



Juridical review and implementation of child custody rights in court decision number: 144/PDT.G/2021/PN.SIM

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ABSTRACT

A family is formed by a legal marriage event both according to religion and the State and in accordance with applicable laws and regulations. In a marriage, it is certain to crave the presence of children to fill a family and produce a complete household. In addition, children are also the successors of their parents' descendants and as the successors of the nation. After having children, parents have the main and important obligations and responsibilities in assisting the growth and development of children. The role of parents is the first teaching in a child's life in the process of shaping and building a good child's character is the obligation of parents in caring for, maintaining and educating until their children grow up. This parental obligation is certainly supported and regulated in Article 45 of Law Number 1 of 1974 concerning Marriage. However, there are many problems in the household that cause conflict between husband and wife in a marriage which causes various problems. One of the problems that occurs as a result of divorce is the transfer of child custody. This research is a type of research normative juridical research on the provisions of Marriage Law number 1 of 1974, with data analysis using a statutory approach and secondary data using scientific journals.

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1. Introduction

Marriage according to Marriage Law Number 1 of 1974, which has been amended by Law Number 16 of 2019, is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on God Almighty (State Secretariat of the Republic of Indonesia, 2019). The physical bond is a formal relationship that can be seen because it is formed based on the law, a relationship that binds the two parties, and other parties in society, while the inner bond is an informal relationship formed by earnest mutual will, which binds the two parties only. Forming a family and continuing offspring through a legal marriage is a right for every Indonesian citizen. This right has been guaranteed in the 1945 Constitution as stated in Article 28B paragraph (1), namely that everyone has the right to form a family and continue offspring through a legal marriage. However, reality often

changes. Because in family life in a household there will always be conflicts between husband and wife, various kinds of conflicts that can be the root of the problem that can cause a rift between the husband and wife's relationship which leads to divorce and divorce becomes the last choice for couples who are in conflict and can no longer live together (Nurul Azmi, 2023). Divorce should be the last alternative after various efforts to improve marital life have been made (Syahan Nur Muhammad Haiba & Anjar Sri Ciptorukmi Nugraheni, 2024). Divorce has significant consequences for the couple and more importantly, for their children. The determination of child custody is one of the important issues that arise from divorce. Article 38 of Law Number 1 Year 1974 on Marriage stipulates that, marriage can be broken up due to 3 (three) things, namely death, divorce, and by decision of the Court.

Divorce is the last way out that must be taken if the purpose of marriage cannot be achieved. Divorce cannot be carried out unless there are reasons justified by religion and law. Divorce also has the effect that parental authority (*ouderlijke macht*) ends and turns into "guardianship" (*voogdij*). Therefore, if a marriage is dissolved by a judge, the guardianship of the minor children must also be regulated. The determination of guardianship by the judge is made after hearing from the paternal and maternal relatives who are closely related to the children. The judge is free to appoint either the father or the mother as guardian, depending on who he considers to be the most capable or the best in view of the interests of the children. The determination of guardianship can also be reviewed by the judge at the request of the father or mother based on changes in circumstances (Subekti, 2008).

There is no denying that divorce has negative effects, especially for couples who are married and have children. In cases of divorce, children are the most disadvantaged party. Children who are in conflict with the law are part of children who need special protection (Iswari, nd). Child maintenance is basically in the interest of the child for their physical, spiritual, and intellectual and religious growth. After divorce, especially for couples who already have children, maintaining children becomes a problem. If both parents are unwilling to share, this problem becomes more difficult. Children, a gift of God Almighty, have the same dignity and worth as every human being (Judge, 2019). Children are entrusted and entrusted by God Almighty (Gatot Heri Prasetyo, 2020). Children who are not adults and not under parental authority must be placed under guardianship according to the *Burgerlijk Wetboek* system (Khair, 2020). Marriages that have taken place at any time can be broken up, even though it is still viewed negatively in society, but the law is permitted if the husband and wife can no longer be united in the household. The breakdown of marriage or the occurrence of divorce will have legal consequences that need to be considered by the parties to the divorce (R.Purnama, 2023). Child custody, known as "custody" in international law, is a very important issue in divorce because it concerns the future and welfare of the child. Child custody is often a problem before or after divorce. In Indonesia, the determination of child custody is regulated by various laws, including Law Number 1 Year 1974, Child Protection Law Number 23 Year 2002 (which has been amended by Law Number 35 Year 2014), as well as the Compilation of Islamic Law (KHI) for those who are Muslims. These regulations provide a detailed legal framework as to who has the right to maintain children and how such maintenance should be carried out post-divorce (Titania Britney Angela Mandey, 2021).

Execution proceedings were taken because the defendant did not want to surrender the child voluntarily. The Panel of Judges plays an important role in child custody dispute cases such as this, where it is necessary to fully decide the issue of rights in child custody. Taking into account the problems that exist above, the researcher is very interested in discussing the problem. Feeling neglected and mentally depressed to choose what I really feel. in the Simalungun District Court So that researchers want to discuss more deeply related to the title of Child Custody after Divorce (Case Study of Case Decision Number 144/.Pdt.G/.2021/.PN.Sim) (Journal & Archipelago, 2024).

Based on the description above, the problems can be formulated as follows: a) How is the judge's consideration of child custody due to divorce of parents in court?, b) How is the legal arrangement in determining child custody after divorce in Indonesia?.

2. Method

The type of research that the author uses in preparing this research is normative legal research which is perspective in nature and the author uses a statute approach and a case approach. The primary legal materials that the author uses in this research are laws and regulations, and decisions. This method will focus on analyzing the applicable laws and regulations, related court decisions, and legal literature related to the determination of child custody after divorce. The discussion is based on the provisions of relevant laws and regulations and related to legal theories and social events. The data sources used are: a) Primary Data, Primary data is data that has been obtained from a copy of the decision number 144/Pdt.G/2021/PN.Sim, and the provisions of Marriage Law number 1 of 1974, b) Secondary Data, Secondary legal materials used consist of books, legal journals, legal dictionaries, internet sources.

3. Analysis and Results

3.1. Sub-heading of the discussion for Judges Considerations Related to Child Custody in accordance with Case Decision Number 144/Pdt.G/2021/PN.Sim. (Decision_144_pdt.G_2021_pn_sim_20240924132025, nd)

3.1.1. Sitting of the Case

Considering, that the Plaintiff with a Lawsuit dated December 2, 2021 which was received and registered at the Registrar of the Simalungun District Court on December 2, 2021 with Register Number 24/Pdt.G/2019/PN Tjb, has filed a lawsuit as follows: a) That it is true that the Plaintiff and the Defendant are a legitimate married couple who entered into a Christian marriage at the Huria Kristen Batak Protestan Tiga Dolok Number: 56/01.3/R.40/H.1/AK/VIII/13 issued on August 20, 2013 by the Pastor of HKBP Ressort Tiga Dolok and that the marriage was recorded at the Office of Population and Civil Registry of Simalungun Regency based on the Marriage Certificate Excerpt Number: 1208-KW-20082013-0040 issued on August 20, 2013 by the Office of Population and Civil Registry of Simalungun Regency; b) That the marriage between the Plaintiff and the Defendant was initially happy and harmonious and was blessed with a child named: MARIA ROSARI EVANGELISTA SINAGA, Female, born in East Kutai on November 21, 2014 in accordance with Birth Certificate Excerpt Number: 6408-LT- 10032015-0015 issued on March 10, 2015 by the Population and Civil Registration Office of East Kutai Regency; c) That it is true that in 2020, the Plaintiff and the Defendant have legally divorced based on the Decision of the Sangatta District Court with Case Register Number: 35/Pdt.G/2020/PN.Sgt dated March 4, 2021 which has permanent legal force; d) That the divorce of the Plaintiff and the Defendant has also been registered at the Population and Civil Registry Office of Simalungun Regency based on the Divorce Certificate Excerpt Number: 1208-CR-24062021-0001 issued on June 24, 2021 by the Population and Civil Registry Office of Simalungun Regency; d) That it is true that prior to the filing of the aforementioned divorce suit which has been legally binding, the Plaintiff and the Defendant and the child named : MARIA ROSARI EVANGELISTA SINAGA resident at Bitumin Number K-08, RT/RW: 005/000, Ex. Swarga Bara, District. Sangatta Utara, Kutai Timur Regency - East Kalimantan;

- That it is true that the Plaintiff, the Plaintiff's parents, the Plaintiff's and Defendant's families, the Defendant's parents, the Defendant's family and elders in the Defendant's village had made efforts to resolve the problem between the Plaintiff and the Defendant, but the problem was not resolved, so the Plaintiff will take the child named: MARIA ROSARI EVANGELISTA SINAGA to Kalimantan because the Plaintiff conceived and gave birth to the child named: MARIA ROSARI EVANGELISTA SINAGA, especially since the child was a minor who needed the love of the Plaintiff, but the Defendant and the Defendant's parents were angry at the Plaintiff and

did not give the child named : MARIA ROSARI EVANGELISTA SINAGA to the Plaintiff; e) That because the Defendant and the Defendant's parents were angry and unclear, the Plaintiff's parents advised the Plaintiff to return home to Sangatta without bringing the child named : MARIA ROSARI EVANGELISTA; f) That while the Plaintiff's and Defendant's children were with the Defendant, the Plaintiff always contacted the Plaintiff's parents to speak to the Plaintiff's and Defendant's children, however the Defendant's parents never picked up the Plaintiff's phone and returned messages from the Defendant and even the Plaintiff once left clothes with the Plaintiff's friend who was returning home in Siantar to give to the Plaintiff's and Defendant's children, However, the Defendant's parents told the Plaintiff's friend that the Defendant's parents did not know the Plaintiff, so the Plaintiff strongly objected to the actions of the Defendant and the Defendant's parents who did not give the Plaintiff full access to meet and speak with the Plaintiff and Defendant's child; g) That due to the actions of the Defendant and the Defendant's parents who did not provide full access to the Plaintiff to meet and speak with the child named : MARIA ROSARI EVANGELISTA SINAGA, so that the Plaintiff filed a Child Custody Lawsuit to the Simalungun District Court Class IB; h) That it is true that the divorce of the Plaintiff and the Defendant is based on the Decision of the Sangatta District Court mentioned above, does not regulate child custody by the Court, so the Plaintiff requests that the Honorable Panel of Judges who examine, hear and decide the aquo case to grant the Plaintiff's claim in its entirety; i) That, because the child of the Plaintiff and the Defendant mentioned above is still a minor, the Plaintiff has the desire to care for her and has sufficient capacity to do so, therefore the Plaintiff requests that the Honorable Panel of Judges Who Examined, Adjudicated and decided the aquo case declare the child named : MARIA ROSARI EVANGELISTA SINAGA, female, born in East Kutai on November 21, 2014 in accordance with the Birth Certificate Excerpt Number: 6408-LT10032015-0015 issued on March 10, 2015 by the Department is under the care and control of the Plaintiff; j) That because the Plaintiff's claim is granted in its entirety, it is reasonable for the Plaintiff to request that the Honorable Panel of Judges who examined, tried and decided the aquo case that the Defendant be ordered to hand over the child named : MARIA ROSARI EVANGELISTA SINAGA without any conditions whatsoever to the Plaintiff as the custodian of the child, and furthermore if the Defendant does not heed and execute the Decision, then the Plaintiff may request assistance for an order to execute the decision assisted by State security forces; That this child custody lawsuit was filed because of several things: The child is a minor and requires the full attention of a mother, and that attention cannot be separated from her siblings. In addition, it was shown that the respondent failed to provide adequate and appropriate care to the child during his time with the plaintiff, the defendant always worked out of town, so the child was not taken care of and the defendant MARIA ROSARI EVANGELISTA SINAGA was often left behind and given to another family, so maybe she was not cared for and left alone, declare that the Plaintiff, the mother, has custody of the child (atmoko dwi, 2022).

3.2. The position of Judges in the law is clearly regulated in Article 1 paragraph (5) of Law No. 48 of 2009 concerning Judicial Power, in the provisions of the article it is stated that:(Maryati, 2021)

The authority given to Judges to take a discretion in deciding cases is regulated in Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which stipulates: "Judges and constitutional judges are obliged to explore and understand the values of law and a sense of justice that lives in society" (Shidarta, 2019).

Based on the rule of law, there is a legal norm "requiring Judges to explore, follow and understand the legal values and sense of justice that live in society. To fulfill this norm, the Judge must take legal discretion." The judge is tasked with digging it up and formulating it in a decision. The judge's decision is part of the law enforcement process which aims to achieve legal truth or for the realization of legal certainty. Judge's decision is a product of law enforcement (Helmi, 2020). It is ironic that the child of the customary marriage is still underage,

so they cannot decide whether to follow their biological father or mother (Dear Nuraini Zulfani, 2022).

These activities have legal consequences in terms of both written and unwritten law, where the law guarantees the protection of children. Arif Gosita said that "legal certainty must be implemented to continue efforts to protect children. implemented to continue efforts child protection and avoid unintended abuses that negatively impact in child protection practices (Sari, 2023).

3.3. Conclusion of Judges' Considerations Decision Number: 144/Pdt.G/2021/PN.Sim.

- If the parents are divorced, the care and maintenance of the child remains the obligation and responsibility of the parents, even though one of the parents has custody of the child. However, in the care and maintenance of children, it is the children's rights that take precedence for the benefit of the child in the future. This is stated in Article 14 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. So the custody of children in this case is rightly given to the mother as the contents of the decision. However, in the care and maintenance of children, it is the rights of the children that take precedence for the benefit of the children in the future. This is stated in Article 14 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Based on this right in relation to this case after a divorce the custody of the child falls to the mother (Yahya et al., 2024).
- Based on decision number 144/Pdt.G/2021/PN. Sim, the judge's decision is in accordance with article 14 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that even if one of the parents has decided to leave the child, the responsibility for caring for and maintaining the child remains with both parents. In this case the father often went out of town and the child was taken care of by his parents. The father is also a worker whose time is spent more at his job than for his child. Based on these circumstances, custody of the child was granted to the mother for the benefit of the child.
- In accordance with the above decision, the judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision which contains justice and legal certainty as well as benefits for the parties concerned so that this judge's consideration must be addressed carefully, well and carefully in deciding existing cases (Erisa et al., nd). So that the judge in considering requires many things to declare the fairest possible decision for the parties, the consideration itself is not always based on formal law alone but many things can be used as the basis for the judge's consideration. Law is responsive, namely the law is very open to changes in society with the intention of following the development of the surrounding community and achieving social policy goals, in this case the law can come from anywhere so that it is mutually sustainable with the aim of creating a harmonious and prosperous life as well as judges in using their considerations in making court decisions.
- Article 41(a) of Law No. 1 of 1974 concerning marriage and Article 2(b) of Law No. 23 of 2002 amending Law No. 35 of 2014 concerning child protection, refers to the same principle, namely based solely on the interests of the child. Therefore, to be able to determine who is entitled to child maintenance rights (hadhanah), it is not only seen from who has the most rights between the Plaintiff as his mother or the Defendant as his father, but in this case must prioritize "in the best interest of the child (best interest of child)" this is in accordance with and in line with the provisions of Jurisprudence Number 110 K / AG / 2007 dated December 07, 2007 with the legal principle that "the main consideration in the issue of child maintenance (hadhanah) is the most important benefit and interests of the child, not because merely normatively considered the most entitled, even though the child is or is not 12 years old (mumayyiz) ".(H Andi Syamsu Alam, SH, MH, Drs. H Habiburrahman, M.Hum., Prof. Dr. H Abdul Manan, SH, nd)In fact, because the child is not yet 12 years old or mumayyiz, a mother is considered more capable of meeting the child's needs and showing more attention.

This is because, at that age, the child still requires attention and affection from the mother, unless the mother proves to be facing difficulties or is not qualified to look after the child (hadhanah). Taking into account all of the aforementioned, the plaintiff's claim that the plaintiff be allowed to have custody of the ten year old child MARIA ROSARI EVANGELISTA SINAGA can be granted.

3.4. Analysis of The Judges Legal Consideration

Considering that in this case, the Defendant as a husband and/or as a father has neglected his responsibilities as a husband and as a father. Seeing that there has been continuous disagreement between the Plaintiff and the Defendant as husband and wife, they have not achieved the purpose of marriage as referred to in Article 1 of the Marriage Law, namely to achieve a happy and lasting family (Budiman & Salam, nd). In the case of the child rights dispute above, the judge must assess the available evidence in a balanced manner in order to make a comprehensive decision.

Therefore, judges apply the principle of seeking formal truth in the trial of civil cases. Nonetheless, in order to seek the formal truth, the judge can naturally apply the principle of seeking material truth or material truth which is the way the judge tries to convince himself based on the evidence specified in Article 164 of the Civil Code and Article 1866 of the Civil Code. Furthermore, based on the trial evidence, the defendant always worked out of town so he could not take good care of his child, especially when the child was a minor and needed all of the mother's love and affection, and this affection could not be separated from his siblings. Due to legal considerations, the researcher believes that giving custody of the child to the mother. The provisions regarding how much maintenance is given to children are not specifically regulated in the Marriage Law or KHI.

However, this provision is found in several laws and regulations in Indonesia which only apply to certain fields of work, such as: a) The former husband/father of a civil servant is obliged to hand over part of his salary for the livelihood of his former wife and children, as specified in Article 8 paragraph 1 of Government Regulation Number 10 of 1983. Then for the distribution of the salary, one-third for the former civil servant husband, one-third for his former wife, and 1/3 for his children, b) Former husbands/fathers who work as members of the National Police are obliged to provide alimony to children of at least one-third of their salary if temporary custody is vested in the wife, as specified in Article 26 paragraph 3 letter b of National Police Chief Regulation No. 9/2010, c) Former husbands/fathers who work as members of the TNI or employees of the Ministry of Defense are obliged to provide maintenance to their former wives and children in accordance with the court's decision. This provision is regulated under Article 21 paragraphs 1 and 2 of the Ministry of Defense Regulation Number 31 of 2017 (S et al., 2023).

The legal protection that can be received by children in the process of providing child custody caused by divorce is legal certainty, supervision of the implementation of custody and legal sanctions. Legal certainty is expected to be able to avoid conflict between the two parents which can have a negative impact on children. Then legal protection can be done by providing supervision of the implementation of custody rights carried out by the court. Supervision aims to ensure that child protection is comprehensively met and received. When it comes to protecting children from parental abuse, the principle is the best interests of the child. What is best for the child. If the judge witnesses that the child is afraid of the father, the way to protect the child is by transferring custody to the parent who is closer to the child. However, in decisions like this, we suggest that judges relate more to existing normative rules, such as the Child Protection Law or international conventions on child protection (Tarigan & Zaenal Abidin, 2022).

3.5. Legal Arrangements in Establishing Child Custody After Divorce in Indonesia

To date, there is no clear regulation on the execution of child custody rights. Some argue that all execution jurisprudence relates only to the law of things (zakenrecht) and not the law of

persons (personrecht). However, there are those who argue that a verdict can be executed provided that it has permanent legal force. If a judgment has permanent legal force, it means that it is enforceable. In the event that the verdict has permanent legal force, the losing party Defendant must in principle voluntarily surrender custody of the child to the Plaintiff. However, the execution process can only be carried out if a request for execution has been made (Jamal et al., 2021). The Child Protection Law has also outlined the parents who must care for, nurture, educate and protect children.

This means that parents are entitled to their children as long as their power is not revoked. For this reason, the main principle that must be considered is the best interests of the child. The principle of the best interests of the child is contained in the explanation of the law (Santiago et al., 2023). According to the Juvenile Penal System, every decision must always consider the survival, growth and development of the child. This is the basis of 3 paragraph (1) of the Convention on the Rights of the Child, which states, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administration There are legal proceedings related to the granting of child custody starting from the filing of a divorce suit in court by the child's parents. As children have rights as specified in Article 28 b paragraph (2) of the Constitution of the Republic of Indonesia (UUD RI), namely the right to survival, growth and development and the right to protection from violence and discrimination For this reason, the court considers various factors before deciding who to give custody of the child to. Family courts could consider a more active approach to hearing children's views, perhaps by involving child psychology experts or specialized mediators (Setiawan, 2020)(Muhammad Firdaus, 2023).

The court considers factors such as the age of the child, emotional closeness, economic capacity and residence that can have a good impact on the development of the child. It is possible for the court to ask for opinions from social institutions to provide direction or recommendations on who deserves custody as a result of the divorce. Court consideration is one of the most important aspects to determine the value of a court decision which contains justice and legal certainty, besides that there are also benefits for the parties concerned. If the court has decided that custody falls to one of the parties, this does not eliminate the rights and obligations of the parent who does not get custody. In this regard, Article 14 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that: "Every child has the right to be cared for by his or her own parents, unless there are valid reasons and/or legal rules showing that the separation is in the best interests of the child and is the last consideration". The Role of the Court in Determining Custody: a) The court has an important role in determining child custody, taking into account various factors such as the welfare of the child, the ability of the parents, and the relationship of the child with the parents; b) The court may determine sole custody, joint custody, or joint custody with visitation arrangements; c) The court may also appoint a mediator to help the parents reach an agreement on child custody. The support of government institutions and laws and regulations to ensure the implementation of the fulfillment of children's rights is needed. Provisions related to children's rights have been included in the legislation in force in Indonesia. This aims to ensure the legal certainty of child protection, including the rights of children affected by their parents' divorce cases. Certainty is defined as a state of certainty; provisions; determination. Certainty in legal studies means that the legal instruments of a country can function optimally so that the rights and obligations of each citizen are guaranteed (Nurfieni, 2022).

Article 45 paragraph 2 of Law No. 1 of 1974 regulates the rights and obligations between parents and children, stating that in the first part, both parents are obliged to take care of and educate their children as best they can. On the other hand, the second part states that the obligations of parents mentioned in the first part of this article apply until the child is married or able to live alone, and the obligations of parents mentioned in the first part of this article remain in force even after the relationship. Mentioned in this article, divorced husband and wife are responsible for maintaining and educating their children in a manner similar to their

own children. Article 46(1) states that the child is bound to respect his or her parents and follow their good intentions, and Article 46(2) states that if the child has grown up, he or she is required to take care of his or her parents and family in a straight line up if they need his or her help (Asshiddiqie, 1999). Article 47 explains, (1) Children who have not reached the age of 18 (eighteen) years or have never entered into marriage are under the authority of their parents as long as they are not deprived of their authority. While paragraph (2) explains, parents represent the child regarding all legal actions inside and outside the Court. After the breakdown of a marriage, as specified by law, the maintenance of children under the age of 18 years usually follows the mother. However, as explained in Article 41 of Law No. 1 of 1974, due to the breakdown of marriage due to divorce, either the mother or father is still obliged to maintain and educate their children, based solely on the interests of the child. Then what if there is a dispute over child custody? Article 41 of Law No. 16 of 2019 explains, In the event of a dispute over parental control, the court makes a decision: the father is responsible for all costs of the child's care and education. However, it is not very clear that you do not have the ability; it is just that if you cannot provide this obligation, the court can determine that you bear the costs.

3.6. Child Custody Rights

The legal basis regarding child custody in divorce is mentioned in Supreme Court Decision Number 102 K/Sip/1973 dated April 24, 1975. According to this ruling, the biological mother should be given the highest priority when awarding child custody in a divorce, especially if the child is under 12 years old. However, Article 156 letter (c) KHI says that a mother can lose custody of her child if she cannot ensure the child's physical and spiritual safety. In such a situation, at the request of relative concerns, the mother can lose custody of her child. The Marriage Law in principle regulates that, children whose parents have divorced must still get love, education and material from both parents (Islamic & Sahara, 2019).

Legal arrangements in establishing child custody in Indonesia are regulated in Law Number 1 Year 1974 concerning Marriage (Indonesia, 2012). Here are some of its provisions: a) Both parents have an obligation to maintain and educate their children, both before and after divorce; b) In the event of a dispute over the control of a child after divorce, the court will render a decision; c) The maintenance of children who are not yet mumayyiz or not yet 12 years old is the right of the mother; d) A mumayyiz child has the right to choose between his father or mother as the custodian. The costs of maintaining and educating children are the responsibility of the father, but if the father breaks up a parent's marital relationship does not mean that a child's civil rights from both parents will be lost. The child still has inheritance rights from both parents when the parents die (Hidayana et al., 2020).

4. Conclusion

One of the consequences of divorce is guardianship for children. In order to realize the goal of law, namely legal certainty, the court must appoint a guardian from either one of the parents or other parties to be responsible and become the guardian of the child who is the result of divorce. Guardianship is a form of legal protection provided by the state to ensure the lives of children. The hope is that the guardianship will not have too much negative impact on the child even though the marriage of the two parents has broken up. Of course, the judge in deciding on the appointment of a guardian must be wise in order to prioritize the principle of the best interests of the child and try to explore the wishes of the child regarding who will become his guardian. So in this case the judge plays a very important role in handling child custody issues.

The child custody execution process is the last step taken in child custody disputes. This process is important to ensure compliance with the court's decision and in the best interests of the child. However, the execution process must be done carefully and take into account the psychological aspects of the child. Mediation, legal aid, and awareness-raising efforts can help in overcoming challenges and reaching a better solution for all parties. The requirements for obtaining child custody in divorce in Indonesia emphasize the parents' ability to maintain and educate the

child, as well as the best interests of the child. The process of determining custody involves various aspects, and the court has an important role in ensuring that the decision is fair and in accordance with the law.

References

- Asshiddiqie, J. (1999). National Law Reform. 27(April), 21–31.
- atnoko dwi, baihaki ahmad. (2022). Marriage and Family Law Book.
- Budiman, FA, & Salam, A. (nd). Child Care After Divorce. 8(1), 2024.<https://publishing-widyagama.ac.id/ejournal-v2/index.php/jhls/>.
- Erisa, K., Prasada, A., Meryantika, Y., Universitas, S., Ogan, I., & Kayuagung, KI (nd). Fulfillment of Children's Support after Parental Divorce (Case Study in Secondong Village, Pampangan District, Ogan Komering Ilir Regency).
- H Andi Syamsu Alam, SH, MH, Drs. H Habiburrahman, M.Hum., Prof. Dr. H Abdul Manan, SH, SIMH (nd). 110_K_AG_2007.pdf.
- Hakim, ML (2019). Application of the Social Fiqh Concept of KH. MA SAHAL MAHFUDH to the Age Limit for Marriage in Article 7 paragraph (1) of the Marriage Law. Islamic Review: Journal of Islamic Research and Studies, 8(2), 207–234. <https://doi.org/10.35878/islamicreview.v8i2.174>
- Helmi, M. (2020). Legal Discovery by Judges Based on the Constructivism Paradigm. Kanun Journal of Legal Studies, 22(1), 111–132. <https://doi.org/10.24815/kanun.v22i1.14792>
- Hidayana, MI, Jauhari, I., & Yahya, A. (2020). Juridical Analysis of Children Protection Post Divorce Parent. IUS Journal of Law and Justice Studies, 8(2), 302–311. <https://doi.org/10.29303/ius.v8i2.704>
- Indonesia, R. (2012). Law No. 11 of 1974 concerning Irrigation. 1–5.
- Islami, I., & Sahara, A. (2019). Legality of custody of minors. Law, vol 10. no, 154.
- Iswari, MS (nd). Restorative Justice; Handling of Children in Conflict with the Law in the Perspective of Social Welfare. In Journal of Social Work and Social Service (Vol. 1, Issue 2).
- Jamal, R., Bukido, R., & Yasin. (2021). Consideration of Child Maintenance Cases in the Manado Religious Court. Al-Istinbath: Journal of Islamic Law, 6(2), 205–222. <https://doi.org/10.29240/jhi.v6i2.2453>
- Jurnal, J., & Nusantara, C. (2024). DIVORCE JURIDICAL REVIEW OF THE DETERMINATION OF CHILD CUSTODY DUE TO DIVORCE. 1, 4359–4366.
- Khair, U. (2020). Implementation of Child Custody Rights After Divorce. JCH (Jurnal Cendekia Hukum), 5(2), 291. <https://doi.org/10.33760/jch.v5i2.231>
- Maryati, M. (2021). Basic Considerations of Judges in Determining Child Custody Rights to Husbands as Applicants at the Jambi Religious Court. Scientific Journal of Batanghari University, Jambi, 21(3), 1299. <https://doi.org/10.33087/jiubj.v21i3.1740>
- Muhammad Firdaus. (2023). Legal Protection of Children's Rights in Divorce Processes: A Study of Children's Interests in Family Courts. JISOSEPOL: Journal of Social, Economic and Political Sciences, 1(1), 24–29. <https://doi.org/10.61787/6ch2ht63>
- Nurfieni, A. (2022). Dynamics of Regulation of Protection of Constitutional Rights of Children Post-Divorce. Indonesian Legal Idea, 1(2), 73–86. <https://doi.org/10.57100/jchi.v1i2.15>
- Nurul Azmi, M. (2023). Determination of custody of children who are not yet mumayyiz to the father from a Maqashid Syari'ah perspective (Analysis of Padang PTA Decision No.18/Pdt.G/2022/PTA.Pdg). 6(2). [verdict_144_pdt.g_2021_pn_sim_20240924132025](https://doi.org/10.33760/jch.v5i2.231). (nd).
- S, CD, Adabi, MI, Djusfi, AR, Ath, P., Aulia, E., Jhowanda, R., & Krisna, LA (2023). Inkracht Concerning Child Custody Rights. 16(1), 174–190.
- Santiago, P.A., Lesawengen, L., & Kandowangko, N. (2023). The Impact of Divorce on Children's Personality (A Study of Divorced Families in Melonguane District Village, Talaud Regency). Journal Ilmiah Society, 3(1), 1–7. <https://journal.unpas.ac.id/index.php/pendas/article/view/8077>
- Sari, WP (2023). Custody Rights of Minors Due to Divorce. UNJA Journal of Legal Studies, 01(1).
- State Secretariat of the Republic of Indonesia. (2019). Law of the Republic of Indonesia No. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. *Republic of Indonesia Law*, 006265,2–6.<https://peraturan.bpk.go.id/Home/Details/122740/tu-no-16-tahun-2019>
- Shidarta. (2019). Legal Reasoning and Legal Reasoning: Philosophical Roots. August, 157.
- Subekti. (2008). Civil Law-Principles-of-Civil-Law-Subekti.
- Syahan Nur Muhammad Haiba, & Anjar Sri Ciptorukmi Nugraheni. (2024). Determination of Child Custody Rights After Divorce Based on the Principle of the Child's Best Interests. Alliance: Journal

- of Law, Education and Social Humanities, 1(2), 151-161.
- Tarigan, J., & Zaenal Abidin. (2022). Arrangement of Child Custody Rights and Children's Citizenship Status as a Result of Divorce from Mixed Marriages Reviewed from International Civil Law. *JurnalRechten:RisetHukumDanHakAsasiManusia*, 2(1),28-40.
- Titania Britney Angela Mandey. (2021). Child Custody Rights Due to Divorce According to Law Number 16 of 2019 Concerning Amendments to Law Number 1 of 1974 Concerning Marriage,9,72.
- Yahya, SZ, Putri, EC, Kanzu, DA, & Hidayah, AO (2024). Analysis of Child Custody Rights Guardianship Decisions in Divorce Cases (Case Study of Decision No. 1618/PDT.G/2020/PA.SMP).