

## IMPLEMENTATION OF CHILD PROTECTION IN DIVORCE CASES AT THE BINJAI RELIGIOUS COURT : AN ANALYSIS OF ISLAMIC FAMILY LAW AND LAW NUMBER 35 OF 2014

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**Abstract :** The rising divorce rate in Indonesia has serious implications for the fulfillment of children's rights, particularly regarding the psychological aspects, which are often neglected. This study aims to analyze the implementation of legal protection for children, with a focus on their psychological needs and the principle of the best interest of the child, in divorce cases at the Binjai Religious Court. The research method employed is normative-juridical, utilizing a statutory approach, a conceptual approach, and an analysis of Islamic law perspectives concerning hadhanah (child custody) and child support (nafkah). Data was sourced from regulations, academic literature, and court case documents. The findings reveal that although judges have referred to child protection provisions (such as those in Law Number 35 of 2014), considerations of children's psychological aspects remain declarative and have not become substantive in court rulings. The main obstacles include judges' limited understanding of family psychological dynamics, the scarcity of counseling support services within the court environment, and low parental awareness. It is concluded that strengthening both regulations and judicial practices is necessary to ensure comprehensive child protection in the aftermath of divorce.

**Abstrak :** Peningkatan angka perceraian di Indonesia berimplikasi serius terhadap pemenuhan hak anak, khususnya pada aspek psikologis yang sering terabaikan. Penelitian ini bertujuan menganalisis implementasi

perlindungan hukum bagi anak, dengan fokus pada kebutuhan psikologis dan prinsip the best interest of the child, dalam perkara perceraian di Pengadilan Agama Binjai. Metode penelitian yang digunakan adalah yuridis-normatif melalui pendekatan perundang-undangan (statute approach), konseptual (conceptual approach), dan analisis perspektif hukum Islam terkait hadhanah dan nafkah anak. Data bersumber dari regulasi, literatur, dan dokumen perkara. Hasil penelitian mengungkapkan bahwa meskipun hakim telah merujuk pada ketentuan perlindungan anak (seperti dalam Undang-Undang Nomor 35 Tahun 2014), pertimbangan terhadap aspek psikologis anak masih bersifat deklaratif dan belum substantif dalam putusan. Hambatan utamanya mencakup pemahaman hakim tentang dinamika psikologi keluarga yang terbatas, minimnya dukungan layanan konseling di lingkungan pengadilan, serta rendahnya kesadaran orang tua. Disimpulkan bahwa diperlukan penguatan baik dari sisi regulasi maupun praktik peradilan untuk memastikan perlindungan anak yang komprehensif pascaperceraian.

## INTRODUCTION

Marriage is a declaration or contract that establishes a legal relationship between a man and a woman for the purpose of forming a family unit (Suryatni, 2021). Its objective is to build a happy and enduring family grounded in the belief in the One Almighty God, as stipulated in Law No. 1 of 1974 on Marriage.

The family, as the smallest social unit, plays a crucial role in shaping an individual's personality and moral values. Within this environment, children grow and develop through emotional interactions with their parents and their social surroundings (Yulianti et al., 2023).

A harmonious family is the ideal aspiration of every married couple. However, not all marriages achieve this condition, as the dynamics of family life often give rise to various challenges. Harmony can only be attained when effective communication is established and deliberation becomes a habitual practice among family members, especially between husband, wife, and children. This condition is reflected in inner tranquility, peace of mind, and emotional and spiritual well-being, which align with the fulfillment of the material and non-material needs of each family member (M. Sari, 2023). Problems that are not properly managed and resolved may escalate into prolonged conflict, ultimately leading to divorce.

Several factors may trigger disputes within the family, including ineffective communication, an inability to resolve problems, stress, psychological pressure, economic difficulties, and domestic violence (Abdul Rahman Masionu, 2024).

Unresolved domestic conflicts often push couples toward divorce. Although divorce is sometimes viewed as a solution to ongoing tension, the decision carries serious consequences for children's emotional and social development. External pressures such as work-related stress, income disparities, jealousy, and interference from extended family often exacerbate marital tension. Dissatisfaction with sexual relations and differences in parenting styles can also provoke conflict which, if left unaddressed, worsens the situation. The accumulation of such issues may create profound disharmony that leads couples to separate (Hanun & Rahmasari, 2022).

Children of divorced parents face heightened risks related to their personal development and social relationships. They may also experience emotional disturbances such as anxiety, aggressive behavior, and depression (Natalia et al., 2025).

Furthermore, a study by Miralles, Godoy, and Hidalgo (2023), reviewing various quantitative and qualitative studies over a fifteen-year span, reveals that parental alienation is among the most frequent consequences of divorce. This condition causes children to develop feelings of hatred, rejection, or estrangement toward one or both parents. The effects are not only social but also psychological and emotional, including distress over separation, tendencies to blame parents, and the shaping of their understanding of relationships, commitment, and family through the lens of their own experience or observations of divorce. Such patterns often create hesitation and distrust when forming relationships in adulthood (Miralles et al., 2023).

Similarly, the research findings of Obeid et al. (2021) indicate that parental separation can place children at risk of various developmental issues. Children from divorced families are more vulnerable to risky sexual behaviors, difficulties coping with failure, and academic challenges that may lead to school dropout. Deviant behaviors such as juvenile delinquency, alcohol consumption, and drug abuse are also more likely to appear. Clinically, children may experience mood disorders such as severe anxiety, depression, and a tendency toward dark or melancholic humor (Obeid et al., 2021).

Beyond internal family factors, social pressures also influence children's conditions post-divorce. Nurlita's (2024) study shows that children in single-parent households often face stigma from their environment, including peers and adults. Such stigma generates negative assumptions that shape the child's attitudes, behaviors, and interactions within society, ultimately affecting their self-confidence and social adjustment (Nurlita, 2024).

In response to these concerns, Law No. 35 of 2014 on Child Protection affirms that the state, local government, community, and parents bear an absolute responsibility to ensure the fulfillment of children's rights, including for children from divorced families. This law, which amends Law No. 23 of 2002, aims to strengthen legal emphasis, broaden the scope of protection, and impose deterrent effects for all forms of violations of children's rights. It also serves as a fundamental basis for implementing the principle of the Best Interests of the Child, as articulated in the Convention on the Rights of the Child, and provides legal protection for children's physical, mental, and social well-being. These provisions reflect the government's commitment to combating all forms of child rights violations and violence against children.

Despite the increasing divorce rate each year, public attention to the fulfillment of children's rights remains limited, especially concerning psychological well-being. JDIH BPK RI (2014) notes that psychological dimensions are often overlooked and rarely discussed in depth. This lack of attention stems not only from limited awareness but also from conceptual gaps and low societal openness in understanding the urgency of psychological protection for children post-divorce (Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, 2014).

This study examines the implementation of legal protection for children in divorce cases based on Law No. 35 of 2014 on Child Protection. The urgency of this inquiry arises from the rising divorce rates in Indonesia, which have serious implications for children's psychological condition, parenting patterns, and overall development. Employing a Family Psychology theoretical framework, this study highlights the persistent neglect of children's rights, particularly emotional

needs and the continuity of caregiving after divorce. Through a case study at the Binjai Religious Court, this research aims to analyze the application of relevant regulations and identify obstacles and strategies for realizing effective child protection, particularly in supporting their emotional and social development.

## **RESEARCH METHODS**

This study employs a normative juridical approach grounded in two primary frameworks: the statute approach, used to examine Law No. 35 of 2014 on Child Protection along with its derivative regulations; and the conceptual approach, which draws upon principles of Family Psychology. The psychological lens is utilized to assess how divorce dynamics affect children's emotional well-being, social relationships, and developmental needs, ensuring that the analysis of legal protection is examined alongside children's psychological needs in a comprehensive manner.

The research also integrates an Islamic legal perspective through an examination of the Qur'an, Hadith, the Compilation of Islamic Law (KHI), and relevant fatwas—particularly in relation to the concepts of *hadhanah* (child custody), child maintenance, and the principle of the best interest of the child within the framework of family fiqh. The Binjai Religious Court was selected as the research site due to its high number of divorce cases and the significant proportion of disputes involving the fulfillment of children's rights, making it a representative location for assessing the implementation of child protection within the practice of religious courts.

The data sources consist of primary legal materials (statutes) and secondary legal materials (scholarly journals, books, and interviews with judges). Data analysis was conducted through the stages of data reduction, categorization of legal issues, and normative interpretation, which involves interpreting positive legal provisions, Islamic legal principles, and theories of Family Psychology in a comparative manner. These stages aim to evaluate the extent to which children's psychological protection after divorce is ensured in judicial practice and to identify the factors that hinder its fulfillment.

## DISCUSSION/RESULTS AND DISCUSSION

### A. Islamic Legal Perspectives on Hadhanah (Child Custody) and the Requirements for Child Care in Islam

In the early stages of life, a child is unable to fulfill basic physical and spiritual needs independently and therefore requires an adult to care for, protect, and guide the development of his or her character. It is in this context that the concept of ḥaḍānah (الحضانة) becomes essential, as the party responsible for caregiving holds a decisive role in shaping the child's emotional, moral, and mental well-being. Islamic law thus places significant emphasis on matters of ḥaḍānah, given that the stages of a child's growth are crucial in determining the quality of life he or she attains in adulthood.

Terminologically, ḥaḍānah is understood as the right of a young child to receive proper guardianship, care, supervision, and education. At this developmental phase, a child requires emotional closeness and consistent nurturing. For this reason, classical Islamic scholars position the mother as the individual most entitled to exercise hadhanah, considering the maternal instinct and psychological attachment that are generally stronger. The majority of fuqahā'—including Imām al-Shāfi'ī, Imām Mālik, Imām Abū Ḥanīfah, and Imām Aḥmad—agree that the right of hadhanah rests with the mother so long as she meets the necessary criteria and the child remains in an age requiring intensive care.

The strength of the mother's custodial right is further affirmed in a hadith of the Prophet ﷺ:

حَدَّثَ اللَّهُ بْنُ وَهَبٍ، قَالَ: أَخْبَرَنِي حُيَّ بْنُ عَبْدِ اللَّهِ، عَنْ عُمَرَ بْنِ حَفْصٍ الشَّيْبَانِيِّ، قَالَ: أَخْبَرَنَا أَبُو عَبْدِ الرَّحْمَنِ الْحُبَلِيُّ، عَنْ أَبِي أَيُّوبَ، قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: مَنْ فَارَقَ بَيْنَ الْوَالِدَةِ وَوَلَدِهَا فَارَقَ اللَّهُ بَيْنَهُمَا وَيَبْنَ أَجْبَبٌ يَوْمَ الْقِيَامَةِ. (رواه الترمذي)

"Whoever separates a mother from her child, Allah will separate him from those he loves on the Day of Resurrection."

(Narrated by al-Tirmidhī)

This hadith serves as a stern warning against removing a child from the care of his or her mother in the early years of life, as such an act is deemed to violate the natural bond and intrinsic relationship between mother and child.

The regulation of custody in Indonesian positive law also aligns with the views of Islamic scholars. Article 105 of the Compilation of Islamic Law stipulates that in cases of divorce, a child under the age of twelve shall be placed under the custody of the mother, while the father remains responsible for the financial maintenance of the child. This provision reinforces the understanding that a child's emotional and psychological needs are more adequately met through the mother's proximity, especially in early childhood. Thus, both classical fiqh and national legal regulations affirm that, in principle, the right of *hadhanah* lies with the mother, unless there are factors that invalidate her eligibility (Aulia, 2022).

Contemporary scholars, including Wahbah al-Zuhaili in his authoritative work *al-Fiqh al-Islami wa Adillatuh*, also discuss this matter explicitly, devoting a subsection to the definition, requirements, and duration of *hadhanah*, thereby offering a comprehensive framework for understanding its implementation in Islamic family law.

In his work, Wahbah al-Zuhayli defines *ḥaḍānah* as follows: etymologically, the concept of *ḥaḍānah* derives from the word *al-ḥiḍn* (الْحِضْنُ), meaning “the side of the body” or “embrace,” which connotes closeness, protection, and care. In Sharī‘ah terminology, *ḥaḍānah* refers to the custodial effort undertaken by the party entitled to care for a child, particularly when the child is still unable to meet his or her own needs (*ghayr al-mumayyiz*), such as the need for food, clothing, bodily cleanliness, bathing, and the management of daily necessities.

Wahbah al-Zuhayli further explains that this custodial responsibility also extends to the care of adults who have lost the capacity for sound judgment, as reflected in the statement:

“وَالْحِصَانَةُ هِيَ حِفْظُ مَنْ لَا يَسْتَطِيعُ الْقِيَامَ بِهِ إِلَّا بِالنَّصْرِ”

“*ḥaḍānah* is the protection of one who is unable to manage his own affairs.”

Within the framework of fiqh, *ḥaḍānah* is a form of responsibility and guardianship (*wilāyah*) that, in its early stages, is generally deemed more suitable

for women. This is because the gentleness, affection, and patience associated with maternal qualities are considered more aligned with the developmental needs of young children. When the child reaches a certain stage at which rational guidance and stronger social regulation become necessary, the right of custody may transfer to the father, who is regarded as better positioned to provide protection and discipline during that phase.

The jurists unanimously agree that ḥaḍānah is a mandatory obligation (wājib), as negligence in caring for a child may endanger his or her safety and developmental well-being. This obligation aligns with Sharī'ah directives requiring caregivers to fulfill the basic needs of children, similar to the duty of financial support (nafaqah). Because ḥaḍānah requires wisdom and attentive concern, scholars consider it reprehensible (makrūh) to engage in behaviors that may cause harm to the child during the caregiving period, including uttering harsh words toward the child, household helpers, or property.

This view is supported by the Prophet's ﷺ statement:

“ لَا تَدْعُوا عَلَى أَنْفُسِكُمْ، وَلَا تَدْعُوا عَلَى أَوْلَادِكُمْ، وَلَا تَدْعُوا عَلَى أَمْوَالِكُمْ ”

“Do not invoke harm upon yourselves, your children, or your wealth.”

In another narration, Ibn ‘Abbās reports that Aus ibn ‘Ubādah al-Anṣārī once informed the Prophet ﷺ that he had daughters and had invoked misfortune upon them. The Prophet ﷺ forbade such supplication and said:

“ لَا تَدْعُ عَلَيْهِنَّ، فَإِنَّ الْبَرَكَهَ مَعَهُنَّ ”

“Do not pray against them, for blessing accompanies them.”

The Prophet ﷺ then elaborated that daughters are a source of blessing; they bring joy in times of ease, offer support during hardship, and provide care in moments of illness. This affirmation underscores that ḥaḍānah is not merely a social obligation but also a moral trust endowed with spiritual value (Az-Zuhayli, 2011).

Wahbah al-Zuhaylī also outlines several general requirements for individuals eligible to hold custodial rights, including:

1. Reaching legal maturity (bāligh)
2. Possessing sound intellect (‘āqil)
3. Having the capacity to educate the child

#### 4. Demonstrating trustworthiness (amānah)

In several schools of law, such as the Shāfi‘ī and Ḥanafī schools, adherence to Islam is considered a condition for custodianship

In addition, al-Zuḥaylī discusses the legal ruling concerning the right of visitation for the parent who does not receive custodial authority after divorce.

The scholars unanimously agree that the parent who does not hold ḥaḍānah retains the right to visit the child in order to preserve familial bonds. Wahbah al-Zuḥaylī states: « وَيَجِبُ أَنْ لَا يُنْعَمَ أَحَدُ الْوَالِدَيْنِ مِنْ زِيَارَةِ الْوَلَدِ حِفْظًا لِلدَّلِيلَةِ وَالرَّحِمِ », meaning that neither parent may prevent the other from visiting the child, as such visitation constitutes an act of maintaining kinship ties (ṣilat al-raḥim).

Within the Ḥanafī school, when the child is under the care of the mother (al-ḥāḍinah), the father is entitled to visit the child. Visitation may take place by having the mother bring the child outside so that the father may see the child on a daily basis. Conversely, if ḥaḍānah transfers to the father due to the lapse of the mother's custodial right or because of another Shari‘ah-based cause, the mother continues to retain visitation rights through the same mechanism. However, according to customary practice deemed beneficial, the frequency of visitation is once per week. Al-Zuḥaylī cites the Ḥanafī position:

« وَيَكُونُ لِلْأُمِّ أَنْ تَزُورَ وَلَدَهَا مَرَّةً فِي الْأُسْبُوعِ »

“The mother is entitled to visit her child once a week.”

According to the Mālikī school, a mother has the right to visit her young child once daily. For older children, the frequency becomes weekly. The father enjoys the same visitation rights as the mother, but these are limited prior to the child entering formal education. After the child reaches that age, visitation is scheduled periodically according to what best serves the child's welfare. Al-Zuḥaylī notes: « وَلِلْأُمِّ زِيَارَةُ وَلَدِهَا الصَّغِيرِ كُلَّ يَوْمٍ، وَالْكَبِيرِ كُلَّ أُسْبُوعٍ » “The mother (who does not hold custody) is entitled to visit her young child every day, and to visit the older child once a week.”

The Shāfi‘ī school holds that when a child who has reached the stage of tamyiz chooses to reside with the father, the mother still retains the right to visit the child. The father may not prohibit such visitation, as doing so would sever

family ties. It is stated: « لَا يَجُوزُ لِلْأَبِ مَنَعُ الْأُمِّ مِنْ زِيَارَةِ وَلَدِهَا لِأَنَّ فِي ذَلِكَ قَطْعًا لِلرَّحِمِ » — “The father is not permitted to prevent the mother from visiting her child, for such an act would constitute severing kinship bonds.” However, visitation must not be excessive. If the father refuses to allow the mother to enter the home, he is obligated to bring the child outside so that visitation may still occur. In cases where the child is ill, the mother has a stronger claim to provide care due to her gentleness and attentiveness, though the interaction must avoid circumstances that could lead to *khalwah*.

The Ḥanbalī school’s view is generally aligned with that of the Shāfi‘īs. If a *tamyīz*-aged child chooses to live with the father, the father may not prevent the mother from visiting or caring for the child during illness. If the child resides with the mother, nighttime is spent with her, while daytime is spent with the father for educational purposes. For a female child, after the age of seven she is placed under the father’s care until marriage, yet she retains unrestricted visitation rights with her mother, with neither parent permitted to prevent such contact. Al-Zuhaylī affirms: « وَلَا يَحِلُّ مَنَعُ الزَّيَارَةِ فَإِنَّ فِيهِ قَطْعًا لِلرَّحِمِ » — “It is not lawful to prevent visitation, for doing so constitutes the severing of kinship ties.” (Az-Zuhayli, 2011)

Regarding the responsibilities of the custodial guardian, Wahbah al-Zuhaylī explains that from a *fiqh* perspective, the father bears the primary responsibility for safeguarding, educating, and equipping the child with the necessary skills for his or her future livelihood. This is consistent with the foundational principles of child care in Islamic law, which emphasize that the father is the party obligated to provide financial support and protection. Women, by contrast, may not be hired for tasks that could expose them to *khalwah* with the male employer, as such circumstances are prohibited by the Sharī‘ah. The jurists state:

“إِنَّ اسْتِئْجَارَ الْمَرْأَةِ فِي مَوَاطِنِ الْخُلُوةِ لَا يَجُوزُ لِمَا فِيهِ مِنَ التُّهْمَةِ وَسَدِّ الدَّرَائِعِ”

“Hiring a woman for work in situations that may lead to *khalwah* is impermissible because it contains elements of suspicion and must be prevented as part of *sadd al-dharā’i’* (blocking the means to wrongdoing).”

Meanwhile, the *ḥāḍhinah*—whether the biological mother or another appointed female guardian—bears full responsibility for attending to the child’s

basic needs while the child is under her care. These needs include physical care, clothing, and other daily requirements, the costs of which must be provided by the father. The provision of maintenance (nafaqah) may be arranged on a daily, weekly, or monthly basis according to the court's determination. Such determination takes into account the father's financial capacity and the best interests (maṣlaḥah) of the child.

In this context, the jurists emphasize that the father is not permitted to issue instructions to the caregiver in a manner that could endanger the child, such as saying: "Bring the child to me first, only then may you take the child back." Such conduct is impermissible because it may expose the child to harm. The fuqahā' assert:

“لَا يَلْزَمُ الْحَاضِنَةُ أَنْ تُثَبِّتَ أَمْرًا فِيهِ ضَرَرٌ لِلْوَلَدِ”

“A ḥāḍhinah is not required to comply with any instruction that entails harm to the child.” (Az-Zuhayli, 2011)

## **B. A Psychological Perspective on the Impact of Divorce on the Family and Its Relevance to Child Protection**

Article 19 letter (f) of Law No. 1 of 1974 stipulates that divorce may be filed before the court on the grounds of ongoing disputes and conflicts between husband and wife, such that reconciliation and harmonious family life are no longer possible. This provision serves as a concrete legal basis for judges in assessing, examining, and adjudicating divorce petitions brought before the court.

Divorce is often viewed as a solution to family disharmony—whether stemming from prolonged conflict or other factors such as adultery, alcoholism, gambling, abandonment for two consecutive years, imprisonment, or severe physical disability. Yet behind such decisions lie serious consequences that are frequently overlooked, particularly for children. Children are the most vulnerable to experiencing significant changes in their daily lives and in their worldview as a result of parental separation.

From a family psychology perspective, divorce can have adverse effects on all family members. Children often perceive a stark disruption in their routines; where they once saw both parents at home, they now confront major changes. Their understanding of parental affection may shift as each parent becomes

occupied with post-divorce responsibilities. The situation may worsen when custody is granted to the mother, resulting in her becoming a single parent, which may lead the child to grow up without the emotional and developmental support of a father—a phenomenon widely referred to in contemporary discourse as fatherlessness (Retnoningtias et al., 2024).

For parents, divorce may generate several negative consequences:

1. Economic instability: A drastic change in financial conditions may compel a woman to work to meet basic and daily needs, as reliance on financial support from the former spouse is no longer feasible.
2. Psychological fluctuations: A single mother typically experiences negative emotions such as frustration, disappointment, resentment, or emotional exhaustion in the aftermath of divorce.
3. Parenting challenges: Former spouses must find effective ways to share parental roles—both materially and emotionally—to meet the child's needs, while also adjusting to new forms of communication post-divorce.
4. Mutual blame: Parents may continue blaming each other for the failure of the marriage, generating hostility and affecting their social standing due to the stigma associated with being a widow or widower.

The consequences for children are equally, if not more, severe, particularly with regard to their developmental trajectory:

1. Lack of complete parental affection, which can significantly affect emotional and psychological development in later stages of life.
2. Emotional instability: Children may withdraw, remain silent, self-blame, or feel shame among peers.
3. Increased negative emotions, such as anxiety, confusion, anger, and sadness.
4. Difficulty concentrating, particularly academically, which often results in declining performance due to an inability to focus.
5. Higher inclination toward behavioral problems during developmental years.
6. Traumatic responses, including insecurity due to the loss of family cohesion and a diminished sense of protection. Children may also show

reduced social awareness, lower empathy, and limited responsiveness or understanding of social situations, reflecting weakened sensitivity to their environment (Retnoningtias et al., 2024).

A wide range of studies indicates substantial variation in the psychological impact of divorce on children, largely because each child possesses different levels of psychological resilience in responding to family stressors, including parental conflict (Retnoningtias et al., 2024).

Moreover, the dynamics of the divorce process itself strongly influence how children perceive and cope with parental separation. Conflict characterized by verbal or physical altercations—particularly when escalating into domestic violence or open infidelity witnessed by the child—can create profound trauma. Conversely, a divorce conducted amicably and without involving the child (for example, when issues such as physical disability or infidelity are kept from the child’s knowledge) tends to result in milder psychological consequences (Retnoningtias et al., 2024).

According to Wardah Nuroniyah in her book *Psikologi Keluarga*, parenting is defined as follows:

“Parenting carries various meanings. Terminologically, it can be identified as the process of raising a child. The term ‘raising’ encompasses the methods or ways in which parents fulfill the physiological and psychological needs of the child; nurture the child based on standards and criteria set by the parents; and instill and enforce values in the child.”

Based on this explanation, she emphasizes that parents play an active role in carrying out their duties and bear responsibility for the child’s development. In her view, parents are not only required to meet the child’s physical needs, but must also provide their best efforts to fulfill the child’s material needs, emotional needs, psychological well-being, and to secure access to the best possible educational opportunities (Nuroniyah, 2023).

Furthermore, she explains that the psychological impact of divorce on children may affect the formation of their character. The consistent presence of both father and mother in a child’s life functions as an essential support system that fosters strong psychological resilience, as the child receives adequate

affection and full parental support, and experiences a sense of security due to being consistently supervised throughout various stages of development (Nuroniyah, 2023).

The problem arises when the absence or incompleteness of parental presence generates serious consequences for the child's development. Without a unified guideline or integrated parenting framework from both parents, many children affected by divorce experience long-term psychological effects. This may lead to significant developmental challenges. If not properly addressed, these effects may become emotional burdens carried into adulthood—even into marriage ultimately affecting family well-being and contributing to stress in future generations. In more serious cases, the consequences of parental divorce may hinder children from receiving adequate parental support when they themselves are preparing for marriage (Varzaneh & Bagherian, 2024). This issue is particularly notable because parents who have established new families often become reluctant to gather together during their child's wedding. Even during the marriage approval process, the child may only communicate with one parent, creating emotional as well as administrative barriers.

In divorce proceedings, the determination of child custody is not solely a legal matter; it also involves profound psychological considerations. Family psychology, as a discipline that examines the dynamics of familial relationships, offers crucial contributions to addressing the emotional, social, and developmental needs of children after parental separation. A family-psychology approach becomes indispensable when making custody decisions, as such decisions must consider which parent is most capable of providing a stable and healthy developmental environment.

Child protection within Indonesia's legal system relating to divorce must reflect an understanding of the child's best interests, including psychological aspects. Law No. 35 of 2014 on Child Protection affirms that children are entitled to physical, mental, and social protection. In practice, it is essential to account for the child's psychological condition so that judicial decisions conform to and align with the principle of the best interest of the child. Parents are expected not only to fulfill the child's basic needs but also to ensure their mental, physical, and social

security. However, in many cases, the mental well-being of the child remains overlooked within parenting practices.

### **C. Normative Analysis of the Implementation of Law No. 35 of 2014 on Child Protection After Divorce**

Law No. 35 of 2014 is an amendment to Law No. 23 of 2002 concerning Child Protection. This statute serves as the legal foundation for all regulations, policies, judicial decisions, and matters relating to children, including efforts to safeguard and fulfill children's rights in divorce cases. The law emphasizes the child's right to live, grow, and develop in accordance with their dignity as human beings. It also reflects the government's commitment to the ratification of the Convention on the Rights of the Child, forming a fundamental pillar in the effort to protect children from potential violence and discrimination.

In divorce cases, the best interest of the child principle constitutes both a moral and legal basis that must be invoked before the parties, particularly within judicial proceedings.

Law No. 35 of 2014 regulates various child-related rights in the context of divorce, such as custody, education, and protection including protection from family conflicts that may significantly affect a child's mental well-being. The statute also mandates the safeguarding of children's rights, particularly in relation to education, protection from physical violence, and mental health. Substantively, the law requires the active contribution of the State, government, local authorities, the community, families, parents, and guardians to ensure that child protection is realized comprehensively and indiscriminately.

However, empirical findings show that its implementation often remains inadequate, especially regarding children's mental and psychological conditions. Based on direct observation conducted at the Religious Court of Binjai, it was found that the judicial panel has made optimal efforts to render decisions in accordance with applicable regulations, including the Child Protection Law. Nevertheless, in practice, deviations still occur and often go undetected or unreported.

This is reinforced by the findings of Mardi and Fatmariza (2021) in their study, *Faktor-Faktor Penyebab Keterabaian Hak-Hak Anak Pascaperceraian*. Their

research identified at least three major factors causing the neglect of children's rights after divorce in Padang City: (1) economic conditions; (2) poor communication between divorced parents; and (3) lack of parental awareness and responsibility (Mardi & Fatmariza, 2021).

Additionally, a study by Islamiyah, Mamonto, and Stoffel (2025), *Parents' Responsibilities towards Children After Divorce*, reported a case in Jayapura in which a former wife prohibited the former husband from meeting their child. Such cases demonstrate that, in practice, court decisions still leave gaps that allow deviations by involved parties, either due to lack of awareness or the emotional strain following divorce, which hinders the fulfillment of children's rights. (Islamiyah et al., 2025)

According to Satjipto Rahardjo's theory of legal protection, the law exists so that individuals and communities may fully enjoy the rights conferred upon them. Law functions not only as an adaptive and flexible instrument but also as a predictive and anticipatory one. Legal protection is especially needed by those who are socially, economically, and politically weak, in order to obtain social justice (Fuad et al., 2020).

Rahardjo emphasizes that the law is essential for vulnerable groups lacking sufficient social, economic, or political power. Its purpose is to ensure social justice, particularly for individuals who are unable to assert their rights within complex social realities. The law is expected to function as a protective mechanism for vulnerable populations and to guarantee that every individual receives their rights fairly.

In the context of child protection after divorce, this theory carries significant relevance. Based on the issues described above, it is evident that the implementation of Law No. 35 of 2014 often falls short of fulfilling children's concrete protection needs, especially in psychological and social aspects. This indicates a persistent gap between the ideal legal norms (*das Sollen*) and the reality in practice (*das Sein*). Thus, Rahardjo's theory of legal protection serves as a critical framework for assessing the extent to which the legal system has effectively functioned to protect children as the most vulnerable parties in divorce-related conflicts.

#### **D. Implementation of Legal Protection for Children in Divorce Cases at the Religious Court of Binjai**

The Religious Court of Binjai is a first-instance judicial body with territorial jurisdiction over the City of Binjai, comprising five districts, eleven villages, and eleven urban wards (Binjai, 2024). In 2024 alone, at least 767 divorce cases were filed and adjudicated before this court.

Drawing upon the theoretical frameworks previously outlined, this section presents an empirical account of the court's practices based on interviews with judges and relevant scholarly works.

According to the thesis written by one of the judges of the Religious Court of Binjai, YM Nur Khozin Maki who also served as a member of the judicial panel in Case No. 368/Pdt.G/2021/PA.Bji decisions concerning child custody (hadhanah) in divorce proceedings adhere firmly to the best interest of the child principle. In the aforementioned case, the panel applied Article 105(b) of the Compilation of Islamic Law (KHI) (Maki, 2023), reinforced by the provisions of Law No. 48 of 2009 on Judicial Power.

With respect to childcare and financial maintenance, the panel anchored the father's financial obligations in Article 41(a) and (b) of Law No. 1 of 1974 on Marriage (Maki, 2023), as well as Article 156(d) and (f) of the Compilation of Islamic Law. Although the respondent in the reconventional claim refused to provide support on the grounds that the children were already over 12 years old, the judges held that the father's obligation to provide maintenance does not terminate upon divorce. Consequently, the court determined a proportional maintenance amount by considering the father's income as an unskilled laborer, while also taking into account the mother's physical condition—she had undergone amputation due to diabetes. The determination was made to ensure that the financial burden would not be excessive for either parent, yet remained sufficient to meet the children's basic needs.

Furthermore, the judicial panel referred to Supreme Court Circular Letter No. 1 of 2017, which mandates access rights for the non-custodial parent. By explicitly stipulating visitation obligations within the hadhanah ruling—and by granting the authority to revoke custody if the custodial parent obstructs

visitation—the panel sought to ensure that the child’s emotional bond with the non-custodial parent is preserved. This provision aims to prevent emotional trauma and insecurity by maintaining the continuity of the child’s relationship with both parents, even when formal custody is granted to only one party (Maki, 2023).

Consistent with the researcher’s previous analysis, the *de jure* application (*das sollen*) of child protection demonstrates that the implementation of child custody rights is in accordance with Law No. 35 of 2014. The General Provisions of the law emphasize that “every child must be given the widest possible opportunity to grow and develop optimally, both physically, mentally, and socially.” The Religious Court of Binjai has made substantial efforts to guarantee these opportunities, both financially—through orders on child maintenance—and psychologically, by emphasizing the importance of visitation rights. This is supported by the results of an interview with Judge Nur Khozin Maki, summarized as follows:

“Raising a child cannot be done carelessly, especially in early childhood when the child does not yet understand anything. Parenting must include education, affection, and the fulfillment of other needs. Even when the mother has custody, civil determination remains necessary—for example, when she plans to work. Childcare costs should ideally be calculated based on income. Due to time constraints, it is not problematic if the father takes over care on certain days, such as Mother’s Day. Joint parenting patterns like this are considered better. The determination of the child’s needs, excluding education and health costs, may follow an annual increase of about 10%. Education and health expenses are excluded because they are unpredictable—we do not know when a child may fall ill, nor the variation in educational costs from kindergarten to senior high school. All of this constitutes an effort to protect children as victims of divorce.”

From the psychological perspective, he further stated:

“For the best interest of the child, it is crucial to maintain the child’s right to visitation, affection, and attention from both parents. This also serves as mutual supervision and shared responsibility between father and mother. For instance, if the mother cares for the child during weekdays because school runs from Monday,

then the father may be given time with the child on weekends, such as Saturday or Sunday, after which the child may return to the mother in the afternoon. In this way, the father remains involved in parenting and can provide needed affection. It must be remembered that a child's needs are not merely material. Children also require attention, presence, and affection from both parents. Problems must remain between the father and mother; the child must not become a victim of parental selfishness.”

Despite these normative provisions, the realities of practice within society vary considerably. There remain individuals who disregard court rulings and statutory child protection requirements. Therefore, concrete strategies are necessary to ensure the effective realization of child protection, including:

Enhancing legal education for the public regarding children's rights post-divorce. Consistent and firm law enforcement against violations of children's rights, including breaches of visitation orders and failure to provide maintenance. Strengthening inter-institutional coordination, including collaboration among child protection agencies, law enforcement officials, and community leaders.

To prevent the recurrence of similar issues, all parties must develop awareness of the long-term psychological impacts that divorce may impose on children. Children are valuable assets to the nation, and no one can predict the extent to which future generations will contribute to the country's development. For this reason, the state firmly condemns all actions that may hinder or aggravate a child's growth and development.

As a form of comparative analysis between *das sollen* and *das sein*—with respect to Islamic legal concepts, family psychology theories, and their implementation in practice—the results are presented in the following comparative table :

| Aspect               | Islamic Law                                                                      | KHI Article 105                                                      | Family Psychology                                             | Child Protection Law                                           |
|----------------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------|----------------------------------------------------------------|
| Foundational Concept | Child custody ( <i>ḥaḍānah</i> ) aims to ensure safety, proper care, and optimal | Children under 12 years old are placed under the care of the mother. | Custody prioritizes emotional needs, attachment security, and | Child protection is grounded in the best interest of the child |

| Aspect                    | Islamic Law                                                                                     | KHI Article 105                                                                            | Family Psychology                                                                                      | Child Protection Law                                                                     |
|---------------------------|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
|                           | development in accordance with Islamic principles.                                              |                                                                                            | psychological stability.                                                                               | principle.                                                                               |
| Party Entitled to Custody | The mother has priority during the early stages of the child's life.                            | The mother is entitled to custody of children under 12 years of age.                       | The mother typically serves as the primary attachment figure in early childhood.                       | Determined based on what best serves the child's welfare, regardless of parental status. |
| Custodian Requirements    | Must be rational, trustworthy, and capable of providing proper upbringing.                      | Requirements are not specified in detail; determined based on feasibility and suitability. | Custodians must be emotionally stable and capable of supporting the child's psychological development. | The custodian must guarantee the child's safety and welfare.                             |
| Children's Rights         | Right to care, education, safety, and proper upbringing.                                        | The child lives with the mother while the father provides financial support.               | Emotional stability, a sense of security, and consistent affection are essential rights.               | Rights to life, development, protection, and fulfillment of basic needs.                 |
| Parental Visitation       | Visitation cannot be denied; maintaining family ties is encouraged.                             | The child's relationship with both parents must be preserved.                              | Regular visitation is important for the child's mental health and emotional continuity.                | Children have the right to maintain contact with parents, provided it is safe.           |
| Duration of Custody       | Custody continues until the child reaches mumayyiz (discernment age), after which the child may | Custody remains with the mother until the child reaches 12 years of age.                   | Early childhood development necessitates closeness with the mother.                                    | No specific age is prescribed; decisions follow the child's best interest.               |

| Aspect                     | Islamic Law                                             | KHI Article 105                                          | Family Psychology                                                            | Child Protection Law                                                           |
|----------------------------|---------------------------------------------------------|----------------------------------------------------------|------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
|                            | choose.                                                 |                                                          |                                                                              |                                                                                |
| Financial Support (Nafkah) | The father is obliged to provide financial maintenance. | The father continues to bear financial responsibilities. | Economic stability directly influences the child's psychological well-being. | Parents are required to fulfill the child's basic needs and financial welfare. |

## CONCLUSIONS

The psychological protection of children after divorce, under both Islamic law and positive law, positions the best interest of the child as the primary guiding principle. Islamic law, through the concept of *ḥaḍānah*, establishes that custody must be entrusted to the party most capable of ensuring the child's safety, affection, and emotional stability—typically the mother, insofar as she fulfills moral and caregiving qualifications. This principle aligns with Article 105 of the Compilation of Islamic Law (KHI) and is reinforced by Law No. 35 of 2014 on Child Protection, which mandates the state, family, and society to guarantee the fulfillment of children's physical, mental, and social rights.

The findings further indicate that the psychological impact of divorce on children is significant, ranging from emotional disturbances and behavioral problems to heightened vulnerability to trauma. Accordingly, strengthening post-divorce caregiving systems becomes a central and urgent necessity.

This research contributes to the development of Islamic family law by demonstrating the importance of harmonizing classical *fiqh* norms on *ḥaḍānah*, the provisions of the KHI, and the child-protection principles embedded in Law No. 35/2014. Such integration offers a comprehensive framework for religious courts in adjudicating custody cases, particularly in relation to the psychological needs of children—an aspect that has often received limited consideration in judicial practice.

Nevertheless, the study has limitations concerning the empirical scope of data from the Binjai Religious Court, which covers only a specific time period, as well as limitations in the family psychology literature employed. Moreover, the

research has not yet explored the internal dynamics of families through more in-depth quantitative or observational approaches.

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