaginal pain and that he had only treated it once with Rivanol and a cotton swab. The father also stated that the investigation by the police and the Indonesian Child Protection Commission (KPAI) Mandailing Natal found no evidence to support the allegations of abuse, and the police advised the father to take good care of Anggia.
6. Plaintiff's Request: The mother is seeking custody of her four children, especially Anggia Nurul Maulida, and is also seeking child support of at least Rp 1,500,000 per month.
7. Defendant's Response: The father is willing to provide child support but prefers to give it directly to the children when they visit, because he is worried that it will not reach the child if it is given through the mother. He also stated that Anggia felt comfortable and preferred to live with him.

Judge's Legal Considerations:

The judge referred to Article 41 of Law Number 1 of 1974 concerning Marriage, which affirms the obligation of both parents to maintain and educate children in the best interests of the child (Febry Alamsyah Lubis, 2019). Although Article 105 letter (a) of the KHI generally states the right of the mother to the child not yet *Mumayyiz*, the judge considered the exceptions provided for in positive law and Islamic law. The judge referred to Article 26 paragraph (2) of Law Number 35 of 2014 concerning Child Protection (transfer of parental obligations if incapacitated) and Article 13 of Law Number 23 of 2002 concerning Child Protection (children's right to protection from ill-treatment). The court also examined legal references that allow the transfer of custody of children under 12 years of age to the father if the mother is incompetent, negligent, or misbehaves that may hinder the physical, spiritual, intellectual, and religious development of the child. A judge's top priority is the "welfare of the child" (the welfare

of the child), which includes the child's mental state and economic need for his or her development.

Reasons for Giving Custody to Dad (for Anggia Nurul Maulida):

The judge's decision to give custody of Anggia Nurul Maulida to her father was based on several key reasons:

1. Invalid Evidence: The transcript of the recorded conversation between the Plaintiff and Anggia Nurul Maulida (Evidence P.6) is considered invalid as evidence because it is not an authentic deed and is not stamped (Febry Alamsyah Lubis, 2019). This reduces the credibility of the mother's accusations.
2. False/Defamatory Allegations: Allegations of sexual abuse by the mother against the father are considered as defamatory because they are not proven by the police and KPAI investigations. This act of defamation by the mother is a significant factor for the judge, because it shows dishonest behavior and has the potential to damage the relationship between the child and the father.
3. Mother's Unworthiness: Mother is considered unfit to nurture, care for, and protect children due to defamatory acts and other indications of mistreatment. The court's findings, based on the course of the trial and witness testimony, show that the father was more attentive and spent more time with the child (Febry Alamsyah Lubis, 2019).
4. Children's Comfort and Safety: The court observed that the child (Anggia) felt comfortable and safe living with the father. There are indications of the child's fear of the mother's actions (e.g., being stepped on or given chili peppers if they ask for pocket money), which indicates a less conducive environment under the mother's care.
5. Father's Ability and Attention: Dad is considered able to take care of Anggia, meet her daily needs, and take her to school. The judge found that the father was more attentive and spent more time with the child.
6. Father's Economic Ability: Even though he works as a farmer, father is considered able to provide for his children's material needs.

The Panyabungan Case (No. 306/Pdt.G/2018/PA. PYB) serves as an important precedent, showing how a judicial interpretation of the "best interests of the child" can expressly override the general preference of the KHI for the mother, especially when allegations of severe misconduct by the mother are made and proven to be untrue, and the father demonstrates a better parenting capacity as well as the comfort of the child. This case explicitly involves a child (Anggia) who is under the age of 12 (6 years old at the time of the decision), but custody is given to the father, directly contrary to the general rule of KHI Article 105(a) which prioritizes the mother for the child who has not been *Mumayyiz*. The judge's decision was heavily influenced by several critical factors: unproven and harmful allegations of sexual abuse from the mother (considered defamation), the comfort and safety of the child disclosed while with the father, and the father's proven ability to provide consistent care and meet the needs of the child. The lack of credible evidence from the mother and the assumption of her negative behavior are decisive.

This case shows that when the mother's eligibility is seriously questioned (especially through false accusations that undermine her trust and capacity to prioritize the child's well-being) and the father can demonstratively provide a safer, stable, and emotionally more nurturing environment, the court will prioritize actual well-being child above

presumptive legal preference for the mother. This highlights the judiciary's willingness to dig deeply into the specifics of parental behavior, the child's mental state, and the practical realities of parenting, rather than simply applying default rules. This sets an important precedent for similar cases where the mother's ineligibility or misconduct is proven, thus shaping the evolving landscape of custody decisions in Indonesia.

The court granted part of the Plaintiff's lawsuit. Custody of the first child (Tiara Fitri Damayanti), second (Sindy Asyifa Afikah), and fourth (Aiyra Shalihatunnisa) child is given to the mother. However, custody of the third child, Anggia Nurul Maulida, was given to the father. Both parents are given broad access to meet and pour out affection to all children, regardless of who holds custody. Fathers are required to pay child support of at least IDR 1,000,000 per month for three children in their care, excluding education and health costs, with an increase of 20% annually until the child is an adult or independent (Febry Alamsyah Lubis, 2019).

Comparison with Other Relevant Religious Court Decisions

The decision of the Panyabungan Religious Court is in line with the trend of rulings in other religious courts in Indonesia which shows flexibility in the application of custody rules in the best interests of the child:

1. PA Medan (Decision Number 433/Pdt.G/2019/PA. Mdn): Custody is given to the father after the mother dies. Although the grandmother (from the maternal line) claimed custody, her claim of paternal incapacity was not proven. This case shows that even in the case of the death of the mother, the father must demonstrate his ability and the other party's claim must be substantiated, in line with Article 98 Paragraph (3) and Article 104 Paragraph (1) of the KHI which emphasizes the father's ability to fulfill obligations.
2. PA Medan (Decision Number XXXX/Pdt.G/2019/PA. Mdn): Custody is given to the father because the mother is not present at the trial and is proven to be negligent in her obligations as a wife (*nusyuz*, cell phone addiction, adultery). Fathers are proven to be able to take good care of children. This case reinforces the argument that the mother's negligence and misconduct were the main determinants of custody transfer.
3. PA Medan (Decision Number 2568/Pdt.G/2020/PA. Mdn): Custody is taken away from the mother due to negligence in taking care of the child and given to the father. This decision was analyzed in line with the principles of *Maqashid Shari'ah* (the purpose of Islamic sharia), in particular *Hifzh al-Nafs* (the preservation of the soul/self), *the Hifzh al-'Aql* (the maintenance of reason), and *the Hifzh al-Nasab* (the maintenance of the *nasab*/offspring), which show a strong philosophical basis behind the decision to transfer custody.
4. PA Demak (Decision Number 0830/Pdt.G/2019/PA. Dmk): Custody is given to the father because the mother has a psychological disorder and depression that makes her unfit to be a caregiver, and the child has an emotional closeness to the father (Ervina & Hidayat, 2025). This points to the maternal mental health factor as an important consideration.
5. PA Sidoarjo (Decision Number 1394/Pdt.G/2022/PA. Sda): Custody of a 2-year-old child is given to the father because the child is not well cared for by the mother. (Ervina & Hidayat, 2025) This is a vivid example of how even a very young child is not an obstacle to the transfer of custody if the mother is proven to be negligent.

These cases, including the Panyabungan Religious Court Decision, show that courts in Indonesia are increasingly applying the principle of "best interests of the child" dynamically, allowing for the transfer of custody to the father when the mother's condition does not support the child's welfare or when the father can provide a more stable and nurturing environment.

CONCLUSION AND SUGGESTION

Conclusion

The role of fathers in post-divorce parenting in Indonesia has undergone a significant shift in legal practice, moving beyond traditional preferences towards mothers. Although the Compilation of Islamic Law (KHI) Article 105 letter (a) generally establishes the custody of children under the age of *mumayyiz* to the mother, positive laws such as the Child Protection Law and various Supreme Court jurisprudence have established a more flexible legal framework, with the principle of "best interests of the child" as the main foundation. The Child Protection Act, as a *lex specialis*, allows deviations from the general rule when the child's physical, mental, and spiritual well-being is threatened by the mother's behavior or condition. Case Study of the Decision of the Panyabungan Religious Court Number 306/Pdt.G/2018/PA. PYB is a real illustration of this dynamic. In such cases, custody of the 6-year-old child is given to the father, even though the child is not yet *mumayyiz*. This decision was based on a series of in-depth judges, including the invalidity of the evidence of the allegations of sexual abuse by the mother, the assessment of the allegations as defamatory, the mother's unworthiness in the custody, the comfort and safety of the child with the father, and the father's proven ability and attention. This case shows that the court will carefully evaluate the parent's behavior and the conditions of the parenting environment to ensure the most favorable outcome for the child.

This shift is also supported by the goals of Islamic sharia (*Maqashid Shari'ah*) such as *Hifzh al-Nafs*, *Hifzh al-'Aql*, and *Hifzh al-Nasab*, which provide a philosophical basis for the transfer of custody when the welfare of children is threatened. This shows that the judiciary applies a holistic approach, integrating positive legal norms and Islamic legal principles to achieve substantive justice for children. While the judge's discretion is important for tailoring the decision to the individual case, it can also create uncertainty in the legal outcome. Therefore, it is important for the parties involved in a custody dispute to present strong and credible evidence, as well as consider effective legal representation.

Overall, this analysis confirms that the role of fathers in post-divorce parenting is not only legally recognized, but also increasingly valued as a crucial element for children's mental and social well-being. Courts in Indonesia demonstrate a strong commitment to protecting children's rights and ensuring their growth and development in the most supportive environment, regardless of who is traditionally considered the primary custodian.

Suggestion

Based on the findings of this study, it is recommended that legal practitioners, particularly judges, prioritize the application of the "best interests of the child" principle in all custody decisions, taking into account in-depth evidence regarding the child's emotional and psychological well-being. Lawyers should also provide more concrete evidence regarding the parents' parenting abilities. Academics are strongly encouraged to further explore the dynamics of fathers' roles in post-divorce parenting

and the impact of court decisions on child development. Policymakers are advised to evaluate existing regulations and introduce training for religious court judges on the application of this principle. Further research is also needed to examine the long-term impact of the transfer of custody to fathers and compare the application of the law between Muslim and non-Muslim families in Indonesia. These steps are expected to create a more just legal system that prioritizes child welfare.

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