



PROTECTION OF CHILDREN'S RIGHTS AFTER DIVORCE: CHALLENGES AND SOLUTIONS IN INDONESIAN LAW



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Abstract

The protection of children's rights in divorce proceedings constitutes a constitutional obligation of the Indonesian legal system, as explicitly mandated by Law Number 35 of 2014 on Child Protection. This obligation requires judicial institutions, particularly Religious Courts, to place the best interests of the child as a primary consideration in adjudicating marital disputes. Normatively, this responsibility is reinforced through the application of judges' *ex officio* authority, which enables judges to render decisions beyond the parties' formal claims in order to ensure the fulfillment of children's fundamental rights. This study aims to analyze the implementation of judges' *ex officio* authority in Religious Court divorce cases, with specific emphasis on children's rights to maintenance (nafkah), custody (hadhanah), legal identity, and meaningful participation in judicial proceedings. Using a juridical – normative approach, the research examines statutory provisions, including the Child Protection Law, the Compilation of Islamic Law (KHI), and relevant Supreme Court Regulations, to evaluate the coherence and effectiveness of the existing legal framework. The findings indicate that despite a relatively comprehensive normative foundation, the practical protection of children's rights remains inadequate. This gap is primarily caused by regulatory inconsistencies, limited awareness among litigants regarding children's post – divorce rights, and weak mechanisms for enforcing court judgments. Consequently, judicial decisions that recognize children's rights often fail to produce tangible outcomes.

Abstrak

*Perlindungan hak-hak anak dalam perkara perceraian merupakan kewajiban konstitusional dalam sistem hukum Indonesia, sebagaimana secara tegas diamanatkan dalam Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak. Kewajiban ini menuntut lembaga peradilan, khususnya Pengadilan Agama, untuk menempatkan kepentingan terbaik bagi anak sebagai pertimbangan utama dalam memutus sengketa perkawinan. Secara normatif, tanggung jawab tersebut diperkuat melalui penerapan kewenangan *ex officio* hakim, yang memungkinkan hakim menjatuhkan putusan melampaui tuntutan formal para pihak guna menjamin terpenuhinya hak-hak fundamental anak. Penelitian ini bertujuan untuk menganalisis implementasi kewenangan *ex officio* hakim dalam perkara perceraian di Pengadilan Agama, dengan penekanan khusus pada hak anak atas nafkah, pengasuhan (hadhanah), identitas hukum, serta partisipasi yang bermakna dalam proses peradilan. Dengan menggunakan pendekatan yuridis-normatif, penelitian ini mengkaji ketentuan peraturan perundang-undangan, termasuk Undang-Undang Perlindungan Anak, Kompilasi Hukum Islam (KHI), dan peraturan Mahkamah Agung yang relevan, guna menilai koherensi dan efektivitas kerangka hukum yang berlaku. Hasil penelitian menunjukkan bahwa meskipun landasan normatif perlindungan hak anak tergolong cukup komprehensif, implementasinya dalam praktik masih belum optimal. Kesenjangan ini terutama disebabkan oleh ketidaksinkronan regulasi, rendahnya kesadaran para pihak berperkara terhadap hak-hak anak pascaperceraian, serta lemahnya mekanisme pelaksanaan putusan pengadilan. Akibatnya, putusan hakim yang mengakui hak-hak anak sering kali tidak menghasilkan dampak yang nyata.*



INTRODUCTION

Context of the Problem: Divorce is a complex legal event that transcends the mere dissolution of the marital bond; it precipitates a systemic collapse of the family structure, often leaving children as the primary, albeit indirect, victims. Psychologically and socially, children of divorce are vulnerable to "parental alienation" and economic deprivation.¹ This is consistent with the findings of Iman & Joni (2024), who emphasized that parental divorce can disrupt a child's psychological well-being due to the sudden loss of a harmonious family environment.² In the Indonesian context, the urgency of this issue is underscored by data from the Directorate General of the Religious Courts (Badilag), which recorded a significant increase in divorce cases, reaching over 400,000 cases annually in recent years (Badilag, 2023). To mitigate these impacts, the state mandates the protection of children through Law Number 35 of 2014 on Child Protection. This law codifies the universal principle of the "best interest of the child," a concept derived from the 1989 UN Convention on the Rights of the Child (CRC) as the paramount consideration in all judicial decisions. As legal scholar Satjipto Rahardjo argues, the law must serve the human interest (progressive law); thus, judicial institutions are morally and constitutionally bound to ensure that the friction of divorce does not erode the fundamental rights of the child.³

Previous Research and the Gap in Legal Execution Within the Religious Courts (*Pengadilan Agama*), the mechanism for safeguarding these rights is theoretically reinforced by the judge's *ex officio* authority, the power to issue rulings beyond the specific demands of the litigants (*ultra petita*) to protect the vulnerable.⁴ This authority is firmly grounded in Article 41 of Law No. 1 of 1974 (Marriage Law), Articles 105 and 156 of the Compilation of Islamic Law (KHI), and Supreme Court Circular Letter (SEMA) No. 3 of 2018. Previous studies, such as those by Bagir Manan regarding judicial activism, suggest that judges must not be "mouthpieces of the statute" but active guardians of justice. However, empirical reality reveals a stark dichotomy between legal idealism and practice. Research indicates significant challenges: inconsistent application of *ex officio* rights, low legal literacy among mothers regarding their rights to demand maintenance, and, most critically, the weak execution of court judgments. Many rulings on child maintenance (*nafkah anak*) end as "paper tigers, unenforceable due to the lack of coercive state mechanisms to seize assets or penalize non-compliant fathers. This gap creates a legal vacuum where the child's rights are recognized *de jure* but neglected *de facto*.⁵

¹ Charlotte A. Böcken et al., "Indonesian Forensic Practitioners' Reported Use of Strategies to Reverse Parental Suggestions," *Psychology, Crime & Law*, October 13, 2025, 1–18, <https://doi.org/10.1080/1068316X.2025.2568731>.

² Rifqi Qowiyul Iman and Joni Joni, "Divorce and Its Practices Before A Religious Court; A Perspective Analysis of Islamic Legal," *Al-Hurriyah: Jurnal Hukum Islam* 9, no. 1 (August 30, 2024): 13–26, <https://doi.org/10.30983/alhurriyah.v9i1.8066>. ; Iis Mardiansyah et al., "Beyond Victimhood: Rethinking Communicative Resilience and Child Transformation after Parental Divorce in Indonesia," *Frontiers in Sociology* 10 (November 26, 2025), <https://doi.org/10.3389/fsoc.2025.1668368>.

³ Alarode Lahoya Simbolon and Sidi Ahyar Wiraguna, "Analisis Hukum Acara Mahkamah Konstitusi: Implikasi Putusan Terhadap Penegakan Hak Asasi Manusia," *RISOMA : Jurnal Riset Sosial Humaniora Dan Pendidikan* 3, no. 3 (May 14, 2025): 204–15, <https://doi.org/10.62383/risoma.v3i3.770>.; Ermawan Fitra Purnama, "We, in the field, see that legislation/punishments against sexual violence are still not enough." 2022, <https://safeguardingchildhood.com/safe-guarding-childhood/indonesia/> (acceded 10 Desember 2025)

⁴ Lilik Andar Yuni and Akhmad Haries, "Protection of Women's Rights After Divorce in Religious Courts: What Makes This Mission Difficult to Achieve?," *Mazahib* 23, no. 2 (December 18, 2024): 595–630, <https://doi.org/10.21093/mj.v23i2.7958>.

Research Objectives and Methodology To address these systemic failures, this research employs a juridical–normative analysis to comprehensively examine the application of the judge's *ex officio* rights. Unlike previous general studies, this research makes the objectives explicit by dissecting the implementation of these rights across four specific pillars: (1) maintenance (*nafkah*), (2) custody rights (*hadhanah*), (3) preservation of identity, and (4) the child's participation in legal proceedings. The primary research question posed is: "*How is the judge's ex officio right applied in divorce disputes in the Religious Courts to protect children's rights effectively?*" By analyzing the Child Protection Law, KHI, and recent Supreme Court regulations, this study aims to move beyond mere identification of problems to the formulation of strategic solutions. The expected outcome is a set of recommendations for regulatory harmonization, the reform of mediation procedures to include child advocacy, capacity building for judges, and the strengthening of execution mechanisms, ensuring that the protection of children shifts from a moral obligation to a tangible legal reality.⁶

This study aims to comprehensively examine the protection of children's rights after divorce within the Indonesian legal system by identifying both normative and practical challenges and proposing effective solutions. The research analyzes the national legal framework governing post–divorce child protection, including the Child Protection Law, the Compilation of Islamic Law, and relevant Supreme Court regulations. It further examines the implementation of judges' *ex officio* authority in ensuring the fulfillment of children's rights, particularly in relation to maintenance, custody, legal identity, and meaningful participation in judicial proceedings. In addition, the study identifies structural, institutional, and socio–legal obstacles that hinder the effective protection of children's rights in post–divorce cases. Based on these findings, the research formulates normative and practical recommendations to strengthen child rights protection through regulatory harmonization, enhanced judicial capacity, and improved mechanisms for the execution of court judgments.

METHODS

This study employs a juridical–normative research design, utilizing a library research approach to examine legal principles and regulations systematically. Data collection relies exclusively on secondary data sources, which are categorized into primary legal materials specifically Law Number 35 of 2014 concerning Child Protection, the Compilation of Islamic Law (KHI), and relevant Supreme Court Circulars (SEMA) and Regulations (PERMA) regarding the judge's *ex officio* rights supplemented by secondary materials such as legal journals and books, and tertiary materials like legal encyclopedias. The rationale for selecting the juridical–normative method is its efficacy in analyzing the internal coherence of legal norms and the dogmatic structure of law, rather than empirical social behaviors. This method allows for a comprehensive study of legal principles and systematics through document study, ensuring that the analysis remains grounded in established legal hierarchy and textual authority.

The data analysis technique utilized is a qualitative descriptive evaluative analysis, which processes the collected legal materials to provide a detailed exposition of the current legal landscape. This analysis interprets legal norms, court decisions, and doctrines

⁶ Musleh Harry et al., "Examining the Provision of Legal and Religious Education to Islamic Families to Safeguard the Rights and Well–Being of Women and Children: A Case Study Conducted in Malang Regency, East Java," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (August 24, 2024): 1526, <https://doi.org/10.22373/sjhk.v8i3.19566>.

to identify the discrepancy between legal idealism (das sollen) and practical reality (das sein). This technique was chosen because it moves beyond mere description; it evaluates the effectiveness of current regulations to formulate strategic suggestions. Qualitative legal analysis is essential for interpreting the meaning of statutes and judicial reasoning, allowing researchers to derive prescriptive conclusions and recommendations that address the identified gaps in the application of *ex officio* rights.

RESULT AND DISCUSSION

RESULT

Legal Basis and Mechanism for Applying the *Ex Officio* Right from the Perspective of Islamic Family Law and Positive Law

The judge's *ex officio* authority in divorce cases is a legal instrument designed to uphold substantive justice, especially for vulnerable parties like women and children.⁷ The term *ex officio*, Latin for "from the office" or "by virtue of the office, refers to the inherent authority of a judge.⁸ In the context of the Religious Courts, this authority allows the panel of judges to issue a ruling that exceeds the claims or requests of the parties, provided it is deemed necessary to uphold justice and legal values prevailing in society.⁹ Although the principle of *ultra petita partium* (a ruling cannot exceed the *petitum* or claims) is the general procedural basis in civil procedural law, the *ex officio* authority in divorce cases is an exception made to accommodate social realities and protect fundamental human rights. Theoretically, in Islamic law, the state's authority to intervene through judges is justified by the principle of *taqyid al-mubah*, under which the government holds the authority to regulate divorce procedures to ensure administrative order and legal certainty.¹⁰

The formal legal basis for applying the *ex officio* right in Indonesia stems from Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and a series of Supreme Court regulations. Article 41, paragraph (1) of the Marriage Law states that parents remain obligated to maintain, educate, and provide maintenance (nafkah) for their children. Paragraph (2) specifies that the father is responsible for the costs of maintenance and education, but if he is unable, the court can order the mother to help shoulder the burden.¹¹ Furthermore, sub-section (c) of the same article authorizes the court to "oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife".¹² The word "can" in this phrase provides a philosophical underpinning for the existence of the *ex officio* right.

⁷ Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post – Divorce Rights at the Samarinda Religious Court," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (December 29, 2021): 135 – 54, <https://doi.org/10.18326/ijtihad.v21i2.135–154>; S. C. Van Huis, "Islamic Courts and Women's Divorce Rights in Indonesia." (2015), <https://scholarlypublications.universiteitleiden.nl/handle/1887/35081> (acceded 13 December 2025)

⁸ Alamsyah Alamsyah et al., "Islamic Judicial Activism in Determining Child Maintenance: Ex Officio Authority and Peaceful Settlement in Indonesian Religious Courts," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (September 25, 2025): 671 – 99, <https://doi.org/10.29240/jhi.v10i2.12755>.

⁹ Kementerian Agama RI, *Kompilasi Hukum Islam*, 2018.

¹⁰ Qowiyul Iman and Joni, "Divorce and Its Practices Before A Religious Court; A Perspective Analysis of Islamic Legal."

¹¹ Undang – Undang Nomor 1 Tahun 1974 tentang Perkawinan.

¹² A Fauzi, "Pembaruan Hukum Keluarga Islam Di Indonesia: Analisis Produk Hukum Mahkamah Agung Tentang Hak – Hak Istri Dan Anak Pasca Perceraian," *Peradaban Journal of Law and Society* 4, no. 1 (2025).

Other legal grounds are closely related to the KHI. Article 105 of the KHI explicitly stipulates that the custody (*hadhanah*) of children who are not yet *mumayyiz* (usually under 12 years old) is the absolute right of the mother. Paragraph (3) of the same article mandates that the father is fully obliged to bear all the costs of *hadhanah*.¹³ Meanwhile, Article 149 of the KHI places concrete obligations on the husband after *talak* divorce, including providing *mut'ah* (token of appreciation), maintenance during the *iddah* period, repayment of the dowry (*mahar*), and *hadhanah* costs for children up to 21 years of age. The obligation for *hadhanah* costs up to age 21 is also regulated in Article 156 sub-section (d) of the KHI, and Article 229 of the KHI emphasizes that judges must consider legal values and the sense of justice prevailing in society when issuing their rulings.¹⁴

The practical application of the *ex officio* authority is further formulated through Supreme Court regulations. PERMA Number 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law is a significant milestone, as it explicitly encourages judges to use juridical, sociological, and philosophical considerations to ensure benefit and justice, including in determining *nafkah iddah*, *mut'ah*, and *madhiyah*.¹⁵ This legal product is a response to findings of gender injustice in handling cases involving women.¹⁶ Furthermore, SEMA Number 4 of 2016, point 5 provides specific guidance that "The Religious Court can *ex officio* determine child maintenance to the father if it is proven that the child is under the care of the mother," based on Article 156 sub-section (f) of the KHI.¹⁷ However, there is an inconsistency within the Supreme Court's own legal products. For example, SEMA Number 3 of 2015, point 10, and SEMA Number 3 of 2018, point A-9 state that the determination of the right to *hadhanah* (custody) cannot be done *ex officio* if not requested in the lawsuit.

This creates a paradox where a judge can determine the obligation for child maintenance without a request, but cannot determine who will be the custodian without a request, even though trial facts show the child lives with the mother. The mechanism for applying the *ex officio* right involves the judge actively seeking facts, not just relying

¹³ Muhammad Farid, Muhammad Syukri Albani, and Fauziah Lubis, "Legal Reconstruction of Hadhanah Rights Due to Divorce in Indonesia from a Maqashid Syari'ah Perspective," *JURNAL AKTA* 12, no. 1 (February 12, 2025): 123, <https://doi.org/10.30659/akta.v12i1.43809>.

¹⁴ Kementerian Agama RI, *Kompilasi Hukum Islam*; Eka Susylawati, "The Acceptability of Active Judge Principle in Divorce Talak Cases of Religious Courts at Madura to Assure the Wife S Rights," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 2 (2019): 267–82, <https://doi.org/10.19105/al-lhkam.v14i2.2435>.

¹⁵ Siti Musawwamah, "The Implementation of PERMA Number 3 of 2017 Concerning The Guidelines For Dealing With Women's Cases on Laws As an Effort of Women Empowerment In The Judiciary in Madura," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 1 (June 27, 2020): 67–92, <https://doi.org/10.19105/al-lhkam.v15i1.2883>; Susylawati, "The Acceptability of Active Judge Principle in Divorce Talak Cases of Religious Courts at Madura to Assure the Wife S Rights."

¹⁶ Nina Nurnila, *Women, Islam and Everyday Life* (Routledge, 2009), h. 92–103, <https://doi.org/10.4324/9780203878545>; Agus Hermanto, "Teori Gender Dalam Mewujudkan Kesetaraan: Menggagas Fikih Baru," *Ahkam: Jurnal Hukum Islam* 5, no. 2 (November 1, 2017), <https://doi.org/10.21274/ahkam.2017.5.2.209–232>; Siti Musawwamah, "Divorcing Husbands as a Solution to Protect Women's Dignity: A Case Study of Domestic Violence at Madura Religious Court," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 997, <https://doi.org/10.22373/sjhk.v6i2.14929>. Rika Saraswati, "Gender Bias in Indonesian Courts: Is Perma No. 3 of 2017 the Solution for Gender-Based Violence Cases?," *Laws* 10, no. 1 (December 29, 2020): 2, <https://doi.org/10.3390/laws10010002>.

¹⁷ SEMA Surat Edaran Mahkamah Agung Nomor 1 Tahun 2017 tentang Pedoman Penyelesaian Perkara *Hadhanah* Mahkamah Agung RI

on the *petitum* of the lawsuit.¹⁸ The judge provides legal clarification to the parties, exposes the parties' economic conditions, and considers the principles of *maqashid syariah* and the principle of propriety to reach a just and wise decision.¹⁹

Substantive Protection of Children's Rights

The substantive protection of children's rights in divorce disputes in the Religious Courts encompasses four main elements: the right to maintenance (*nafkah*), the right to custody (*hadhanah*), access to the non-custodial parent, and the application of the principle of the best interest of the child.²⁰ These aspects are regulated in various laws and regulations, both positive and religious law, but their implementation is often far from ideal.

The right to child maintenance is a form of material life guarantee that must be paid by the father.²¹ The legal basis is Article 41 of the Marriage Law, *in conjunction with* Law No. 16 of 2019, Article 105 KHI, and Article 149 KHI, which state that the father is primarily responsible for the child's maintenance, education, and *nafkah*. Maintenance costs include necessities such as food, clothing, shelter, and education costs.²² Nevertheless, the amount of maintenance often does not align with the child's real needs.²³ To address this gap, the Supreme Court, through SEMA Number 3 of 2018, provided guidelines that maintenance considerations must be fair and proper, taking into account the husband's financial ability and the child's needs.²⁴

SEMA Number 3 of 2015, point 10, and SEMA Number 4 of 2016, point 5, even added the clause "an increase of 10% – 20% per year" in the ruling to ensure maintenance remains relevant over time.²⁵ Despite this, many rulings only set a minimal amount and do not include the increase clause, so the child's fate depends on the judge's *ijtihad* (legal reasoning) and the father's good faith. Many real cases show that even when a ruling has the force of law, the maintenance is difficult to execute due to reasons such as the father's unclear whereabouts, minimal communication, or non-compliance from the male party.²⁶

¹⁸ Adi Nur Rohman, — Sugeng, and Hesti Widyaningrum, "Instrumentation of Ex Officio Rights of Religious Courts Judge Related to Fulfilling Children's and Wife's Rights Due to Divorce," *Jurnal Hukum & Pembangunan* 50, no. 2 (September 28, 2020): 361, <https://doi.org/10.21143/jhp.vol50.no2.2581>.

¹⁹ Achmad Kadarisman, Alfarid Fedro, and Zainal Arifin, "Best Interest of the Child in Islamic Family Law: Integrating Maqāṣid Al-Shari'ah and Double Movement Theory in Ḥadāth Cases," *Jurnal Al-Dustur* 8, no. 2 (December 1, 2025): 155 – 74, <https://doi.org/10.30863/aldustur.v8i2.10459>; Farid, Albani, and Lubis, "Legal Reconstruction of Hadhanah Rights Due to Divorce in Indonesia from a Maqashid Syari'ah Perspective."

²⁰ Abd rahman Dahlan et al., "Women's Post-Divorce Rights in Malaysian and Indonesian's Court Decisions," *AHKAM : Jurnal Ilmu Syariah* 23, no. 1 (June 26, 2023), <https://doi.org/10.15408/ajis.v23i1.27967>.

²¹ Bahiyah Ahmad et al., "Assessing the Rate of Child Maintenance (Financial Support) from a Shariah Perspective: The Case of Malaysia," *Al-Jami'ah: Journal of Islamic Studies* 58, no. 2 (December 7, 2020): 293 – 322, <https://doi.org/10.14421/ajis.2020.582.293 – 322>; A. Nasa, "Inflation and Child Support: A Maqasid Analysis," *Mazahib Jurnal Pemikiran Hukum Islam* 22, no. 1 (2023), <https://doi.org/http://doi.org/10.21093/mj.v22i1.5120>.

²² Kementerian Agama RI, *Kompilasi Hukum Islam*.

²³ Ahmad et al., "Assessing the Rate of Child Maintenance (Financial Support) from a Shariah Perspective: The Case of Malaysia."

²⁴ Ahyaril Nurin Gausia and Fathur Rochim, "Implementasi Kebijakan Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung RI Tentang Pemenuhan Hak Anak Dan Perempuan Pasca Perceraian Di Pengadilan Agama," *Islamic Law: Jurnal Siyasah* 8, no. 1 (March 1, 2023): 23 – 39, <https://doi.org/10.53429/iljs.v8i01.626>.

²⁵ UU Nomor 35 Tahun 2014 tentang Perlindungan Anak.

²⁶ Ghusairi, "Hak Anak Setelah Perceraian dalam Peraturan Perundang-undangan di Indonesia," PA Rangkasbitung, 2021, <https://pa-rangkasbitung.go.id/publikasi-arsip-artikel/arsip-artikel/417-hak-anak-setelah-percerai-dalam-peraturan-perundang-undangan-di-indonesia>. (Acceced 25 September 2025)

The custody right (*hadhanah*) is a special right of the mother over a child who is not yet an adult.²⁷ According to Article 105 KHI, the mother has the right to care for a child who is not yet *mumayyiz* (usually under 12 years old). A child is considered *mumayyiz* when they can distinguish between good and bad, generally regarded as starting at the age of puberty (*baligh*).²⁸ After reaching the age, the child is given the right to choose their caregiver, either the father or the mother.²⁹ The obligation for maintenance and custody costs remains the father's responsibility until the child reaches 21 years of age or is able to be self-sufficient.³⁰

However, in practice in the Religious Courts, the main problem arises from the wife's behavior of not demanding custody rights in her lawsuit. As a result, even if the child is genuinely cared for by the mother after the divorce, the judge cannot determine the *hadhanah* right *ex officio* because it is prohibited by SEMA.³¹ This places the child in a difficult situation where the legal relationship with the mother is severed, even though the mother is providing the daily care.

Access to the non-custodial parent is an important right of the child, yet it is often neglected.³² If the mother remarries, the right to custody may transfer to the father's new wife (stepmother), but the child still has the right to maintain contact and access to their biological mother.³³ SEMA Number 1 of 2017, point 8, affirms that the ruling must include the obligation of the party holding the *hadhanah* right to provide access to the non-custodial parent.³⁴ This is a vital step to protect the child's right to family identity and emotional relationship with their biological parent. Unfortunately, data show that many divorce rulings actually separate the child from one parent permanently, both *de facto* and *de jure*, without substantive discussion on how to maintain the child's relationship with the non-custodial parent.

The application of the best interest of the child principle has become increasingly crucial with the enforcement of Law No. 35 of 2014 on Child Protection.³⁵ This principle

²⁷ Adi Nur Rohman and Elfirda Ade Putri, "Progressive Reading of Child Custody Rights in Indonesia: A Gender Justice Perspective on Marriage Law," *Jurnal Hukum Dan Peradilan* 11, no. 1 (March 31, 2022): 43, <https://doi.org/10.25216/jhp.11.1.2022.43> – 63.

²⁸ Ahmad Rusyaid Idris, Muhammad Khusaini, and Syaiful Anwar Al-Mansyuri, "Contemporary Islamic Law in Indonesia: The Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage," *MILRev : Metro Islamic Law Review* 3, no. 1 (April 4, 2024): 1, <https://doi.org/10.32332/milrev.v3i1.8907>.

²⁹ Farid, Albani, and Lubis, "Legal Reconstruction of Hadhanah Rights Due to Divorce in Indonesia from a Maqashid Syari'ah Perspective."

³⁰ Gema Al Aqsha, Abdul Hafizh, and Others, "Kewenangan Ex Officio Hakim Terhadap Pertambahan Nilai Nafkah Anak Pada Perkara Perceraian," *Sakena: Jurnal Hukum Keluarga* 9, no. 1 (2024): 1 – 8, [https://journals.fasya.uinib.org/index.php/sakena/article/download/461/335](https://journals.fasya.uinib.org/index.php/sakena/article/view/461%0Ahttps://journals.fasya.uinib.org/index.php/sakena/article/download/461/335).

³¹ UU Nomor 35 Tahun 2014 tentang Perlindungan Anak; Adelina Nasution, Pagar Pagar, and Asmuni Asmuni, "The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 890, <https://doi.org/10.22373/sjhk.v6i2.12758>.

³² Feni Agustina, "Fulfilling Children's Rights through Post-Divorce Relationships: An Investigation from Bima," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (June 30, 2023): 158 – 79, <https://doi.org/10.14421/ahwal.2023.16108>.

³³ Nguyen Thi Bao Anh and Lam Ba Khanh Toan, "A Comparison Of The Right To Visit Children After Divorce," *International Journal of Empirical Research Methods*, October 16, 2023, 27 – 39, <https://doi.org/10.59762/ijerm202575791120231005150412>.

³⁴ SEMA Surat Edaran Mahkamah Agung Nomor 1 Tahun 2017 tentang Pedoman Penyelesaian Perkara Hadhanah, Mahkamah Agung RI; Agustina, "Fulfilling Children's Rights through Post-Divorce Relationships: An Investigation from Bima."

³⁵ Kadarisman, Fedro, and Arifin, "Best Interest of the Child in Islamic Family Law: Integrating Maqāsid Al-Shari'ah and Double Movement Theory in nah Cases."

demands that judges go beyond formal provisions and consider substantive factors that affect the child's overall well-being. The UN Committee on the Rights of the Child formulated seven elements in the Best Interest of the Child: the child's opinion, identity, family environment and care, vulnerability status, health, and education. Certain rulings show that judges are beginning to use this principle.³⁶ For example, the East Jakarta Religious Court ruling that granted custody of a 7-year-old child to the father based on the child's comfort and emotional closeness, even though the child had not formally reached *mumayyiz* age and the KHI rule should have given it to the mother.³⁷ Similarly, the Blitar Religious Court ruling considered the mother's emotional stability and family environment before determining custody.³⁸ However, the application of this principle still heavily depends on the individual judge's *ijtihad* and perception, making the results inconsistent and prone to discrimination.³⁹

Limitations of Implementation and Dynamics of Progressive Law in the Field

Despite the detailed legal framework and the judge's *ex officio* authority, there are several significant limitations in its implementation on the ground, creating a complex dynamic of progressive law.⁴⁰ These limitations stem from legal norms that are not fully harmonious, low public legal awareness, and differing interpretations and perceptions among the judges themselves.⁴¹ One major limitation is the inconsistency and internal contradictions within the Supreme Court regulations. As previously described, the prohibition against judges establishing the *hadhanah* right *ex officio* (SEMA 3/2015) conflicts with the father's obligation to pay maintenance for the child cared for by the mother (SEMA 4/2016). How can a judge decide on a financial obligation without determining the custody status? This creates an ethical and legal dilemma for judges, where they must choose between adhering to the formal norm prohibiting *ex officio* custody or upholding substantive justice for the child cared for by the mother. Some

³⁶ Muhamad Isna Wahyudi, "Judges' Legal Reasoning on Child Protection: Analysis of Religious Courts' Decisions on the Case of Child Parentage," *Al-Jami'ah: Journal of Islamic Studies* 55, no. 1 (June 26, 2017): 127–54, <https://doi.org/10.14421/ajis.2017.551.127–154>.

³⁷ Hartini Hartini, Haniah Ilhami, and Rahmawati Mohd Yusoff, "Sole Custody and The Implication of Fault-Based Divorce Under the Indonesian Legal System," *Journal of Indonesian Legal Studies* 9, no. 1 (May 8, 2024): 249–78, <https://doi.org/10.15294/jils.vol9i1.4576>; Asantia Puspita Rohmah, Prahasti Suyaman, and Asti Sri Mulyanti, "Determination of Custody Rights (Hadhanah) for Children Who Are Not Yet Mumayiz to the Father," *Rechtsnormen Journal of Law* 1, no. 2 (July 24, 2023): 48–57, <https://doi.org/10.55849/rjl.v1i2.307>. Click or tap here to enter text.

³⁸ Tajuddin Noor, "Perlindungan Hukum Pasca Perceraian: Analisis Strategi Dan Implementasi Di Indonesia," *Kajian Ilmiah Hukum Dan Kenegaraan* 4, no. 1 (July 25, 2025): 61–71, <https://doi.org/10.35912/kihan.v4i1.5149>; Nasaruddin Mera et al., "Child Custody Rights for Mothers of Different Religions: Maqāsid Al-Shari'ah Perspective on Islamic Family Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (August 24, 2024): 1645, <https://doi.org/10.22373/sjhk.v8i3.23809>.

³⁹ Hartini, Ilhami, and Yusoff, "Sole Custody and The Implication of Fault-Based Divorce Under the Indonesian Legal System."

⁴⁰ Gausia and Fathur Rochim, "Implementasi Kebijakan Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung RI Tentang Pemenuhan Hak Anak Dan Perempuan Pasca Perceraian Di Pengadilan Agama."

⁴¹ Fajri M Kasim et al., "The Protection of Women and Children Post – Divorce in Sharia Courts in Aceh: A Sociological Perspective," *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (December 31, 2022), <https://doi.org/10.15408/ajis.v22i2.28747>; N Nurnila, "Indonesian Women's Rights after Divorce: Text, Context, and Agency," *Journal of Fatwa Management and Research* 26, no. 1 (2021), <https://doi.org/http://doi.org/10.33102/jfatwa.vol26no1.332>.

judges tend to choose the safer route, which is only setting maintenance without touching the custody issue, thereby overlooking the injustice experienced by the child.⁴²

Another limitation lies in the low public legal awareness. Very few plaintiffs, especially wives, know about and are willing to demand their children's rights in the divorce lawsuit.⁴³ Reasons such as embarrassment, fear of a complicated process, lack of legal knowledge, or the belief that mediation only discusses divorce itself are major obstacles.⁴⁴ Article 66 paragraph (5) of Law No. 7 of 1989 on Religious Courts (as amended) states that the application for child custody can be filed together with or after the divorce application, with the option being optional. This freedom of option is often utilized by wives not to demand the child's rights, which ultimately makes it difficult for the judge to use their *ex officio* authority to the fullest. This phenomenon shows that the judge's authority cannot function optimally without active participation and legal awareness from the parties.

Differences in perception and inconsistency among judges also pose a significant challenge.⁴⁵ Some judges are progressive, viewing the *ex officio* right as a tool to create responsive and adaptive justice to social reality.⁴⁶ They use juridical, sociological, and philosophical considerations to find the best solution for the child, even if it contradicts the demands of legal formality. However, some judges are more conservative, refusing to exceed the *petitum* for fear of violating the *ultra petita* principle.⁴⁷ They prefer to refer to formal legal principles rather than using their *ijtihadi* (discretionary) authority. This difference causes "geographical injustice," where the fate of a child in a divorce dispute heavily depends on which jurisdiction they are in and which judge is examining the case. Other factors, like the husband's dishonesty in reporting his income, the husband's financial inability, or the wife's remarriage, also become concrete obstacles to implementing the ruling.

Ultimately, the progressive legal dynamic offered by the *ex officio* right is hampered by the weakness of the execution mechanism. Even if the judge successfully rules on child maintenance, the ruling is often not complied with by the ex – husband.⁴⁸ The execution process is often lengthy, administrative, and costly, making the judge's ruling "illusory" (seemingly existent) but lacking real impact for the child.⁴⁹

DISCUSSION

⁴² S Hidayatullah, H Mahmudah, and R Melati, "Eksistensi Penerapan Hak Ex Officio Hakim Dalam Putusan Di Pengadilan Agama Bima," *Sangaji* 6, no. 2 (2022), <https://doi.org/10.52266/sangaji.v6i2.1319>.

⁴³ Abdullah Abdullah et al., "Fulfillment of The Living Rights of Children the Victims of Divorce in the Muslim Community of Lombok, Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (July 1, 2024): 253 – 71, <https://doi.org/10.22373/ujhk.v7i1.22281>.

⁴⁴ Harry et al., "Examining the Provision of Legal and Religious Education to Islamic Families to Safeguard the Rights and Well – Being of Women and Children: A Case Study Conducted in Malang Regency, East Java."

⁴⁵ Nurlaelawati, 2013. " *Islamic Justice in Indonesia: Family Law Reforms and Legal Practices in the Religious Courts.*" Buletin Pusat Penelitian Asia – Pasifik,

⁴⁶ Susylawati, "The Acceptability of Active Judge Principle in Divorce Talak Cases of Religious Courts at Madura to Assure the Wife S Rights."

⁴⁷ A Khanif, *Religious Minorities, Islam and the Law: International Human Rights and Islamic Law in Indonesia* (Routledge, n.d.).

⁴⁸ Taufiq Saleh, Khalisah Hayatuddin, and Arif Wisnu Wardhana, "Factors of Unfulfilled Rights of Wife and Children as Consequences of Divorce in Religious Court Decisions," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 1 (June 14, 2023): 85 – 96, <https://doi.org/10.19109/nurani.v23i1.16644>.

⁴⁹ Rachel Rinaldo, Eva F. Nisa, and Nina Nurmita, "Divorce Narratives and Class Inequalities in Indonesia," *Journal of Family Issues* 45, no. 5 (May 2, 2024): 1195 – 1216, <https://doi.org/10.1177/0192513X231155657>.

The application of the judge's *ex officio* right in the Religious Courts cannot be separated from the broader national legal framework, especially with the enactment of Law Number 35 of 2014 on Child Protection. This Law is a new milestone in national law, affirming that children's rights are an integral part of human rights and must be protected by the state, not just a family matter or parental obligation.⁵⁰ Integrating the principles of the Child Protection Law into divorce practice in the Religious Courts is a transformative step that demands a paradigm shift from an orientation on parental interests to a primary orientation on the best interests of the child. This harmonization is not merely a legal necessity but also a religious obligation, as compliance with state regulations that promote public welfare such as child protection, is part of a Muslim's duty in engaging with the state.⁵¹

The Principle of the Best Interest of the Child is the primary legal reference. Before Law No. 35/2014, the consideration of the child's interest often competed with the consideration of parental interests or family norms in divorce rulings.⁵² Now, with this principle reaffirmed in Article 3 of the Child Protection Law, judges have a strong legal basis to prioritize the child's needs and aspirations. The UN Committee on the Rights of the Child in General Comment Number 14 (2013) has formulated the concept of the best interests into seven elements, which include the child's opinion, identity, family environment, care, vulnerability situation, health, and education. Modern divorce case rulings are beginning to reflect the mainstreaming of these elements. For example, judges are starting to actively listen directly to the opinion of children who are *mumayyiz* (mature enough to discern) (satisfying the element of "child's opinion"), evaluating the condition of the mother's family environment before establishing custody (satisfying the element of "family environment"), and considering the mother's emotional stability (satisfying the element of "care").⁵³ Although not yet a common practice, this indicates a movement toward integrating the new paradigm.

Law No. 35/2014 not only protects children from violence and discrimination (Article 9) but also guarantees the right to a name and identity (Article 5), the right to custody (Article 6), the right to education (Article 12), the right to health (Article 11), and the right to play and expression (Article 13).⁵⁴ In the context of divorce, this means judges must not only decide on maintenance and custody but also ensure that the ruling does not harm other children's rights. For example, in disputes over joint property, SEMA No. 1 of 2022 prohibits the division of the sole place of residence of the child before the child reaches 21 years of age, as the house is part of the right to protection from neglect and the right to a decent environment.

⁵⁰A Khotim, "Protection of Children's Rights in Post – Divorce Custody Disputes Comprehensive Study on the Best Interests of Children," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam*, 2025, 199 – 210.; Mera et al., "Child Custody Rights for Mothers of Different Religions: Maqsid Al – Shari'ah Perspective on Islamic Family Law in Indonesia."

⁵¹ Qowiyl Iman and Joni, "Divorce and Its Practices Before A Religious Court; A Perspective Analysis of Islamic Legal."

⁵² Gilang Favian Pratama and Ahmad Suryono, "Analisis Hak – Hak Anak Pasca Perceraian Orangtua Menurut Undang – Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *Journal of Contemporary Law Studies* 1, no. 1 (November 16, 2023), <https://doi.org/10.47134/lawstudies.v1i1.1946>.

⁵³ Noor, "Perlindungan Hukum Pasca Perceraian: Analisis Strategi Dan Implementasi Di Indonesia."

⁵⁴ Helga Aryananda, Amir Junaidi, and Femmy Silaswaty Faried, "Perlindungan Hukum Bagi Anak Di Bawah Umur Sebagai Korban Perceraian Menurut Undang – Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002," *Jurnal Bevinding* 1, no. 8 (2023): 60 – 72.

The Child Protection Law affirms that every child has the right to equal treatment before the law, regardless of race, religion, gender, or family background.⁵⁵ In divorce practice, this means judges must reject all forms of discrimination against children. The principle of respect for the child's perspective means that a child who is of adequate age and understands the issue must have their opinion heard, although it is not always final.⁵⁶ This represents a shift from the traditional "protector" model toward a "dialogue partner" model in the legal process. However, the integration of Law No. 35/2014 still faces challenges. The main limitation is that the Child Protection Law is a general law (*lex generalis*), while the Compilation of Islamic Law (KHI) is a special regulation (*lex specialis*) governing marriage and divorce.⁵⁷

Although in Indonesian positive law, a Law (*Undang-Undang*) is always prioritized over regional regulations or special regulations, in practice at the Religious Courts, KHI norms are often used as the primary reference because they are deemed to be more strongly infused with *Sharia* values. There is still resistance to the full implementation of the universal principles of the Child Protection Law, as it is sometimes viewed as interference with "religious law." Therefore, a stronger synergy is needed among judges, Supreme Court officials, and legal experts to conduct a reinterpretation of the KHI based on the principles of humanity and human rights contained within Law No. 35/2014. The formation of the Working Group (Pokja) for Women and Children within the Supreme Court is a strategic step to encourage this legal harmonization, with the hope that new regulations will emerge that are more inclusive and consistent with the constitution and international conventions ratified by Indonesia, such as the Convention on the Rights of the Child (CRC).⁵⁸

Statistical data and empirical field reviews provide a clear picture of the scale of the problem and the concrete challenges in handling divorce cases in the Religious Courts.⁵⁹ These figures not only show a very high volume of cases but also reveal procedures and practices that often leave victims, especially children, vulnerable. Nationally, the trend of divorce rates in Indonesia shows a significant increase. Based on the Annual Report of the Religious Judiciary Body of the Supreme Court, the number of divorce cases decided in all Religious Courts across Indonesia jumped from 444,358 in 2018 to 480,618 in 2019.⁶⁰ Although it decreased in subsequent years, with 394,608 cases in 2024, the figure remains at a very high level. In 2024, there were almost 500,000 divorce cases recorded throughout Indonesia, where approximately 77% to 70% were filed by the wife. These numbers indicate

⁵⁵ (UU Nomor 35 Tahun 2014, tentang Perlindungan Anak.

⁵⁶ Ibnu Radwan Siddik Turnip et al., "Implementing the Concept of Co – Parenting in Divorce Cases: An Analysis Using the Maslahah Approach," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 20, 2024): 463 – 84, <https://doi.org/10.29240/jhi.v9i2.10117>.

⁵⁷ Khoiruddin Nasution and Syamruddin Nasution, "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (December 13, 2021): 347 – 74, <https://doi.org/10.14421/ajis.2021.592.347 – 374>; Muhammad Luqman Asshidiq and Diana Zuhroh, "Pemenuhan Hak Anak Pasca Perceraian Dalam Perspektif Undang – Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak Dan Kompilasi Hukum Islam," *Jurnal Al-Hakim: Jurnal Ilmiah Mahasiswa, Studi Syariah, Hukum Dan Filantropi* 4, no. 2 (November 6, 2022), <https://doi.org/10.22515/jurnalalhakim.v4i2.5866>.

⁵⁸ Fauzi, "Pembaruan Hukum Keluarga Islam Di Indonesia: Analisis Produk Hukum Mahkamah Agung Tentang Hak – Hak Istri Dan Anak Pasca Perceraian."

⁵⁹ Ahmad Ash Shiddieqy et al., "Integration of Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Muslim Societies," *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 2 (June 30, 2025): 1 – 26, <https://doi.org/10.33367/legitima.v7i2.7101>.

⁶⁰ Dalih Effendy, "Upaya Memberi Perlindungan bagi Anak Korban Perceraian Orang Tuanya di Pengadilan Agama," PTA Jakarta, 2025, <https://www.pta-jakarta.go.id/content/1193-artikel-upaya-memberi-perlindungan-bagi-anak-korban-perceraian-orang-tuanya-di-pengadilan-agama-dalih-effendy> (acceded 23 September 2025)

that the phenomenon of divorce is a major social reality that demands comprehensive and sensitive handling. More surprising is the data highlighting the protection of women's and children's rights in the rulings. A study in the region of Jakarta, Banten, and West Java Religious High Courts (PTA) in 2017 found that out of 1,000 divorce cases, only 7% of the parties sought child rights.⁶¹ In the Tembilahan Religious Court, out of 925 divorce cases in 2020, only 9 cases (0.97%) stipulated the determination of child support (*nafkah anak*).⁶² Even at the national level, out of 478,381 divorce cases in 2020, only 2.73% or about 13,081 rulings included the fulfillment of women's and children's rights.⁶³ These figures are deeply concerning and demonstrate a very wide "gap" between the legal capacity and the practical capacity of the parties and the judicial institutions.

Field reality shows that the main causes of this "gap" are culture and procedure.⁶⁴ Mediation, which is a mandatory stage, often does not substantively discuss children's rights.⁶⁵ Mediators and judges are often worried about violating the *ultra petita* principle if they discuss matters not requested in the *petitum*.⁶⁶ Psychological factors also play a role, where wives often feel embarrassed, traumatized, or do not want to add to the husband's burden, choosing not to demand the child's rights. Furthermore, there is a real execution problem. Many fathers do not provide maintenance at all, are unknown, or have remarried. This confirms that without a strong and disciplined execution mechanism, the judge's ruling becomes futile. The *ex officio* authority was born out of concern for a "legal vacuum" and a loss of "substantive justice".⁶⁷

However, the reality is that even when judges use the *ex officio* authority, its impact is still very limited, often relying on the individual judge's *ijtihad* and hampered by the husband's dishonesty about income.⁶⁸ Thus, the study affirms that the true solution to the problem of protecting children's rights in divorce is not just strengthening the judge's authority. The solution must include a thorough reform of legal procedures, increased public legal awareness, and consistent and effective law enforcement.

CONCLUSION

This study confirms that the *ex officio* authority of judges in Religious Courts represents a pivotal legal mechanism for the protection of children's rights in post –

⁶¹Ibid.,

⁶² Gushairi, "Hak Anak Setelah Perceraian dalam Peraturan Perundang-undangan di Indonesia." PA Rangkasbitung, 2021, <https://pa-rangkasbitung.go.id/publikasi-artikel/arsip-artikel/417-hak-anak-setelah-perceraian-dalam-peraturan-perundang-undangan-di-indonesia>, (acceded 11 September 2025)

⁶³ F T R Andrea and Z N Awaliyah, "Fulfillment of the Rights of Wife and Children Post Divorce," *MILRev: Metro Islamic Law Review* 1, no. 2 (2022), <https://doi.org/10.32332/milrev.v1i2.6211>.

⁶⁴ Abdullah et al., "Fulfillment of The Living Rights of Children the Victims of Divorce in the Muslim Community of Lombok, Indonesia."

⁶⁵ Ummu Salamah, "Settlement Of Divorce Dispute Through The Forum Of Mediation In Judicial Institutions As An Effort Of Legal Protection For The Rights And Interests Of The Child Of Post – Divorce," *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 2 (September 22, 2021), <https://doi.org/10.18592/sjhp.v21i2.4603>.

⁶⁶ Hotnidah Nasution and Ahmad Rifqi Muchtar, "Access to Justice for Women and Children in Divorce Cases in the Indonesian Religious Courts," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020), <https://doi.org/10.15408/ajis.v20i2.15702>.

⁶⁷ Amran Suadi et al., "Legal Protection of Women's and Children's Rights after Divorce through the E-MOSI CAPER App," *Jurnal Hukum Novelty* 15, no. 1 (April 26, 2024): 35, <https://doi.org/10.26555/novelty.v15i1.a27347>.

⁶⁸ Fauzi, A., 2025. "Pembaruan Hukum Keluarga Islam di Indonesia : Analisis Produk hukum Mahkamah Agung tentang Hak-Hak Istri dan Anak Pasca Perceraian." *PERADABAN JOURNAL OF LAW AND SOCIETY* 4 (1), h.63–67, <https://doi.org/10.58476/peradaban.v4i1.131>

divorce proceedings, yet its effectiveness remains constrained by normative inconsistencies and procedural formalism. Although this authority is intended to enable judges to act proactively in safeguarding the best interests of the child, its application is frequently limited by rigid procedural interpretations and the continued reliance on party-driven claims. The findings reveal a substantive gap between the normative objectives articulated in Law No. 35 of 2014 and their realization in judicial practice, indicating that the presence of statutory guarantees alone is insufficient to ensure substantive justice for children. This condition reflects a broader structural issue within the legal system, where child-centered principles are often subordinated to formal procedural compliance. Consequently, the study emphasizes the need for an analytical shift that transcends doctrinal legal analysis and incorporates a socio-legal perspective to better understand how institutional practices, judicial discretion, and enforcement mechanisms collectively shape the protection of children's rights after divorce.

Based on these conclusions, the study proposes strengthening both the normative and institutional dimensions of child rights protection in Religious Court adjudication. It recommends that the Supreme Court formulate more explicit and binding technical regulations to standardize the mandatory use of *ex officio* authority in cases involving children's rights, particularly concerning maintenance, custody, and legal identity, regardless of explicit requests from the parties. In parallel, enhancing judicial capacity through targeted training on child-sensitive adjudication and human rights-based approaches is essential to ensure consistency and legal certainty across jurisdictions. The study also underscores the urgency of improving post-judgment enforcement mechanisms, as the effectiveness of *ex officio* rulings ultimately depends on their execution. Accordingly, future research should prioritize empirical investigations into compliance levels and enforcement practices, thereby ensuring that judicial decisions translate into concrete and sustainable improvements in children's welfare in post-divorce contexts.

REFERENCES

Books and Journals

Abdullah, Abdullah, Akhmad Syahri, Fatin Hamamah, Abd. Gafur, and Ahmad Sholeh. "Fulfillment of The Living Rights of Children the Victims of Divorce in the Muslim Community of Lombok, Indonesia." *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (July 1, 2024): 253 – 71. <https://doi.org/10.22373/ujhk.v7i1.22281>.

Agustina, Feni. "Fulfilling Children's Rights through Post – Divorce Relationships: An Investigation from Bima." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (June 30, 2023): 158 – 79. <https://doi.org/10.14421/ahwal.2023.16108>.

Ahmad, Bahiyah, Raihanah Hj. Azahari, Asmak Ab Rahman, and Mazni Abdul Wahab. "Assessing the Rate of Child Maintenance (Financial Support) from a Shariah Perspective: The Case of Malaysia." *Al-Jami'ah: Journal of Islamic Studies* 58, no. 2 (December 7, 2020): 293 – 322. <https://doi.org/10.14421/ajis.2020.582.293 – 322>.

Ahmad Ash Shiddieqy, Akhmad Roja Badrus Zaman, Sumayyah Faqihah, Muhammad Nur Fathoni, and Dinda Difia Madina. "Integration of Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Muslim Societies." *Legitima : Jurnal Hukum Keluarga Islam* 7, no. 2 (June 30, 2025): 1 – 26. <https://doi.org/10.33367/legitima.v7i2.7101>.

Alamsyah, Alamsyah, Asrianti Sukirman, Oyo Sunaryo Mukhlis, and Aden Rosadi. "Islamic Judicial Activism in Determining Child Maintenance: Ex Officio Authority

and Peaceful Settlement in Indonesian Religious Courts." *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (September 25, 2025): 671 – 99. <https://doi.org/10.29240/jhi.v10i2.12755>.

Alarode Lahoya Simbolon, and Sidi Ahyar Wiraguna. "Analisis Hukum Acara Mahkamah Konstitusi: Implikasi Putusan Terhadap Penegakan Hak Asasi Manusia." *RISOMA : Jurnal Riset Sosial Humaniora Dan Pendidikan* 3, no. 3 (May 14, 2025): 204 – 15. <https://doi.org/10.62383/risoma.v3i3.770>.

Andar Yuni, Lilik. "The Use of Ex Officio to Fulfill Women's Post – Divorce Rights at the Samarinda Religious Court." *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (December 29, 2021): 135 – 54. <https://doi.org/10.18326/ijtihad.v21i2.135 – 154>.

Andrea, F T R, and Z N Awaliyah. "Fulfillment of the Rights of Wife and Children Post Divorce." *MILRev: Metro Islamic Law Review* 1, no. 2 (2022). <https://doi.org/10.32332/milrev.v1i2.6211>.

Aqsha, Gema Al, Abdul Hafizh, and Others. "Kewenangan Ex Officio Hakim Terhadap Pertambahan Nilai Nafkah Anak Pada Perkara Perceraian." *Sakena: Jurnal Hukum Keluarga* 9, no. 1 (2024): 1 – 8. <https://journals.fasya.uinib.org/index.php/sakena/article/view/461%0Ahttps://journals.fasya.uinib.org/index.php/sakena/article/download/461/335>.

Aryananda, Helga, Amir Junaidi, and Femmy Silaswaty Faried. "Perlindungan Hukum Bagi Anak Di Bawah Umur Sebagai Korban Perceraian Menurut Undang – Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002." *Jurnal Bevinding* 1, no. 8 (2023): 60 – 72.

Bücken, Charlotte A., Paul Riesthuis, Nathanael Sumampouw, and Henry Otgaar. "Indonesian Forensic Practitioners' Reported Use of Strategies to Reverse Parental Suggestions." *Psychology, Crime & Law*, October 13, 2025, 1 – 18. <https://doi.org/10.1080/1068316X.2025.2568731>.

Dahlan, Abd rahman, Fathinuddin Fathinuddin, Azizah Azizah, Nur Rohim Yunus, Aliyeva Patimat Shapiulayevna , and Yunasril Ali. "Women's Post – Divorce Rights in Malaysian and Indonesian's Court Decisions." *AHKAM : Jurnal Ilmu Syariah* 23, no. 1 (June 26, 2023). <https://doi.org/10.15408/ajis.v23i1.27967>.

Farid, Muhammad, Muhammad Syukri Albani, and Fauziah Lubis. "Legal Reconstruction of Hadhanah Rights Due to Divorce in Indonesia from a Maqashid Syari'ah Perspective." *JURNAL AKTA* 12, no. 1 (February 12, 2025): 123. <https://doi.org/10.30659/akta.v12i1.43809>.

Fauzi, A. "Pembaruan Hukum Keluarga Islam Di Indonesia: Analisis Produk Hukum Mahkamah Agung Tentang Hak – Hak Istri Dan Anak Pasca Perceraian." *Peradaban Journal of Law and Society* 4, no. 1 (2025).

Gausia, Ahyaril Nurin, and Fathur Rochim. "Implementasi Kebijakan Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung RI Tentang Pemenuhan Hak Anak Dan Perempuan Pasca Perceraian Di Pengadilan Agama." *Islamic Law: Jurnal Siyasah* 8, no. 1 (March 1, 2023): 23 – 39. <https://doi.org/10.53429/iljs.v8i01.626>.

Harry, Musleh, Saifullah Saifullah, Jundiani Jundiani, and Meisy Fajarani. "Examining the Provision of Legal and Religious Education to Islamic Families to Safeguard the Rights and Well – Being of Women and Children: A Case Study Conducted in Malang Regency, East Java." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (August 24, 2024): 1526. <https://doi.org/10.22373/sjhk.v8i3.19566>.

Hartini, Hartini, Haniah Ilhami, and Rahmawati Mohd Yusoff. "Sole Custody and The Implication of Fault – Based Divorce Under the Indonesian Legal System." *Journal of Indonesian Legal Studies* 9, no. 1 (May 8, 2024): 249–78. <https://doi.org/10.15294/jils.vol9i1.4576>.

Hermanto, Agus. "Teori Gender Dalam Mewujudkan Kesetaraan: Menggagas Fikih Baru." *Ahkam: Jurnal Hukum Islam* 5, no. 2 (November 1, 2017). <https://doi.org/10.21274/ahkam.2017.5.2.209–232>.

Hidayatullah, S, H Mahmudah, and R Melati. "Eksistensi Penerapan Hak Ex Officio Hakim Dalam Putusan Di Pengadilan Agama Bima." *Sangaji* 6, no. 2 (2022). <https://doi.org/10.52266/sangaji.v6i2.1319>.

Idris, Ahmad Rusyaid, Muhammad Khusaini, and Syaiful Anwar Al – Mansyuri. "Contemporary Islamic Law in Indonesia: The Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage." *MILRev: Metro Islamic Law Review* 3, no. 1 (April 4, 2024): 1. <https://doi.org/10.32332/milrev.v3i1.8907>.

Kadarisman, Achmad, Alfarid Fedro, and Zainal Arifin. "Best Interest of the Child in Islamic Family Law: Integrating Maqasid Al – Shari'ah and Double Movement Theory in Ḥaḍānah Cases." *Jurnal Al-Dustur* 8, no. 2 (December 1, 2025): 155–74. <https://doi.org/10.30863/aldustur.v8i2.10459>.

Kasim, Fajri M, Abidin Nurdin, Salman Abdul Muthalib, Samsinar Syarifuddin, and Munawwarah Samad. "The Protection of Women and Children Post – Divorce in Sharia Courts in Aceh: A Sociological Perspective." *AHKAM : Jurnal Ilmu Syariah* 22, no. 2 (December 31, 2022). <https://doi.org/10.15408/ajis.v22i2.28747>.

Kementerian Agama RI. *Kompilasi Hukum Islam*, 2018.

Khanif, A. *Religious Minorities, Islam and the Law: International Human Rights and Islamic Law in Indonesia*. Routledge, n.d.

Khotim, A. "Protection of Children's Rights in Post – Divorce Custody Disputes Comprehensive Study on the Best Interests of Children." *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam*, 2025, 199 – 210.

Mardiansyah, Iis, Sumardjo, Sarwititi Sarwoprasodjo, and Tin Herawati. "Beyond Victimhood: Rethinking Communicative Resilience and Child Transformation after Parental Divorce in Indonesia." *Frontiers in Sociology* 10 (November 26, 2025). <https://doi.org/10.3389/fsoc.2025.1668368>.

Mera, Nasaruddin, Marzuki Marzuki, M. Taufan B., Saprudin Saprudin, and Andi Intan Cahyani. "Child Custody Rights for Mothers of Different Religions: Maqasid Al – Shari'ah Perspective on Islamic Family Law in Indonesia." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (August 24, 2024): 1645. <https://doi.org/10.22373/sjhk.v8i3.23809>.

Muhammad Luqman Asshidiq, and Diana Zuhroh. "Pemenuhan Hak Anak Pasca Perceraian Dalam Perspektif Undang – Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak Dan Kompilasi Hukum Islam." *Jurnal Al-Hakim: Jurnal Ilmiah Mahasiswa, Studi Syariah, Hukum Dan Filantropi* 4, no. 2 (November 6, 2022). <https://doi.org/10.22515/jurnalalhakim.v4i2.5866>.

Musawwamah, Siti. "Divorcing Husbands as a Solution to Protect Women's Dignity: A Case Study of Domestic Violence at Madura Religious Court." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 997. <https://doi.org/10.22373/sjhk.v6i2.14929>.

———. "The Implementation of PERMA Number 3 of 2017 Concerning The Guidelines For Dealing With Women's Cases on Laws As an Effort of Women Empowerment In

The Judiciary in Madura." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 1 (June 27, 2020): 67 – 92. <https://doi.org/10.19105/al-lhkam.v15i1.2883>.

Nasa, A. "Inflation and Child Support: A Maqasid Analysis." *Mazahib Jurnal Pemikiran Hukum Islam* 22, no. 1 (2023). <https://doi.org/http://doi.org/10.21093/mj.v22i1.5120>.

Nasution, Adelina, Pagar Pagar, and Asmuni Asmuni. "The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 890. <https://doi.org/10.22373/sjhk.v6i2.12758>.

Nasution, Hotnidah, and Ahmad Rifqi Muchtar. "Access to Justice for Women and Children in Divorce Cases in the Indonesian Religious Courts." *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020). <https://doi.org/10.15408/ajis.v20i2.15702>.

Nasution, Khoiruddin, and Syamruddin Nasution. "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights." *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (December 13, 2021): 347 – 74. <https://doi.org/10.14421/ajis.2021.592.347 – 374>.

Noor, Tajuddin. "Perlindungan Hukum Pasca Perceraian: Analisis Strategi Dan Implementasi Di Indonesia." *Kajian Ilmiah Hukum Dan Kenegaraan* 4, no. 1 (July 25, 2025): 61 – 71. <https://doi.org/10.35912/kihan.v4i1.5149>.

Nurmila, N. "Indonesian Women's Rights after Divorce: Text, Context, and Agency." *Journal of Fatwa Management and Research* 26, no. 1 (2021). <https://doi.org/http://doi.org/10.33102/jfatwa.vol26no1.332>.

Nurmila, Nina. *Women, Islam and Everyday Life*. Routledge, 2009. <https://doi.org/10.4324/9780203878545>.

Pratama, Gilang Favian, and Ahmad Suryono. "Analisis Hak – Hak Anak Pasca Perceraian Orangtua Menurut Undang – Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak." *Journal of Contemporary Law Studies* 1, no. 1 (November 16, 2023). <https://doi.org/10.47134/lawstudies.v1i1.1946>.

Qowiyul Iman, Rifqi, and Joni Joni. "Divorce and Its Practices Before A Religious Court; A Perspective Analysis of Islamic Legal." *Al-Hurriyah: Jurnal Hukum Islam* 9, no. 1 (August 30, 2024): 13 – 26. <https://doi.org/10.30983/alhurriyah.v9i1.8066>.

Rinaldo, Rachel, Eva F. Nisa, and Nina Nurmila. "Divorce Narratives and Class Inequalities in Indonesia." *Journal of Family Issues* 45, no. 5 (May 2, 2024): 1195 – 1216. <https://doi.org/10.1177/0192513X231155657>.

Rohmah, Asantia Puspita, Prahasti Suyaman, and Asti Sri Mulyanti. "Determination of Custody Rights (Hadhanah) for Children Who Are Not Yet Mumayiz to the Father." *Rechtsnormen Journal of Law* 1, no. 2 (July 24, 2023): 48 – 57. <https://doi.org/10.55849/rjl.v1i2.307>.

Rohman, Adi Nur, and Elfirda Ade Putri. "Progressive Reading of Child Custody Rights in Indonesia: A Gender Justice Perspective on Marriage Law." *Jurnal Hukum Dan Peradilan* 11, no. 1 (March 31, 2022): 43. <https://doi.org/10.25216/jhp.11.1.2022.43 – 63>.

Rohman, Adi Nur, – Sugeng, and Hesti Widyaningrum. "Instrumentation of Ex Officio Rights of Religious Courts Judge Related to Fulfilling Children's and Wife's Rights Due to Divorce." *Jurnal Hukum & Pembangunan* 50, no. 2 (September 28, 2020): 361. <https://doi.org/10.21143/jhp.vol50.no2.2581>.

Salamah, Ummu. "Settlement Of Divorce Dispute Through The Forum Of Mediation In

Judicial Institutions As An Effort Of Legal Protection For The Rights And Interests Of The Child Of Post – Divorce." *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 2 (September 22, 2021). <https://doi.org/10.18592/sjhp.v21i2.4603>.

Saleh, Taufiq, Khalisah Hayatuddin, and Arif Wisnu Wardhana. "Factors of Unfulfilled Rights of Wife and Children as Consequences of Divorce in Religious Court Decisions." *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 1 (June 14, 2023): 85 – 96. <https://doi.org/10.19109/nurani.v23i1.16644>.

Saraswati, Rika. "Gender Bias in Indonesian Courts: Is Perma No. 3 of 2017 the Solution for Gender-Based Violence Cases?" *Laws* 10, no. 1 (December 29, 2020): 2. <https://doi.org/10.3390/laws10010002>.

Suadi, Amran, Mardi Candra, Fahadil Amin Al Hasan, and Gugun Gumilar. "Legal Protection of Women's and Children's Rights after Divorce through the E-MOSI CAPER App." *Jurnal Hukum Novelty* 15, no. 1 (April 26, 2024): 35. <https://doi.org/10.26555/novelty.v15i1.a27347>.

Susylawati, Eka. "The Acceptability of Active Judge Principle in Divorce Talak Cases of Religious Courts at Madura to Assure the Wife's Rights." *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 2 (2019): 267 – 82. <https://doi.org/10.19105/al-ihkam.v14i2.2435>.

Thi Bao Anh, Nguyen, and Lam Ba Khanh Toan. "A Comparison Of The Right To Visit Children After Divorce." *International Journal of Empirical Research Methods*, October 16, 2023, 27 – 39. <https://doi.org/10.59762/ijerm205275791120231005150412>.

Turnip, Ibnu Radwan Siddik, Sumper Mulia Harahap, Abdul Halim Talli, Arminsyah Arminsyah, and Muhamad Hasan Sebyar. "Implementing the Concept of Co-Parenting in Divorce Cases: An Analysis Using the Maslahah Approach." *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 20, 2024): 463 – 84. <https://doi.org/10.29240/jhi.v9i2.10117>.

Wahyudi, Muhamad Isna. "Judges' Legal Reasoning on Child Protection: Analysis of Religious Courts' Decisions on the Case of Child Parentage." *Al-Jami'ah: Journal of Islamic Studies* 55, no. 1 (June 26, 2017): 127 – 54. <https://doi.org/10.14421/ajis.2017.551.127 – 154>.

Yuni, Lilik Andar, and Akhmad Haries. "Protection of Women's Rights After Divorce in Religious Courts: What Makes This Mission Difficult to Achieve?" *Mazahib* 23, no. 2 (December 18, 2024): 595 – 630. <https://doi.org/10.21093/mj.v23i2.7958>.

Online Database

Dalih Effendy, (2025), *Upaya Memberi Perlindungan Bagi Anak Korban Perceraian ...* (n.d.). Retrieved from <https://www.pta-jakarta.go.id/content/1193-artikel-upaya-memberi-perlindungan-bagi-anak-korban-perceraian-orang-tuanya-di-pengadilan-agama-dalih-effendy>. (accesed 23 September 2025)

Epri Wahyudi, (2025), *Praktik Perlindungan Pemenuhan Nafkah bagi Mantan Istri.* (n.d.). Retrieved from <https://marinews.mahkamahagung.go.id/artikel/praktik-perlindungan-pemenuhan-nafkah-bagi-mantan-istri-0dV>. (accesed 24 September 2025)

Ghusairi, (2025), *Hak Anak Setelah Perceraian - PA Rangkasbitung.* (n.d.). Retrieved from: <https://pa-rangkasbitung.go.id/publikasi-artikel/arsip-artikel/417-hak-anak-setelah-perceraian-dalam-peraturan-perundang-undangan-di-indonesia>. (accesed 11 September 2025)

Van Huis, S. C. (2015). "Islamic Courts and Women's Divorce Rights in Indonesia." <https://scholarlypublications.universiteitleiden.nl/handle/1887/35081> (accessed 13

December 2025)