

Legal Analysis of Post-Divorce Child Protection Rights (Case Study: Decision No. 3/Pdt.G/2025/PTA.Smd)

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ABSTRACT

Rising divorce rates have triggered custody disputes where children's fundamental rights face systematic neglect, generating psychological trauma and legal ambiguity. This research examines post-divorce child protection under Law No. 35 of 2014 on Child Protection, analyzing Decision No. 3/Pdt.G/2025/PTA.Smd as a case study. Two primary questions guide the investigation: first, how courts operationalize the child welfare principle in custody determinations within Decision No. 3/Pdt.G/2025/PTA.Smd; second, how Law No. 35 of 2014 safeguards children's rights amid post-divorce custody conflicts. Employing normative juridical methodology through statutory, conceptual, and case study approaches, the research reveals that Law No. 35 of 2014 establishes child welfare as the paramount consideration in all child-related decisions. The principle addresses physical, psychological, social, and spiritual dimensions to secure optimal development. Decision No. 3/Pdt.G/2025/PTA.Smd demonstrates practical application: the judicial panel awarded custody to the biological mother based on her superior capacity to provide appropriate care environments while preserving paternal visitation rights. The ruling simultaneously mandates financial support obligations, reinforcing continued parental accountability post-divorce. The decision effectively operationalizes child-centered legal frameworks through balanced consideration of caregiving capacity, emotional bonding, and economic responsibility.

ABSTRAK

Meningkatnya angka perceraian memicu sengketa hak asuh yang mengabaikan hak-hak fundamental anak, menciptakan trauma psikologis dan ketidakpastian hukum. Penelitian ini mengkaji perlindungan hak anak pasca perceraian berdasarkan Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak, dengan menganalisis Putusan No. 3/Pdt.G/2025/PTA.Smd sebagai studi kasus. Dua pertanyaan utama mengarahkan penelitian: pertama, bagaimana pengadilan mengoperasionalkan prinsip kesejahteraan anak dalam penetapan hak asuh melalui Putusan No. 3/Pdt.G/2025/PTA.Smd; kedua, bagaimana UU No. 35 Tahun 2014 melindungi hak anak dalam konflik hak asuh pasca perceraian. Menggunakan metode yuridis normatif melalui pendekatan perundang-undangan, konseptual, dan studi kasus, penelitian menemukan bahwa UU No. 35 Tahun 2014 menetapkan kesejahteraan anak sebagai pertimbangan utama dalam seluruh keputusan terkait anak. Prinsip tersebut mencakup dimensi fisik, psikologis, sosial, dan spiritual untuk menjamin perkembangan optimal. Putusan No. 3/Pdt.G/2025/PTA.Smd menunjukkan penerapan praktis: majelis hakim memberikan hak asuh kepada ibu kandung berdasarkan kemampuannya menyediakan lingkungan pengasuhan yang lebih memadai sambil mempertahankan hak kunjung ayah. Putusan tersebut sekaligus menetapkan kewajiban nafkah, memperkuat tanggung jawab orang tua berkelanjutan pasca perceraian. Keputusan mengoperasionalkan kerangka hukum berpusat pada anak melalui pertimbangan seimbang atas kapasitas pengasuhan, ikatan emosional, dan tanggung jawab ekonomi.

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1. Introduction

Divorce has evolved from social taboo to statistical reality in Indonesia. The Central Statistics Agency documented 394,608 divorce proceedings in 2024, with custody battles featuring in over half these cases (Badan Pusat Statistik, 2024). When marriages dissolve and custody becomes contested, children's fundamental rights frequently fall by the wayside. Beyond losing intact family structures, minors endure psychological strain from custody fights that prioritize parental claims over their welfare. Law No. 35 of 2014 on Child Protection explicitly guarantees children freedom from discrimination, exploitation, and violence.

Divorce transforms parental obligations into custody rights—a semantic shift with profound practical implications. When marriages end, spousal bonds dissolve and shared households cease to exist under matrimonial law (Siregar et al., 2023). Article 1 of Law No. 1 of 1974 on Marriage defines marriage as "a formal union between a man and woman who become husband and wife." Marriage represents both spiritual and physical bonding, tying spouses to each other and to society (Bahrudin, 2021). When judges terminate marriages, determining guardianship for minor children becomes critical. Divorce ripples through children's lives regardless of age. While their legal status remains unchanged, parental separation fundamentally alters daily existence—particularly family dynamics. Children live under one parent's care, reshaping interactions and relationships throughout their development. During divorce proceedings, protecting children's rights requires vigilance. Their entitlements—to care, education, and affection—must survive parental separation. The state bears responsibility for ensuring these rights withstand divorce proceedings. Law No. 35 of 2014 on Child Protection mandates that "the child's welfare should guide all decisions affecting them, including post-divorce custody arrangements" (Hasanah, 2025).

Despite existing legal frameworks, post-divorce custody disputes generate debate and legal ambiguity (Noor et al., 2023). Judicial custody decisions vary based on judges' interpretations of applicable regulations and case-specific circumstances. Consider Decision No. 1173/Pdt.G/2024/PA.Bpp, which awarded custody to the biological mother as plaintiff while requiring her to grant unlimited access to the defendant father. The father appealed, yet the judicial panel maintained maternal custody in Decision No. 3/Pdt.G/2025/PTA.Smd. Such cases harm children through diminished attention and affection from divorced parents. Financial responsibilities go unfulfilled, children's rights remain unrealized, and parental duties toward securing those rights languish (Tarmizi et al., 2023). The gap between child protection principles and judicial practice generates serious legal and social consequences for minors.

One area requiring further development involves ongoing monitoring of child welfare after custody decisions. The Supreme Court and lower courts could devote greater attention to post-decision follow-through. Long-term monitoring of children's circumstances would verify that decisions genuinely serve their interests (Sagita Rury & Suherman Asep, 2024). Implementing consultation channels and psychological support could ensure custody arrangements adapt to children's evolving needs. In high-conflict divorces, children may require more sensitive approaches and careful intervention. Growing recognition surrounds involving children in decision-making processes. Under international conventions on children's rights, minors hold the right to be heard in legal proceedings affecting them. The Supreme Court, despite well-reasoned decisions, could better incorporate children's perspectives when determining custody—particularly for older children or those who have reached the age of *mumayyiz* (discernment). Children's views could serve as significant considerations in custody determinations, aligning with principles respecting their fundamental rights, including participation in decisions shaping their lives.

These findings underscore the need for further research examining factors

influencing how courts apply child welfare principles in custody decisions. This study also aims to develop guidelines helping judges reach consistent, child-centered decisions. Through rigorous judicial decision analysis, the research can identify patterns in legal application and recommend improvements to court systems. Practically, these findings could assist policymakers, judicial institutions, and legal professionals in strengthening child rights protection during divorce. The study may also guide judicial training and development of court guidelines prioritizing children's welfare. This study evaluates how child welfare principles are applied in post-divorce custody court decisions, focusing on Decision No. 3/Pdt.G/2025/PTA.Smd, while identifying factors influencing consistent application of these principles.

Given these issues, this research analyzes Law No. 35 of 2014 on Child Protection's effectiveness in safeguarding children's rights in post-divorce custody disputes through normative legal approaches. Research focus includes reconciling Islamic law with positive law, judges' roles in interpreting "child welfare," and mechanisms enforcing parental responsibility. Findings should yield recommendations for policymakers to strengthen child rights protection—whether through regulatory revision, enhanced law enforcement capacity, or integrating psychological approaches into mediation processes. Two questions guide this investigation: first, how Decision No. 3/Pdt.G/2025/PTA.Smd applies child welfare principles, given that children's welfare must take priority in all actions or decisions affecting them—whether undertaken by public or private institutions, courts, administrative authorities, or legislative bodies; second, how Law No. 35 of 2014 on Child Protection safeguards children's rights after divorce.

2. Methodology

To examine these issues, this study employs three primary approaches: statutory approach, conceptual approach, and case approach. The statutory approach involves examining Law No. 35 of 2014 on Child Protection, the Compilation of Islamic Law, and related regulations. The conceptual approach analyzes existing legal concepts and doctrines. Meanwhile, the case approach is conducted by examining Decision No. 3/Pdt.G/2025/PTA.Smd through judicial decision analysis. Data sources in this study comprise primary and secondary legal materials. Primary legal materials include Decision No. 3/Pdt.G/2025/PTA.Smd as the main research object, along with relevant laws and regulations. Secondary legal materials encompass legal literature, such as Law No. 35 of 2014 on Child Protection. Although lacking the binding force of primary legal materials, secondary sources prove essential in helping researchers understand and analyze primary legal materials. Tertiary legal materials provide guidance and explanations regarding primary and secondary legal materials, including legal dictionaries, legal encyclopedias, and scholarly reports. These materials will be examined to deepen understanding throughout the research process.

Legal material collection techniques in this study are conducted through library research. The process involves gathering, classifying, and identifying legal materials based on their level of urgency. Primary legal materials are examined thoroughly through court decisions and statutory review, while secondary legal materials are analyzed to strengthen theoretical foundations and compare various perspectives on the legal issues discussed. Tertiary materials serve as supporting references that clarify terminology and provide broader understanding of legal principles applied in custody disputes.

The analytical technique in this study is carried out through normative juridical methods, facilitating deeper exploration of fundamental principles and foundations as research material. The normative juridical approach involves describing and interpreting

legal norms and judicial practices systematically to draw conclusions regarding post-divorce child custody and legal protection in court enforcement. Through systematic interpretation of statutory provisions and judicial reasoning, the research identifies patterns in how courts balance parental rights with child welfare considerations, revealing both consistencies and discrepancies in judicial application of protective principles. Through this methodology, the study aims to provide sharp, objective, and legally-grounded analysis in addressing questions about applying child welfare principles in court decisions and enforcing parental responsibility. The research not only reveals gaps or weaknesses in regulations but also attempts to offer solutions through strengthening interpretive norms in law, enhancing judicial alignment, and promoting synergy between religious law and positive law to protect children's rights as complete legal subjects. By bridging theoretical frameworks with practical judicial outcomes, the study seeks to contribute actionable recommendations that can improve both legislative clarity and judicial consistency in safeguarding children's welfare during and after parental separation.

3. Results

3.1 Application of the Best Interest of the Child Principle in Decision No. 3/Pdt.G/2025/PTA.Smd

The best interest of the child principle stands as a cornerstone recognized internationally (such as in the UN Convention on the Rights of the Child) and enshrined in Indonesian national legislation (including Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection). This principle establishes that children's welfare must take precedence in all actions or decisions affecting them, whether undertaken by public or private institutions, courts, administrative authorities, or legislative bodies (Eleanora et al., 2021). This principle serves as the guiding framework for every decision-making process within the juvenile justice system, from investigation through prosecution. Far from being mere formality, it constitutes a legal obligation at every stage of legal proceedings involving children, whether as perpetrators or victims. The objective is to ensure that children facing legal proceedings do not experience trauma or negative effects disproportionate to their actions or circumstances, and that they receive treatment appropriate to their age and developmental stage (Ohoiwutun et al., 2023).

The best interest of the child principle represents both the juridical and philosophical foundation for all court decisions, particularly regarding post-divorce child custody. This principle clearly formed the primary consideration for the Panel of Judges in Decision No. 3/Pdt.G/2025/PTA.Smd. The judges, bound by formal regulations, based their decision on thorough examination of the children's circumstances and welfare. This demonstrates judicial understanding of the fundamental principle: positioning children as legal subjects whose rights must take priority over parental interests.

Modern courts typically focus more on "who can provide the best care" rather than "who has the right." Judges assess the quality of parent-child interactions, including parental capacity to provide for children's educational, health, and spiritual needs. Courts also weigh the moral and social support each party can offer. In certain cases, courts may request recommendations from psychologists or social workers to provide objective assessments.

Children's right to be heard forms an essential part of the best interest principle. Courts will listen to children's opinions about their preferred living arrangements if the child has reached sufficient maturity and can articulate their views. Though not absolute, children's opinions become significant considerations. Courts assess children's age to ensure their views remain free from pressure by either parent. Child age represents a crucial factor in judicial consideration. According to Article 105 letter (a) of the Compilation of Islamic Law (KHI), children who have not reached *mumayyiz* status or are under twelve years old generally receive custody to their mother. This

rests on the notion that mothers can better provide the attention and affection young children require, though this does not hold universally. If strong evidence indicates maternal incapacity—such as misconduct, child neglect, or mental disturbance—judges may award custody to fathers.

Judges examine both parents' caregiving capacity. Financial ability, physical and mental health, morality, and willingness to dedicate time and attention all factor into this assessment. Judges determine which parent most assists the child with daily needs, education, and emotional support. Evidence such as witness testimony, caregiving records, and third-party reports from child psychologists prove vital in this process. Judges will grant children the right to express their opinions if they have reached *mumayyiz* status or sufficient maturity (age 12 and above). According to Article 105 letter (b) of KHI, children who have reached *mumayyiz* have the right to choose whether to live with their father or mother. This consideration acknowledges children's autonomy. To ensure children's decisions remain genuinely free from pressure or influence by any party, judges speak with children privately, away from parents.

Custody decisions extend beyond determining who holds caregiving rights. Judges also establish maintenance obligations for the non-custodial parent. Referring to Article 41 of Law No. 1 of 1974 on Marriage and Article 156 letter (d) of KHI, fathers retain responsibility for providing child support. Judges set support amounts based on paternal financial capacity and children's needs, including educational costs, medical care, and daily necessities. Legal considerations in the decision state that the Judge rejected the Appellant's reconvention claim but disagreed with the single judge's decision emphasizing witness proof. The single judge argued that the Appellant could not prove his arguments because he presented only one witness, deemed insufficient under evidentiary law. However, the appeal memorandum and Trial Minutes show that the Appellant had presented two witnesses.

The Panel of Judges at the Samarinda Religious High Court determined that the decision made by the Single Judge at Balikpapan Religious Court granting the Respondent's claim was appropriate. However, they needed to consider several additional matters. Trial Minutes No. 1173/Pdt.G/2024/PA.Bpp show that the Appellant and Respondent divorced on June 4, 2024, after previously marrying legally. They have three children from their marriage.

The first and second children live in Balikpapan under the Appellant's (father's) care. However, the Appellant entrusted their care to his biological mother in Penajam, who works as a street sweeper and only spends time with the children in the afternoon. The Appellant himself can only gather with his children on holidays (Saturday and Sunday) or when not working. Meanwhile, the Respondent cares for the third child as the biological mother. Judges considered that child maintenance and education serve the child's interests, not parental interests. This aligns with Law No. 23 of 2002 on Child Protection, revised as Law No. 35 of 2014, which states that "child protection aims to ensure fulfillment of children's rights so they can grow and develop optimally, and receive protection from violence and discrimination."

Children under age 12 (called *mumayyiz*) psychologically require guidance, attention, protection, and close relationships with their parents. Article 14 Paragraph (1) of Law No. 35 of 2014 on Child Protection states that "every child has the right to be cared for by their own parents; therefore, entrusting the first and second children to the Appellant's parents, who lack sufficient time to care for them, is deemed improper." Conversely, the Respondent, a self-employed businesswoman in Balikpapan, possesses adequate time and income to care for and support all three children simultaneously. The Panel of Judges followed Sayyid Sabiq's opinion in *Fiqhus-Sunnah*, stating that mothers and children hold rights to *hadhanah* (custody) because mothers possess greater knowledge and ability to educate children, along with time and patience that fathers lack.

Considering these factors, the Panel of Judges decided that for the children's best interests, all three children would be better under the Respondent's custody (hadhanah). Therefore, the Single Judge's decision at Balikpapan Religious Court establishing that all three children remain under the biological mother's (Respondent's) custody can be maintained and strengthened. The Panel of Judges also ordered the Appellant to surrender both children to the Respondent. The Panel of Judges ordered the Respondent to provide the children sufficient time to meet and receive affection from the Appellant, despite establishing custody with the Respondent. This ensures that the affectionate relationship between children and father remains intact, and that children's psychological and mental development continues properly.

However, differences exist in this decision that indirectly reveal how complex applying this principle becomes. The Panel of Judges corrected the first-level judge's statement that the Appellant brought only one witness, when actually two witnesses appeared. This correction proves crucial because the principle "one witness is no witness" becomes irrelevant. Though this change did not alter the final decision, judges demonstrated that applying the best interest of the child principle requires careful attention at every evidentiary stage to ensure decisions rest on accurate facts.

4. Discussion

4.1 Protection of Children's Rights Post-Divorce According to Law No. 35 of 2014

Law No. 35 of 2014 on Child Protection explicitly positions children's best interests as the primary consideration in all matters relating to children. The definition of child protection according to Law No. 35 of 2014 on Child Protection is "all activities to guarantee and protect Children and their rights so they can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination." This means that in every decision made regarding post-divorce child custody, whether by parents or judicial institutions, children's welfare, development, and protection must always take priority. The "best interest of the child" concept encompasses various aspects, from physical needs, emotional well-being, education, to children's social development. Religious Courts, for instance, when deciding child custody, must consider various factors that can guarantee fulfillment of children's best interests. Judges assess who can best provide affection, attention, and meet children's needs, both material and moral, along with environments conducive to child development. Legal protection of children's rights represents a constitutional mandate and forms an integral part of the overall child protection system. The state bears responsibility for protecting children from all forms of neglect, violence, exploitation, and discrimination, including in parental divorce cases. Law No. 35 of 2014 on Child Protection also integrates principles from international conventions on children's rights, focusing on the importance of involving children in decisions affecting them, though in practice this still requires further development (berkas.dpr.go.id, 2025). Court decisions in this case demonstrate how these norms apply in practice in custody disputes, aligning with Legal Protection Theory, which according to scholars like Satjipto Rahardjo emphasizes that law must safeguard Human Rights, especially children's rights.

Post-divorce, children have the right to continue receiving care from both parents, though in practice physical custody is generally granted to one parent. Based on Article 1 number 1 of Law No. 35 of 2014 on Child Protection, a child is defined as "a person who has not reached 18 years of age, including children still in the womb" (Indonesian Government, 2014). Law No. 35 of 2014 on Child Protection also states that child custody determination must be based on mature consideration for the child's best interest. In Islamic law, the concept of hadhanah or child custody also strongly

emphasizes who most deserves and can provide the best care and upbringing for children, especially at certain ages. Generally, mothers hold custody rights over children who have not reached a certain age (usually 7 years), but this can differ if mothers are deemed incapable or endanger children. Nevertheless, fathers retain responsibility for providing support and ensuring child welfare, even if physical custody rests with mothers. Law No. 35 of 2014 on Child Protection, which revises Law No. 23 of 2002, strengthens protection of children's rights in various aspects, including the right to care and the right to receive education and health services. The importance of both parents' roles in post-divorce child development cannot be ignored. Though one parent does not receive physical custody, they still have the right to meet and interact with children, along with the obligation to participate in childcare and meeting children's needs. Courts play a vital role in regulating meeting mechanisms between children and non-custodial parents, so emotional relationships remain maintained (pn-tabanan.go.id/, 2024). The following describes how Law No. 35 of 2014 on Child Protection regulates protection of children's rights in custody disputes:

- 1) Primary Principle: Best Interest of the Child (Article 4 of Law No. 35 of 2014 on Child Protection)

This forms the foundation of all child protection in this Law. In custody dispute situations, this means courts and disputing parties (parents) must not only consider their own rights or desires, but must focus on what is best for children's development, welfare, and future. Children's best interests include: Physical needs (food, clothing, housing, health); Psychological needs (affection, security, emotional support); Social needs (environmental interaction, education, recreation); Spiritual needs (moral and religious values).

- 2) Fundamental Children's Rights That Must Be Protected (Chapter II of Law No. 35 of 2014 on Child Protection)

Despite divorce, children always possess basic rights that require fulfillment by both parents, society, government, and the state. Several rights relevant to custody include:

- a) Right to live, grow, and develop. Children have the right to receive environments conducive to their optimal development (Article 4). Custody determination must ensure such environments are available.
 - b) Right to care, maintenance, education, and protection (Article 14 paragraph (2) and Article 26). Despite divorce, both parents retain full responsibility for caring, maintaining, educating, and protecting children. This means that whoever receives custody, the other parent still has obligations to contribute, including regarding support and child interaction (visitation rights).
 - c) Right to receive affection from both parents. Divorce does not eliminate children's relationships with both parents. Courts generally attempt to maintain these relationships, for instance through visitation rights arrangements for non-custodial parents.
 - d) Right to receive financial support from both parents. Support obligations remain attached to both parents, especially fathers, despite marriage dissolution (Article 14 paragraph (2) of Law No. 35 of 2014 on Child Protection and strengthened by Article 41 of Law No. 1 of 1974 on Marriage). Custody decisions must include these support obligations.
 - e) Right to participate and have opinions heard.
- 3) Parental Obligations and Responsibilities Post-Divorce (Article 26 of Law No. 35 of 2014 on Child Protection)

This article affirms that "parents are obligated and responsible to: Care for, maintain, educate, and protect children; Develop children according to their abilities, talents, and interests." These obligations remain with both parents, regardless of who holds custody. This means non-custodial parents still have

moral and material obligations toward their children.

4) Court Role in Custody Determination

In custody disputes, courts (Religious Courts for Muslims, District Courts for non-Muslims) will consider various factors to determine who most deserves custody, while prioritizing children's best interests. Factors considered include:

- a) Child age: Generally, children who have not reached mumayyiz age (around 12 years) receive custody to mothers, unless mothers are proven incapable or endanger children (according to Article 105 of the Compilation of Islamic Law (Supreme Court of RI, 2011), which often serves as reference).
- b) Child's wishes: For children who have reached mumayyiz, judges will seriously consider children's desires or choices to be cared for by father or mother.
- c) Parental conditions and capabilities: This includes financial capacity, physical and mental health, morality, conducive living environments, and each parent's caregiving track record.
- d) Quality of child relationships with each parent.
- e) Availability of extended family support or surrounding environment.

5) Supervision and Sanctions (Chapters X and XI of Law No. 35 of 2014 on Child Protection)

Law No. 35 of 2014 on Child Protection also regulates supervision of child protection implementation. Though not directly regulating specific sanctions for custody violations that disregard children's interests, violations of children's basic rights can lead to criminal sanctions if they meet certain criminal elements (for example, child neglect, violence against children, or child exploitation), as found in Chapter XI of this Law. In the custody decision, children's rights to participate and have their opinions heard are also legally protected. Judges considered children's opinions, either directly or indirectly, though it is not clearly stated that children were asked for testimony. Judges recognized that severing relationships with either parent can damage children's psychological condition, so fathers must retain opportunities to meet with children. Though this decision overall aligns with Law No. 35 of 2014 on Child Protection, several issues relate to implementation methods. No precise definition exists regarding what "best interest of the child" means in legislation. Therefore, when judges interpret and apply this principle, they must consider many factors. This case demonstrates effective use of judgment, but raises questions about decision consistency in other cases.

Children cared for by one parent still have the right to meet and communicate with the other parent, unless strong legal reasons exist that could endanger children. This right is crucial for maintaining children's emotional relationships with both parents. Additionally, children also have the right to receive financial support from both parents to provide for their living needs, including educational and health costs. Resolution of post-divorce child custody disputes can be carried out through several mechanisms. Non-litigation channels, such as mediation, often become the first choice to reach peaceful agreements beneficial to all parties, especially children. Mediation can help parents communicate and seek the best solutions without going through lengthy court processes that could emotionally burden children. However, if mediation fails to reach agreement, child custody disputes can be brought to court. Religious courts serve as primary forums for resolving child custody disputes for Muslim couples, while district courts handle cases for non-Muslims. In trial processes, courts will hear testimony from both parties, witnesses, and sometimes also involve experts or child psychologists to obtain a complete picture of children's situations. Monitoring implementation of Law No. 35 of 2014 on Child Protection also includes efforts to ensure dispute resolution mechanisms operate effectively and favor children (Sari, 2014).

This decision can be regarded as implementation of legal protection provided by the state through judicial institutions to children who become victims of parental divorce. Courts act to ensure that children's rights, regulated in Law No. 35 of 2014 on Child Protection, are not neglected when parents are in conflict. Through this decision, children's rights to care, education, affection, and fulfillment of their basic needs will continue to be met. Ultimately, this decision shows that legal protection for post-divorce children must consider social, psychological, and financial aspects beyond formal aspects. Thus, this decision carries out the mandate of Law No. 35 of 2014 on Child Protection and provides thorough protection for children facing consequences of parental divorce.

4.2 Juridical Analysis of the Decision and Its Relevance to Law No. 35 of 2014 on Child Protection

This decision proves highly relevant to Law No. 35 of 2014 on Child Protection, especially regarding child maintenance (*hadhanah*). Judges explicitly stated that the purpose of child maintenance and education is not for parental interests, but for children's interests themselves. This aligns with Article 3 of Law No. 35 of 2014 on Child Protection, which states that the purpose of child protection is "to ensure children's rights to grow, develop, and participate properly." This decision prioritizes children's best interests, which represents the basic principle of child protection law. In judicial decision-making, judges are often found to not only rely on positive legal norms but also consider social principles and customs living within society. 'Urf can serve as one of the rational bases (*ratio decidendi*) in judicial decisions, especially when written legal norms do not specifically regulate the decided matter. In post-divorce child custody cases, judicial considerations in Decision No. 3/Pdt.G/2025/PTA.Smd can be interpreted as applying jurisprudential 'urf, namely the practice of dominant maternal caregiving based on benefit values already rooted in Indonesian Muslim communities.

Thus, judges in that decision not only applied positive regulations such as Law No. 1 of 1974 and the Compilation of Islamic Law, but also built decisions based on sociological considerations that can be categorized as 'urf *shahih*. This shows that 'urf as living law can strengthen application of the best interest of the child principle, because it accommodates emotional needs, psychological factors, and established family customs (Bahrudin, 2022).

The Panel of Judges' decision depended on the condition of the first and second children entrusted to the Appellant's biological mother in Penajam. The Panel of Judges deemed this condition non-ideal because the Appellant's mother, who works as a street sweeper, only has free time in the afternoon, and the Appellant can only meet his children on holidays. Article 14 Paragraph (1) of Law No. 35 of 2014 on Child Protection, which states that "every child has the right to be cared for by their own parents unless such separation is carried out for the child's best interest, is deemed violated." This consideration shows that judges weighed both formal aspects and quality of childcare. Conversely, the Respondent was deemed to hold *hadhanah* rights over all three children. The Respondent, who works as a self-employed businesswoman in Balikpapan, was considered to have adequate time and income to care for and raise all children simultaneously. Additionally, the Panel of Judges cited Sayyid Sabiq's opinion in *Fiqhus-Sunnah*, stating that mothers and children have rights to *hadhanah* because mothers possess better knowledge and ability to educate children, along with time and patience that fathers lack. Use of this reference shows that judges employed Islamic legal foundations related to child protection principles.

The Panel of Judges still ensured that the Appellant father's rights were not neglected, despite establishing all three children under the Respondent's care. Judges decided that the Respondent must provide the broadest access to the Appellant to visit and pour affection on his children. This relates to child protection objectives, namely to ensure that affectionate relationships between children and parents remain even after parental divorce. This decision shows balance between mothers' rights to care and

fathers' rights to remain emotionally connected with their children for proper psychological and mental growth.

Additionally, the issue of child support was also addressed in this decision. The Panel of Judges used arguments from the Respondent's claim and the fact that the Appellant could not prove his arguments with evidence to consider the Appellant capable of supporting himself, though no direct evidence existed about the Respondent's income. In line with Article 45 Paragraphs (1) and (2) of Law No. 7 of 1989 on Religious Courts and Article 105 letter (c) of the Compilation of Islamic Law (KHI), establishment of support for all three children at Rp6,000,000.00 per month with 10% annual increases was based on principles of propriety, inflation rates, and decent living needs for children.

This decision supports the Balikpapan Religious Court decision and shows that the Samarinda Religious High Court places child welfare as most crucial for them. Various elements were included in juridical analysis, including fact verification, appropriate legal interpretation (such as Law No. 35 of 2014 on Child Protection and the Compilation of Islamic Law), and sociological and psychological considerations for children. Therefore, this decision demonstrates how judges can apply law thoroughly to fulfill children's best interests. This decision strengthens the previous decision and enriches its legal considerations by conducting deeper analysis from various perspectives. This decision shows how child protection law is applied in court practice. Judges considered social situations, caregiving, and children's psychological welfare beyond legal texts. This demonstrates that legal obligations to protect children must be carried out carefully.

5. Conclusion

In Decision No. 3/Pdt.G/2025/PTA.Smd, the best interest of the child principle was applied thoroughly. The court did not merely attend to formal legal aspects but also weighed children's actual circumstances, including caregiving environments, parental financial capacity, and children's emotional needs. Furthermore, this decision demonstrates synergy between field realities and legal norms. The court strengthened the decision regarding maternal custody while obligating fathers to provide support and meeting access to ensure children's rights to affection, fulfillment of basic needs, and optimal growth. This decision shows that this principle functions as the primary guideline for judges to achieve justice focused on children's welfare rather than parental interests. Additionally, this decision demonstrates that applying the best interest of the child principle must be carried out carefully at every stage, including evidentiary processes. This is shown by corrections made by the appellate Panel of Judges regarding factual errors made by the first-level judge concerning witness numbers.

Ultimately, this decision provides a strong example for Indonesian court practice, where courts increasingly advance in interpreting and applying child protection principles. According to this decision, in custody disputes, primary priority must always return to child welfare rather than disputes between divorced parents.

Legal protection of children's rights in post-divorce custody disputes, according to Law No. 35 of 2014 on Child Protection, was implemented robustly in the Samarinda Religious High Court Decision. This decision reflects the legislative mandate guaranteeing children's rights to survival, development, and care by biological parents. By placing children under maternal care deemed more capable, this decision has upheld protection of children's rights to receive the most ideal caregiving environment. Additionally, guarantees for children's support rights and rights to maintain relationships with both parents also show that courts have applied legal protection holistically, in accordance with Law No. 35 of 2014 on Child Protection objectives to ensure children's rights are not neglected amid parental conflict. These guarantees prove essential for

ensuring children do not become victims post-divorce and can still enjoy affection from both parents. Ultimately, this decision shows that legal protection for post-divorce children must consider social, psychological, and financial aspects beyond formal aspects. Thus, this decision carries out the Child Protection Law mandate and provides thorough protection for children facing consequences of parental divorce.

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