

The Impact of Divorce on Child Custody (Decision Study Number 150/Pdt.G/2021/PA.Btl)

Abi Syauqi Rahman¹, Endang Heriyani²

Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Muhammadiyah Yogyakarta

Article Info

Article history:

Received: 29 October 2024

Published: 15 November 2024

Keywords:

Divorce;

Consequences of divorce;

Child custody;

Children not yet mumayyiz.

Abstract

The Compilation of Islamic Law regulates the effects of divorce on children in Article 105 letter (a), which reads: "The maintenance of children who are not yet mumayyiz (under 12 years of age) is the right of the mother. The judge in the decision number 150/Pdt.G/2021/PA.Btl determines the custody of a child who has not yet matured in the hands of his father. This study aims to determine the consideration of the judge in determining the custody of a child who is not yet mumayyiz given to his father. This research is a normative legal research. The research data used are secondary data. Data collection techniques using secondary data are carried out through document studies. For data completeness, interviews with resource persons were also conducted. The primary and secondary data obtained were then analyzed descriptively and qualitatively. The conclusion in this study is that the judge's consideration in decision number 150/Pdt.G/2021/PA.Btl, which gave custody of the first child aged 5 years to his father, because the mother was harsh with her first child and the child had lived with his biological father, so psychologically had more closeness to his father. Thus, the judge did not follow the provisions of Article 105 letter (a) of the Compilation of Islamic Law, which determines that the maintenance of children who are not yet mumayyiz or not yet 12 years old is the right of the mother.

This is an open access article under the [Lisensi Creative Commons Atribusi-BerbagiSerupa 4.0 Internasional](https://creativecommons.org/licenses/by-sa/4.0/)



Corresponding Author:

Endang Heriyani

Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Muhammadiyah Yogyakarta

Email: eheriyani@gmail.com

1. INTRODUCTION

Article 1 of Law Number 1 of 1974 concerning Marriage states "Marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God."

It is explicitly stated that marriage has a very close relationship with religion and spirituality so that marriage not only has physical or physical elements but also has inner or spiritual elements.

The purpose of marriage is not only seen in terms of birth, but there is also an inner connection between husband and wife aimed at building a household or a family that is eternal and happy for both of them and that is in accordance with the will of the Almighty God.

According to Article 2 of the Compilation of Islamic Law, marriage is "marriage, namely a very strong contract or mitsaqan ghalidzan to obey Allah's commands and carrying them out constitutes worship."

The purpose of marriage according to the Compilation of Islamic Law is to create a household life that is sakinah, mawaddah and rahmah. Apart from that, marriage also forms, maintains and transmits offspring through life in the world. As well as preventing adultery from occurring in order to create peace and tranquility of soul for husband and wife, and create happiness which means there is harmony in the family.

At the beginning of marriage, in general, husband and wife couples who enter into a marriage definitely want to live in a household forever or forever, marriage is carried out

once in a lifetime or until death do them part. Many marriage goals in marriage are not achieved according to what is desired.

There are several conditions that cause a marriage to no longer be able to continue or a divorce is forced to occur. It is not uncommon for husbands and wives to experience continuous arguments and disputes which result in the relationship becoming strained and unable to be maintained.

Usually both parties, namely husband and wife, as well as the family have made efforts to make peace but it does not produce the expected results and, in the end, the only way to do this is to dissolve the marriage. One way to dissolve a marriage is to impose divorce.

According to Abdul Ghofur Anshori, divorce is only given to husbands (men) with the consideration that in general husbands prioritize thinking in considering something rather than wives (women) who usually act based on emotions, this is intended so that the occurrence of divorce can be minimized from the right of divorce is given to the wife."

Divorce is the severing of the marital bond between a husband-and-wife which results in the end of the household or family relationship which is carried out before a court hearing, after the court concerned has tried to reconcile the two parties but has been unsuccessful.

According to Muhammad Syaifuddin, "Divorce is the breaking of the spiritual and physical bond between a husband-and-wife which results in the end of the family (household) relationship between the husband and wife." Divorce should only be used as a last resort, after peace efforts have been made there is no other way except divorce.

Article 45 paragraph (1) of Law Number 1 of 1974 concerning Marriage stipulates that both parents are obliged to care for and educate their children as well as possible. The parents' obligations continue until the child marries or becomes independent (Article 45 paragraph (2) Law Number 1 of 1974).

Husbands and wives who have offspring or children are a gift from God that deserves to be grateful. Children have a very important position in the family, so the family must give full attention to the life of their child.

If a divorce occurs, the children who are the victims and the ones who are hurt the most are the children. Children have a physical and spiritual bond with their father and mother. Children are the ones who feel the most direct impact which causes the child's psychology to become imperfect, something that may be difficult to achieve because of their spiritual and physical needs because their father and mother have not fulfilled them perfectly due to divorce. Divorce certainly leaves a very deep trauma for children, because they have to accept the sad reality that their father and mother decided to separate.

Divorce will have legal consequences for the husband and wife as well as for children who were born during the marriage. Divorce between husband-and-wife results in children living less harmoniously and having to live with a single parent, such as with their father or mother. Children should be able to grow into healthy, intelligent, educated and highly moral human beings. Children must receive proper love and protection from their parents.

The consequences of divorce on children in Law no. 1 of 1974 is regulated in Article 41 letters a and b, namely 'both the mother and the father are still obliged to care for and educate their children, solely based on the interests of the child, if there is a dispute regarding control of the child, the Court gives its decision. The father is responsible for all maintenance and education costs required by the child. If the father is in reality unable to fulfill these obligations, the Court can determine that the mother also bears these costs.'

The custody of minor children due to divorce is also regulated in the Compilation of Islamic Law, regulated in Article 105 letter a which read: "The custody of a child who has not reached the age of 12 years is the right of the mother. A child under the age of puberty is considered not yet capable of making his own choices, so it must be determined by the

Court (judge), when there is a dispute regarding the child's custody between the two parents. This is solely for the good and interests of the child.

Filing a divorce lawsuit in judicial practice can be seen in Decision Number 150/Pdt.G/2021/PA.Btl. In this case, a husband and wife married on October 9 2015. During this marriage they were blessed with 2 (two) children.

That at the beginning of the marriage, the husband and wife's domestic life was peaceful, harmonious and happy, which lasted for approximately 1 (one) year and since 2016 their household began to falter, there were frequent disputes and quarrels that occurred because: a) The wife often left house secretly without permission and without the knowledge of her husband, and does not respect and disrespect her husband and very often argues and fights with her husband. Apart from that, the wife also abandons her obligations as a wife and does not take care of the children. The peak of the breakdown in the Petitioner and Respondent's household occurred in 2017 when they left the house they lived together and returned to their parents' house. leaving her husband and children just like that has now been going on for more than 3 (three) years and during that time there has been no physical and spiritual relationship. The husband has tried to maintain the integrity of the household by being patient for years in the hope that the wife will change her attitude and work together to improve the marriage. Both parents, both husband and wife, want custody of the child to fall to them. Because there is a dispute, the judge has the authority to give his decision.

Based on the things that have been described, the problems that can be raised are: What are the judge's considerations in determining that custody of a child who has not yet been given *mumayyiz* to the father in decision Number 150/Pdt.G/2021/PA.Btl?

2. RESEARCH METHOD

2.1 Types of Research

The type of research used is normative legal research. Normative legal research is research that examines the principles, norms, rules of statutory regulations, court decisions, agreements, and doctrine (teachings).

2.2 Research Data

Research data is in the form of secondary data consisting of primary legal materials and secondary legal materials. Primary Legal Material consists of: Al Qur'an and Hadith, Law Number 1 of 1974 concerning Marriage, KHI. Secondary legal materials are: Books on Family Law, journals related to research material.

2.3 Data Collection Techniques

In normative legal research, data collection techniques are used through document study, namely studying statutory regulations, books and journals related to research material. Apart from that, interviews with resource persons were also carried out. A resource person is a person who provides answers or opinions to the interviewer's questions. The resource person in this research is Mr. H. Muh. Dalhar Asnawi, S.H. as the Panel of Judges at the Bantul Religious Court who decided the case.

2.4 Technical data analysis

Data analysis techniques use qualitative descriptive methods. The descriptive method is to clearly describe real situations. Meanwhile, qualitative is an analysis of what is stated by the source and then explained to answer the problem.

3. RESEARCH RESULTS AND DISCUSSION (12 Pt)

3.1. Procedure for Filing a Divorce at the Bantul Religious Court.

Procedures or steps that must be taken in filing a divorce suit: ”

- a. Submit a written or oral request to the Religious Court. "Applicants are advised to ask the Religious Court for instructions on how to make a request letter.
- b. The application is submitted to the Religious Court whose jurisdiction covers the Respondent's residence. "If the Respondent leaves the mutually agreed residence without the Petitioner's permission, then the application must be submitted to the Religious Court whose jurisdiction covers the Petitioner's residence. The application contains: "
 - 1) "Name, age, occupation, religion and place of residence of the Petitioner and Respondent."
 - 2) "Posita (incident facts and legal facts)."
 - 3) "Petitum (things demanded based on posita)."
- c. Applications for child custody, child support, spousal support and joint property can be submitted together with the divorce application or after the declaration of divorce has been pronounced.
- d. Paying court fees, for those who cannot afford it, they can litigate for free (*prodeo*).

3.2. Process for Handling Divorce Cases in the Bantul Religious Courts

- a. The applicant registered an application for divorce with the Religious Court."
- b. "The Petitioner and Respondent were summoned by the Religious Court to attend the trial."
- c. Trial Stages.
 - 1) On the day the first hearing must be attended by the parties, the judge requires the parties to undergo mediation.
 - 2) At the start of mediation, the husband and wife must be present in person.
 - 3) If efforts to reconcile through mediation are unsuccessful, then the examination of the case continues by reading the request letter, answers, answers, evidence and conclusions.
 - 4) When submitting an answer or at the latest before proof, the respondent can file a counterclaim or counterclaim.
- d. If the application is granted and the decision has acquired permanent legal force," then:
 - 1) The Religious Court determines the day of the witnessing hearing of the divorce pledge."
 - 2) "The Religious Court summoned the Petitioner and Respondent to carry out the divorce vow."
 - 3) If within a period of 6 (six) months from the date of the hearing of the oath of divorce, the husband or his representative does not execute the oath of divorce in front of the court, then the legal validity of the determination shall expire and the divorce cannot be filed again based on the same legal grounds.
- e. After the talak vow is pronounced, the clerk is obliged to provide a divorce certificate as proof to both parties no later than 7 (seven) days after the talak vow is made.

3.3. Divorce Case in Decision Number 150/Pdt.G/2021/PA.Btl

The filing of a divorce lawsuit in judicial practice in Decision Number 150/Pdt.G/2021/PA.Btl, regarding the case as follows: That the Petitioner and Respondent are husband and wife who were married on October 9 2015 before a Marriage Registrar Officer on Office of Religious Affairs. The applicant is a husband, while the respondent is a wife. They have been blessed with 2 (two) children with the

initials AB, a son born in Bantul on April 25 2016 and ALA, a son born in Bantul on March 10 2018;

At the beginning of the marriage the domestic life was peaceful, harmonious and happy which lasted for approximately 1 (one) year. Since 2016, the household began to become unstable, there were frequent disputes and fights because the wife often left the house secretly without permission and without the husband's knowledge. The wife does not respect and respect her husband and very often argues and fights with her husband. The wife abandons her obligations as a wife and does not take care of the children. The peak of the breakdown in the household occurred in 2017 when the wife left the house they were living with and returned to her parents' house. This has been going on for more than 3 (three) years and during that time there has been no physical and spiritual relationship.

The applicant has tried to maintain the integrity of the household by being patient for years in the hope that the wife will change her attitude and work together to improve the marriage. The Petitioner's family has tried to reconcile but has been unsuccessful and is now no longer able to maintain the integrity of the household.

The aim of the marriage between the Petitioner and the Respondent to form a *sakinah mawaddah wa rahmah* family can no longer be expected and what instead occurs is physical and mental suffering, therefore, with very deep consideration, the Petitioner filed for divorce through the Bantul Religious Court.

Based on the arguments above, the Petitioner requests that the judge hand down a decision which reads as follows:

- 1) Granting the Applicant's application.
- 2) Give permission to the Petitioner (husband) to pledge one *raj'i talaq* against the Respondent (wife) before the Bantul Religious Court.
- 3) Determine the custody of 2 (two) children with the initials AB, a boy born in Bantul on April 25 2016 and ALA, a boy born in Bantul on March 10 2018, to be given to the Petitioner/his biological father.

Whereas, based on the Petitioner's request, the Respondent submitted an answer in compensation and filed a counterclaim. The contents of the lawsuit are:

- 1) Designate a child named:
 - a) Xx (male), born in xxxxxx on April 25 2016, is currently approximately 5 (five) years old.
 - b) XX (male), born on March 10, 2018 is currently approximately 3 (three) years old, the rights of the maintenance holder are under the Plaintiff Reconcence/Respondent to the Conference or the mother of the biological mother or mother
- 2) Sentencing the Defendant of Counterclaim/Petitioner of Compensation to pay each month to the two children Rp. 4,000,000,- (four million rupiah) and increasing by 20% (twenty percent) every year, handed over to the Claimant/Respondent for Counterclaim via BRI Bank account number xxxxxxxxxx no later than the 10th of each month until the child is an adult and/or independent;
- 3) To legally declare that the Counterclaim Plaintiff/Compensation Respondent has the right to *madliyah* living, *mut'ah* living, and *iddah* living from the Rekonpension Defendant/Compensation Petitioner if the request for a divorce pledge is permitted by the Religious Court.
- 4) Sentencing the Complainant Petitioner/Reponderant Defendant to pay *madliyah* maintenance, *mut'ah* subsistence, and *iddah* subsistence to the Counterclaim Plaintiff/Compensation Respondent.

- a. Determining the payment by the Counterclaim Defendant/Compensation Applicant for Madliyah maintenance, mut'ah maintenance, iddah maintenance, to the Counterclaim Plaintiff/Compensation Applicant to be paid before the time of the reading of the divorce pledge or no later than at the same time as the time of the divorce pledge;
- b. Order the Recognition Defendant/Concession Petitioner to hand over the two children to the Recognition Plaintiff/Compensation Respondent as the mother who is entitled to child maintenance rights.

The panel of judges at every stage of the trial had tried to reconcile the Petitioner and Respondent so they could get back together, but to no avail. The Petitioner is no longer able to maintain the integrity of the Petitioner and Respondent's household. And the Petitioner has tried to maintain the integrity of the household with the Respondent by being patient for many years in the hope that the Respondent will change his attitude and work together to improve the marriage. The Petitioner and Respondent's household has had disputes and quarrels since the beginning of 2019. The household between the Petitioner and Respondent has reached the peak of disputes and quarrels so that the marriage can be said to have broken up (broken marriage). The breakdown of the Petitioner and Respondent's household can be seen from the situation of the parties who had been at odds for 2 (two) years, then separated from their residences since one and a half years ago without carrying out the obligations of husband and wife, where a household should be between husband and wife. serving each other and carrying out their rights and obligations, this is an indication that there has actually been a conflict between the Petitioner and the Respondent for a long time. One of the most important elements in building a happy and harmonious household is the intimate relationship between husband and wife. If this important factor is neglected, as is currently being faced by the Petitioner and Respondent, then the domestic life of the Petitioner and Respondent has lost the meaning of marriage, namely there is mutual affection and love for each other.

Regarding the reason for divorce proposed by the Petitioner, it meets what is intended in Article 19 letter f Government Regulation Number 9 of 1975 in conjunction with Article 116 letter f Compilation of Islamic Law which indicates that there are ongoing disputes and quarrels that can be proven by the Petitioner and Respondent and witnesses. at trial.

The judge finally gave a verdict, namely:

1. Granted the Petitioner's request in part.
2. Give permission to the Applicant (husband) to pronounce a raj'i divorce in front of the Religious Court.
3. Determining the first child to be under the custody of the Applicant or the father, and the second child under the custody of the Respondent or his mother, with the obligation to the Applicant and the Respondent to give access to the party who does not hold custody of the child to meet the child.

The cause of the dispute and quarrel between the applicant and the respondent was because the respondent was harsh towards his first child, and if the dispute occurred 2 (two) years ago then the child in question where the respondent was harsh towards him was the child with the initials AB who was then 3 (three) years old.) year, where at that age the child will be very active and creative so that both parents need more patience in educating him, whereas the child with the initials ALA at that time was only 1 (one) year old. Therefore, if the child with the initials AB (age 5 years) is actually currently living with the applicant, it is appropriate that his care be assigned to the applicant as

his biological father, while the child with the initials ALA (age 3 years) is actually currently living with the respondent, so that is the case. His care should be assigned to the respondent as his biological mother. With the obligation for the applicant and respondent to provide access to the party holding custody of the child to meet the child.

This is in line with the statement of Mr. H. Muh. Dalhar Asnawi, S.H. which states "The holder of child custody is obliged to provide access to parents who do not have custody of the child. "Fathers give their mothers the widest possible access to meet, educate, provide support or money and so on. They must be given the widest possible access, and vice versa."

Children are a compliment to married life and family happiness that have been given by God, so they deserve to be grateful for. However, if in household life there are continuous disputes and fights which result in divorce, then the one who is the victim and the one who is hurt the most is the child, because the child has a birth bond with the father and mother and the child is the one who feels the most direct impact which causes the child's psychology. who is not perfect because his spiritual and physical needs are not met by his father and mother. As parents, fathers and mothers are obliged to organize, take care of and protect the interests of their children. Child custody arises if the father and mother divorce and if there is a dispute regarding child custody, the panel of judges decides.

Regarding the custody of a child who falls to the father, this can be exercised if in this case the mother is declared by the court to be unable to look after the child, whether due to economic or other factors, such as the mother's behavior being considered inappropriate or morally the mother's actions being considered inappropriate for looking after the child. his son. Child custody falls into the hands of the father or mother depending on the legal decision in the Court, in this case the Court considers the attitudes and behavior of the father and mother for the benefit of the child.

This is in line with the statement of Mr. H. Muh. Dalhar Asnawi, S.H. as the Panel of Judges who tried the case at the Bantul Religious Court, stated "If a child experiences violence by his mother, it can be proven by the results of a post-mortem or by witnesses who know about it. If one parent applies physical violence to a child then this is not proper upbringing, this is because one of the parents is taking out anger on the child and this violence can certainly result in the child's parental rights being revoked or not assigned to the parent who committed the violence. "And the child's comfort is the benchmark and the child is comfortable in their respective place and doesn't have a problem going to their mother or father's house."

3.3 The Judge's Consideration in Determining Custody of the Child, which Mumayiz will give to the Father.

Children are creations of Almighty God who's right to live must be guaranteed to grow and develop in accordance with their nature and nature, and their self-respect and dignity must be protected. According to Nur Cholifah and Bambang Ali Kusumo, "Every child has the right to receive protection, namely all forms of activities that guarantee and protect the child to ensure their rights so that they can live, grow, develop and participate optimally in accordance with social dignity, and receive protection from violence and discrimination."

Divorce has legal consequences for husband and wife, for both parties and for children born during the marriage. Children who should live in a harmonious family are forced to live with their parents separated. As a result of divorce, parents must be responsible for the child's survival. With the child's survival, parents are obliged to pay

attention to the child's living costs and the child's daily needs, such as food, clothing, shelter, education and health costs, and so on.

According to the agreement of the ulama (Ijma') the father is obliged to provide support and educational costs for the child. The legal basis for a father's obligation to provide for his children has been regulated in the Al-Qur'an in Surah At-Talaq verse 6 which means "Then if they breastfeed your (children) then give them something in return" and Al-Baqarah verse 233 which means "And the father's obligation is to provide for them and clothe them in an appropriate manner." The father is obliged to provide support for his wife and children. Child support and education costs must be provided whether a divorce occurs or not.

Article 105 letter c of the Compilation of Islamic Law regulates the maintenance of children after a divorce which stipulates that "maintenance costs shall be borne by the father". Therefore, the responsibility for child support when the child's parents have not divorced or after divorce, the child's support remains fully borne by the father.

Article 156 letter d and f Compilation of Islamic Law "all child support and child support costs are the father's responsibility according to his ability, at least until the child is old enough to take care of himself (21 years old) and the court can also consider the father's ability to determine the amount of costs for maintenance and education of children who do not belong to him".

Child care is caring for boys and girls who are still small and cannot yet be independent, protecting the child's interests from everything that can damage or endanger themselves, educating the child physically and spiritually so that his mind can develop and overcome and face life's problems on his own. Islamic law regulates the implementation of child care to love, nurture and provide kindness to children. Parents' obligations towards their children must be fulfilled for the benefit of the child, even if the father and mother are still related or have divorced so that the child still gets attention from both parents.

Law Number 1 of 1975 concerning Marriage Article 41 letters a and b which states, Parents are obliged to care for and educate their children, solely based on the interests of the child, and the father is responsible for all maintenance and education costs required by the child, if In reality, the father cannot fulfill these obligations. The mother also bears the costs.

In order to carry out the custody of a child, a person is needed who is gentle, full of love, patience and has the desire for a child to be good (pious), has enough time, therefore the person who carries out the hadhanah must have skills and sufficiency and need to be certain conditions that must be met, namely:

- a. Mature, sensible, not disturbed by memory, fair, honest.
- b. Trustworthy so that there is a guarantee for the child to be looked after well.
- c. Have the ability and desire for the job.
- d. A mother can keep her child even if she is married to another man as long as her husband does not clearly reject her.

This is in line with the statement of Mr. H. Muh. Dalhar Asnawi, S.H. as the Panel of Judges at the Bantul Religious Court who heard the case, stated "The issue of divorce is that if there is a child, both parents are obliged to care for, develop and educate the child even though there has been a divorce, because there is no ex-child, but there is an ex-husband or ex-wife. Both parents are responsible for the continuity of life and education of the child."

Maintaining child custody according to Islamic law is taking care of young children (not yet tamyiz), both male and female, by protecting them from anything that

hurts and damages them, as well as providing them with something that is good for them so that they become human beings who live perfect lives and are responsible.

Child maintenance or *hadhanah* is the right to nurture, maintain, and educate children until they are adults, married, or able to stand on their own. Child maintenance is regulated in Article 105 letter a and b of the Compilation of Islamic Law which reads "The maintenance of a child who has not yet reached the age of 12 is the right of the mother. And custody of a child who has been *mumayyiz* is handed over to the child to choose between his father or his mother as the holder of custody rights." In principle, child rearing is more emphasized on the psychological importance of children who are not *mumayyiz* or not yet 12 years old and still need the love of the mother.

This is in line with the statement of Mr. H. Muh. Dalhar Asnawi, S.H. as the Council of Judges of the Bantul Religious Court which states in the legislation that the custody of a child who is not yet 12 years old (*mumayyiz*) is given to the mother. Unless the mother violates the conditions that have been set, then custody can be transferred to the father. And when the parents go through a divorce, there is a child who is 12 years old and asks for custody of the child, then the child should be heard, whether he is inclined to follow his father or his mother is welcome.

An application or lawsuit in the determination of child custody can be filed based on the provisions of the Marriage Law Article 41 letter a which state "Either mother or father remains obligated to maintain and educate their children, solely based on the interests of the child, if there is a dispute regarding the control of the children son, the court gives its decision." In a divorce suit, not only do you ask to dissolve the marriage, but you can also ask to be given custody of your children who are still under age.

The judge in considering his decision must be based on the facts and evidence revealed in the trial. This is to find out the good and bad of parents' care for their children and the behavior of the father and mother. In determining child custody, the child's interests must be taken into account, both psychologically, materially and non-materially, and provide a decision that is as fair as possible without reducing the child's rights.

By considering the behavior of the father and mother regarding child care, the judge before deciding who has the right to custody of the child also asks for the child's opinion, whether the child is *mumayyiz*. When deciding a case, the judge is obliged to decide as fairly as possible by exploring the information that has been given and understanding legal values and a sense of justice, and the judge also considers the child's age and intelligence. This is also contained in Article 10 of Law no. 23 of 2002 concerning Child Protection which states "Every child has the right to express and have his opinion heard, receive, seek and provide information according to his level of intelligence and age for the sake of his development in accordance with the values of decency and propriety."

In the divorce case that was studied, the applicant (the mother of the child) objected if the two children were taken care of by the applicant (the father). The first child and the second child turned out to be both not yet 12 years old or not yet *mumayyiz*, so according to the provisions of article 105 letter (a) Compilation of Islamic Law, the care of a child who is not yet *mumayyiz* or not yet 12 years old is taken care of by the mother. Based on the testimony of the witnesses, while the husband and wife were separated, initially the children were taken care of by the mother, then the father came to take the two children, and now the first child is taken care of by the father, while the second child is taken care of by the mother.

The judge is of the opinion that the basis for determining who has the right to hold custody of a child is not solely based on normative arguments as regulated in

Article 105 letter (a) of the Compilation of Islamic Law, but must also carefully consider the best interests for physical, psychological and mental development. child psychomotor. Therefore, the determination of who has custody of a child must also be based on consideration of who the child is being cared for so that he or she obtains the right to live, grow, develop, and participate fairly in accordance with human dignity, as well as receive protection from violence and discrimination, as stipulated in the provisions. Article 4 of Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014. That it has become a legal fact that the cause of disputes and quarrels between husband and wife is because the wife (mother) is harsh towards her child, when the first child was 3 (three) years old, at that age the child would be very active and creative so both parents would need more patience in educating him, while the second child at that time was only 1 (one) year old.

The judge considered that because the first child is now 5 years old and in fact currently lives with his father, it is appropriate to assign his care to the Petitioner as his biological father, while the second child actually currently lives with his mother, so it is appropriate to assign his care to his biological mother.

The Panel of Judges also referred to the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 267 K/AG/2006 dated 28 February 2007, the legal principle of which reads: "That child custody is assigned to the Defendant as his biological father because the child's welfare will be more guaranteed if he is raised by his biological father," and also decision Number 110 K/AG/2007 dated 13 November 2007 whose legal principle reads: "That the main consideration in matters of hadhanah (child care) is the benefit and interests of the child and not merely who is normatively most entitled. Even if the child is not yet 12 years old, and so far it has been proven that the child has lived quietly and peacefully with his father, then for the benefit of the child his hadhanah rights are handed over to his father."

The judge's consideration in placing custody of the child in the hands of the father is based on the child's best interests. If you look closely at the decision in case number 150/Pdt.G/2021/PA.Btl, it is clear that both parents, both father and mother, want custody of their child to fall to them. Because there is a dispute, the judge has the authority to give his decision. In fact, the first child, who is 5 years old) and the second child (3 years 1 month), so that both of them are not yet 12 years old or not yet mumayyiz, then in accordance with the provisions of article 105 letter (a) of the Compilation of Islamic Law, the maintenance of children who are not yet mumayyiz or not yet 12 years old, cared for by their biological mother.

Custody of children is not solely based on normative arguments as regulated in Article 105 letter a of the Compilation of Islamic Law, but must also carefully consider the best interests for the child's physical, psychological and psychomotor development. Therefore, the determination of who has custody of a child must also be based on consideration of who the child is cared for so that he or she obtains the right to live, grow, develop and participate appropriately in accordance with human dignity, as well as receive protection from violence and discrimination, as regulated in provisions of Article 4 of Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014.

The Panel of Judges also referred to the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 267 K/AG/2006 dated 28 February 2007, the legal principle of which reads: "That child custody is assigned to the Defendant as his biological father because the child's welfare will be more guaranteed if he is raised by his biological father," and also Number 110 K/AG/2007 dated 13 November 2007 whose legal principle reads: "That the main consideration in matters of hadhanah (child

care) is the benefit and interests of the child and not merely who is normatively most entitled. Even if the child is not yet 12 years old, and so far it has been proven that the child has lived quietly and peacefully with his father, then for the benefit of the child his hadhanah rights are handed over to his father." And in accordance with the legal formulation of religious chambers, point 4 (four) as stated in the Supreme Court Circular Letter Number 1 of 2017, if the holder of the hadhanah right that has been determined does not give access to parents who do not hold the hadhanah right to meet and express their love for the child, then can be used as a reason to file a lawsuit for the revocation of the hadhanah right.

The panel of judges gave a decision on custody of the second child to the biological mother. Meanwhile, the father is obliged to provide support for the second child who is being cared for by the mother. Because the child's needs are influenced by the child's growth rate, according to the legal formulation of religious chambers, point 14 (fourteen) as stated in the Supreme Court Circular Number 3 of 2015, the provision for child support is followed by an addition of 10% of the stipulated amount excluding educational costs and health. And also, the plaintiff and defendant's second child has been determined to be in the plaintiff's care, so the maintenance payment can be delivered to the plaintiff as his biological mother. This is in accordance with Article 156 letter d of the Compilation of Islamic Law which states "All costs of the child's hadhanah and child support are the responsibility of the father according to his ability, at least until the child is an adult who can take care of himself (21 years)."

Law Number 1 of 1974 concerning Marriage Article 41 letter b which states "The father is responsible for all maintenance and education costs required by the child, if the father is in fact unable to fulfill these obligations, the court can determine that the mother also bears the costs the."

The custody of the child with the initials AB, born in Bantul on 25 April 2016 is under the hadhanah of the Petitioner, and the child with the initials ALA, born in Bantul on 10 March 2018 is under the hadhanah of the Respondent, with the obligation for the Petitioner and Respondent to provide access to the parties. who does not have custody of the child to meet the child. Therefore, the author has a different opinion regarding the separation of child custody rights after divorce for the first child who is cared for by the father and the second child who is cared for by the mother. This means that if children are separated from each other, it will affect the relationship between brothers and sisters, thereby eliminating mutual support behavior, eliminating comfort and protection carried out by older siblings towards their younger siblings. The relationship between brothers and sisters is very important because it can play a role in helping social and emotional development. Relationships between siblings are interactions both in the form of physical and verbal or non-verbal communication, where interactions include knowledge, attitudes, beliefs and feelings towards each other from time to time starting from when a child first becomes aware of the presence of his sibling or younger sibling.

Having older brothers and sisters is seen as someone who can be invited to play, debate and negotiate. This is different from parents who have a role as a source of guidance or instructor. Siblings also act as reinforcers of advice given by parents. An older sibling is someone who provides a clearer, more real and positive picture regarding future life or an example that their younger sibling can follow. The relationship that exists between brothers and sisters is full of good or positive behavior. If a brother and sister have a very close relationship, they will also have quite high empathy. Even though the relationship between brothers and sisters is not always positive, it is not uncommon for brothers and sisters to disagree with each other because

competition, jealousy and envy are prone to occurring. This can disrupt relationships between siblings which can disrupt a person's development. If brothers and sisters live separately, their relationship may not be close and this can give rise to feelings of jealousy. Brothers and sisters become estranged and feel uncomfortable with their biological parents, which makes children unable to share stories when they really need help in dealing with the life problems they are experiencing.

Displays research data.

4 CONCLUSION

Based on the analysis that has been carried out, it can be concluded that the judge's considerations in Decision Number 150/Pdt.G/2021/PA.Btl awarded custody of the first child who was 5 years old to the father, not to the mother, because the mother was harsh towards her first child. Children at toddler age are very active and creative so both parents need more patience in educating them, and now the child lives with his biological father, so psychologically he has more closeness to his father. Apart from that, the judge also referred to the Supreme Court Jurisprudence, Number 267 K/AG/2006 dated 28 February 2007, the legal principle of which reads: "That the child's custody rights are assigned to the Defendant as his biological father because the child's welfare will be more guaranteed if he is raised by his biological father," and also Number 110 K/AG/2007 dated 13 November 2007 whose legal principle reads: "That the main consideration in matters of hadhanah (child care) is the benefit and interests of the child and not merely who is normatively most entitled. In this way, the judge did not follow the provisions of Article 105 letter (a) of the Compilation of Islamic Law that the care of children who are not mumayyiz or under 12 years old is the right of the mother.

5 BIBLIOGRAPHY

Book

Anshori, Abdul Ghofur, 2011, *Hukum Perkawinan Islam : Perspektif Fikih dan Hukum Positif*, Yogyakarta, UII Press.

Basyir, Ahmad Azhar, (1999). *Hukum Perkawinan Islam*. Yogyakarta: UII Press.

Cholifah, Nur dan Bambang Ali Kusumo, "Hak Nafkah Anak Akibat Perceraian", *Wacana Hukum*, Vol 9, No. 2 (2011).

Dewata, Mukti Fajar Nur dan Yulianto Achmad. (2015). *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar.

Fakhrurrazi, dan Istianah Noufa, (2017) "Hak Asuh Anak : Suatu Analisa Terhadap Putusan Mahkamah Syar'iyah Langsa Tentang Pengalihan Hak Asuh Anak", *Al-Qadha : Jurnal Hukum Islam dan Perundang-undangan*, Vol. 4, No. 1.

Ginawati, Dina, (2017). *Penggunaan Model Problem Based Learning Untuk Meningkatkan Keaktifan dan Hasil Belajar Siswa Pada Subtema Pemanfaatan Kekayaan Alam di Indonesia (Skripsi)*. Universitas Pasundan, Bandung, Indonesia.

Indriati, Noer, Suyadi, Khrihnoe Kartika, Sanyoto, dan Wismaningsih, "Perlindungan dan Penemuan Hak Anak (Studi Tentang Orangtua Sebagai Buruh Migran di Kabupaten Banyumas)", *Jurnal Mimbar Hukum*, Vol. 29, No. 3 (2017).

Rachmasari, Finy, 2015, "Hubungan Antar Saudara Pada Remaja Yang Tinggal Terpisah Dengan Saudara Kandung (Studi Pada Keluarga Bercerai)", (Skripsi Fakultas Psikologi, Universitas Airlangga).

Syaifuddin, Muhammad, et al, 2014, *Hukum Perceraian*, Jakarta, Sinar Pustaka.

Subeki, 2005, *Ringkasan Tentang Hukum Keluarga dan Hukum Waris*, Jakarta, PT. Intermasa, 2005.

Suhaila, Zulkifli, (2019) “Putusnya Perkawinan Akibat Suami Menikah Tanpa Izin Dari Istri”, *Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, Vol. 18, No.

Regulation

Law Number 1 of 1974 concerning Marriage.

Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.

Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.

Presidential Instruction Number 1 of 1991 Concerning the Compilation of Islamic Law.

Bantul Religious Court Decision 150/Pdt.G/2021/PA.Btl

Website

Pengadilan Agama Bantul. Prosedur Pengajuan Perkara. Diambil 16 Januari 2022, dari <http://www.pa-bantul.go.id/home/artikel/1488251940>