

Judicial Considerations on Children's Rights Fulfillment in Divorce Rulings: A Study at Makassar Class 1A Religious Court

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Abstract: The increasing divorce rate in Makassar City has a significant impact on children's psychological well-being and educational rights. This study aims to analyse the considerations of judges at the Makassar Class 1A Religious Court in deciding divorce cases related to the fulfilment of children's rights, reviewed from the perspective of *Maqasid al-Syari'ah*. This study uses a qualitative method with a field study design, in which data is obtained through analysis of verdicts and interviews with judges. The results show that the judges' considerations focus on the primary interests (*maslahat primer*) of the child, including protection of life (*hifz al-nafs*) and intellect (*hifz al-'aql*). Judges apply progressive policies such as setting annual increases in alimony (e.g., 10%) to anticipate inflation, as well as prioritising custody rights based on the moral and educational guarantees of the parents rather than simply age limits. However, the effectiveness of these decisions is hampered by Indonesian Civil Procedure Law, which lacks an automatic monitoring mechanism, resulting in many alimony decisions becoming non-executable paper judgments. This study concludes that there is a need for procedural law reform that adopts the principle of effective enforcement to guarantee the constitutional rights of children.

Keywords: Judicial Considerations, Children's Rights, *Maqasid al-Syari'ah*, Makassar Religious Court, Child Support Execution.

Abstrak: Meningkatnya angka perceraian di Kota Makassar berdampak signifikan terhadap kesejahteraan psikologis dan hak pendidikan anak. Penelitian ini bertujuan untuk menganalisis pertimbangan hakim Pengadilan Agama Makassar



Kelas 1A dalam memutus perkara perceraian terkait pemenuhan hak anak, ditinjau dari perspektif *Maqasid al-Syari'ah*. Penelitian ini menggunakan metode kualitatif dengan desain studi lapangan, di mana data diperoleh melalui analisis putusan dan wawancara dengan para hakim. Hasil penelitian menunjukkan bahwa pertimbangan hakim berfokus pada kemaslahatan utama (*maslahat primer*) anak, mencakup perlindungan jiwa (*hifz al-nafs*) dan akal (*hifz al-'aql*). Hakim menerapkan kebijakan progresif seperti menetapkan kenaikan nafkah tahunan (misalnya 10%) untuk mengantisipasi inflasi, serta memprioritaskan hak asuh berdasarkan jaminan moral dan pendidikan orang tua dibanding sekadar aturan batas usia. Namun, efektivitas putusan ini terkendala oleh Hukum Acara Perdata Indonesia yang tidak memiliki mekanisme pengawasan otomatis (*monitoring mechanism*), menyebabkan banyak putusan nafkah menjadi *non-executable paper judgment* (putusan di atas kertas yang tidak terlaksana). Penelitian ini menyimpulkan perlunya reformasi hukum acara yang mengadopsi prinsip eksekusi paksa yang efektif untuk menjamin hak konstitusional anak.

Kata Kunci: Pertimbangan Hakim, Hak Anak, *Maqasid al-Syari'ah*, Pengadilan Agama Makassar, Eksekusi Nafkah.

A. Introduction

Divorce is a complex life event that often has a profound impact on various aspects of family life, including children's education.¹ In fact, the family is the first pillar of education for children. When a child is first born, the family is their first place of learning. This place plays an important role in shaping the child's character in terms of noble values, good and bad manners, what is permissible and what is not, and much more. Children who are raised in broken homes will not grow and develop psychologically in a healthy manner. Most of these children, due to a lack of affection from their parents, tend

¹ Nanang Suprianto, Syukri Syukri, and Erma Suriyani, "Navigating Challenges: How Divorce Affects the Quality of Children's Education," *Jurnal Ilmiah Profesi Pendidikan* 9, no. 2 (2024): 1270–76.

to lack confidence, have difficulty socialising, and are unable to accept advice from others.² In Indonesia, the rising divorce rate among parents has caused significant problems for children, particularly in psychological terms.³

One of the things that causes the greatest fear in a child is separation from their parents. When divorce occurs, children are the first victims of their parents' divorce. Divorce can cause emotional turmoil for the whole family and also affect the child's psychological well-being. Children whose parents have divorced are more prone to depression and higher levels of anxiety. They are also more vulnerable to behavioural problems, delinquency and more conflicts with their peers after their parents' separation.⁴

This will also have an impact on young people. Divorce, which is seen as a failure within the family, is the second most stressful event after the death of a spouse. Divorce will have an impact on a child's development, especially teenagers, because when their father and mother decide to live apart, the parents will be better prepared than the children.⁵

² Siti Azza Nurnaila and Hidayatul Munawaroh, "Dampak Broken Home Terhadap Motivasi Belajar Siswa Di SDN Campurejo Tretep Temanggung (Studi Fenomenologi Pada Anak Broken Home)," *Annaliyah: Jurnal Pendidikan Guru Madrasah Ibtidaiyah* 7, no. 1 (2024): 11–19.

³ Afrida Sasya Novitasari and Khodijah, "DAMPAK PERCERAIAN ORANG TUA TERHADAP KESEHATAN MENTAL ANAK," *JURNAL PENDIDIKAN KREATIVITAS PEMBELAJARAN*, 2025.

⁴ Riaka Ayu Lestari, Rara Insani, and Prima Handayani, "Pengaruh Perceraian Orang Tua Terhadap Perkembangan Emosional Anak," *Jurnal Ilmiah Dan Karya Mahasiswa* 2, no. 1 (2024): 11–14.

⁵ Ade Irma Suryani et al., "Dampak Perceraian Orang Tua Terhadap Anak (Anak Broken Home)," *AMI: Jurnal Pendidikan Dan Riset* 2, no. 1 (2024): 19–25.

The impact is not uniform, but rather depends heavily on a number of factors such as the age of the child at the time of divorce, the quality of the relationship with the parents, how the parents explain the divorce, and social support from the surrounding environment. Improper handling will exacerbate the child's psychological condition and potentially hinder their optimal growth and development.⁶

The immediate impact of divorce can cause children to experience stress, trauma, feelings of loneliness, withdrawal, and difficulty concentrating on their studies. In addition, children from divorced families tend to have lower academic achievement and difficulty in building social relationships. In conclusion, parental divorce has a significant impact on children's mental health, which can affect their emotional and social development in the future.⁷

Statistical data on divorce cases in the Religious Courts over the past three years.⁸ This shows that in 2021, there were 515,222 divorces, then a decrease in 2022 to 284,374, but in 2023 there was an increase again with 483,328 divorce cases. With the increase in divorce rates, the number of children affected by divorce also increased, so that the higher the divorce rate among parents, the higher the number of children affected by their parents' divorce.

⁶ Aisyah Febianti et al., "Dampak Dan Pengaruh Perceraian Terhadap Perkembangan Psikologis Anak," *Jurnal Pendidikan Agama Islam Al-Amin* 2, no. 1 (2025): 111–23.

⁷ Aisha Trenggono, Yani Achdiani, and Gina Nastia, "The Effect of Parental Divorce on Children's Mental Health," *THRIVE Health Science Journal* 2, no. 1 (2025): 1–5.

⁸ Pusat Strategi Kebijakan Hukum dan Peradilan Mahkamah Agung RI, disampaikan pada Seminar Nasional Fakultas Syariah dan Hukum UIN Alauddin Makassar, pada tanggal 11 September 2024 di hotel UIN Alauddin Makassar.

Table 1: Divorce Data for Makassar City

No.	Year	Divorce Suit	Divorce	Amount
1	2023	366.733	116.595	483.328
2	2022	213.566	70.808	284.374
3	2021	385.525	129.697	515.222
Amount		965.824	317.100	1.282.924

Source: Centre for Legal Policy and Judicial Strategy, Supreme Court of the Republic of Indonesia

Makassar, as the largest city in Eastern Indonesia, has experienced rapid development in various sectors, including education and technology. However, along with this development, there has also been an increase in divorce cases. Based on research conducted by Dewi Idriani on the impact of parental divorce on children's motivation to learn, it was found that parental divorce causes low motivation to learn in children due to a lack of attention, affection, encouragement and motivation from their parents.⁹ Divorce rates in Makassar rose sharply throughout 2024.¹⁰

Divorce not only affects children's emotional well-being, but also has a significant impact on their education. When family structures are disrupted, the emotional, social and financial support that parents usually provide is also weakened, causing children to

⁹Dewi Idriani, dkk., Dampak Perceraian Orang Tua terhadap Motivasi Belajar Anak, *Jurnal Pendidikan Sosial Keberagaman*, ISSN 2355-4622 Vol. 5, No. 1, Oktober-Maret 2018, hh. 65 – 79.

¹⁰ “Tren Perceraian Di Makassar Meningkat Tajam Sepanjang 2024, Didominasi Cerai Gugat Oleh Perempuan - Rakyat Sulsel,” n.d.

experience a decline in motivation to learn, concentration and academic achievement.¹¹

Not only does it affect behaviour, but this problem also impacts a child's academic performance. Loss of motivation to learn is the result of a lack of parental attention, where children will neglect their academic life due to the absence of parents who supervise and accompany them during their education.¹² Divorce has a negative impact on children's rights and protection, especially in the context of education. Children experience difficulties in reaching their academic potential, which is disrupted by unstable emotional and psychological conditions. Divorce has a negative impact on children's motivation to learn, academic achievement, and their right to a proper education.¹³

Based on these issues, in this case, the court, as the spearhead of justice represented by the judge's decision, becomes the determinant of whether or not rights are fulfilled properly. This is an effort to mitigate or restore the impact of divorce on children. Religious court judges are part of the discussion in this study, given the majority Muslim population in Makassar City. Judges in the Religious Court

¹¹ Citra Qur'ani Gunawan, Ach Faisol, and Abdul Wafi, "PENGARUH PERCERAIAN ORANG TUA TERHADAP PERILAKU SOSIAL DAN PENDIDIKAN ANAK (STUDI KASUS DI KECAMATAN PONDOK AREN KOTA TANGERANG SELATAN)," *Jurnal Hikmatina* 7, no. 1 (2025): 300–315.

¹² Mei Lantika Trianingsih, "Dampak Perceraian Orang Tua Terhadap Pola Asuh Serta Motivasi Belajar Anak Di SD Negeri Sidomulyo 01, Kec. Selorejo, Kab. Blitar," *Lentera Ilmu* 1, no. 1 (2024): 15–27.

¹³ Sukniasih Sukniasih, Eko Handoyo, and Edi Waluyo, "Dampak Perceraian Terhadap Hak Dan Perlindungan Anak Dalam Perkembangan Pendidikan Di Kota Cirebon," *Action Research Journal Indonesia (ARJI)* 7, no. 2 (2025): 785–95.

can decide divorce cases by stipulating clearly and explicitly that fathers have the obligation and responsibility to fulfil the rights of children after divorce.¹⁴

Therefore, considerations of the Judge of the Makassar Class 1A Religious Court in a Divorce Decision Related to the Fulfillment of Children's Rights based on *maqasid al-Syariah* (primary interests) has become an option that brings together the highest source of law, namely Pancasila, with a vital element in Islamic law, namely *maqasid al-Syariah*. With the percentage of the majority of Muslims in Makassar City, the aspect of Islamic law is considered as part of the Living Law which is very closely related to the percentage of Muslims who are the majority. So *Maqasid al-Syari'ah* was chosen as a perspective, because of the role of *maqasid al-Syari'ah* in applying Islamic law to the appropriate legal object.¹⁵ *Maslahat* as the substance of *Maqasid al-Syari'ah* can be divided according to its review. When viewed from the aspect of its influence on human life.¹⁶ When viewed from the aspect of their influence on human life, *maslahat* can be divided into three levels: primary, secondary, and tertiary.¹⁷ Primary interests include five matters, namely protecting

¹⁴ Ahmad Haris, Edy Lisdiyono, and Setiyowati, "The Reconstruction of Religious Court Decision Execution on the Fulfillment of Children'S Rights Post-Divorce in Indonesia," *Revista de Gestao Social e Ambiental* 18, no. 7 (2024): 1–26, <https://doi.org/10.24857/rgsa.v18n7-035>.

¹⁵ Abd Rauf Muhammad Amin, *Esai-Esai Maqasid Al-Syariah* (Depok: Rajawali Pers, 2022).

¹⁶ Ghofar Shidiq, "Teori Maqashid Al-Syari'ah Dalam Hukum Islam," *Majalah Ilmiah Sultan Agung*, 2009.

¹⁷ Shidiq.

religion, life, offspring, property, and intellect.¹⁸ Therefore, as a priority, *maslahat primer* was used as the perspective in this study.

Based on this, researchers consider it necessary to conduct further research in a study entitled “Considerations of the Judge of the Makassar Class 1A Religious Court in a Divorce Decision Related to the Fulfillment of Children's Rights”. The novelty of this research can be seen through the literature review, namely the results of previous relevant studies. Among the studies relevant to Considerations of the Judge of the Makassar Class 1A Religious Court in a Divorce Decision Related to the Fulfillment of Children's Rights. Nanang Suprianto et al. highlight navigating challenges: how divorce affects the quality of children’s education.¹⁹ Siti Azza Nurnaila and Hidayatul Munawaro focuses on highlighting The impact of broken homes on student motivation at SDN Campurejo Tretep Temanggung through a phenomenological study of children from broken homes.²⁰ Meanwhile, Afrida Sasya Novitasari and Khodijah focus on highlighting the impact of parental divorce on children's mental health.²¹ Riaka Ayu Lestari et al. discuss the impact

¹⁸ Muhaini, *Pengantar Studi Islam* (Banda Aceh: Yayasan Pena, 2013); Agung Kurniawan and Hamsah Hudafi, “Konsep Maqashid Syariah Imam Asy-Syatibi Dalam Kitab Al-Muwafaqat,” *Al-Mabsut: Jurnal Studi Islam Dan Sosial* 15, no. 1 (2021): 29–38.

¹⁹ Suprianto, Syukri, and Suriyani, “Navigating Challenges: How Divorce Affects the Quality of Children’s Education.”

²⁰ Nurnaila and Munawaroh, “Dampak Broken Home Terhadap Motivasi Belajar Siswa Di SDN Campurejo Tretep Temanggung (Studi Fenomenologi Pada Anak Broken Home).”

²¹ Novitasari and Khodijah, “DAMPAK PERCERAIAN ORANG TUA TERHADAP KESEHATAN MENTAL ANAK.”

of parental divorce on children's emotional development.²² Aisyah Febianti et al. discuss the impact and influence of divorce on children's psychological development.²³ Aisha Trenggono et al. highlighting the effect of parental divorce on children's mental health.²⁴ Andy Wasono et al. discuss systematic literature review: the impact of divorce on children's mental health.²⁵ Langyi Lin discuss the effect of parental divorce on children's mental health in contemporary China.²⁶ Desi Ramadani et al., discuss the analysis of the impact of parental divorce on the psychological development and learning outcomes of students at the Al-Amanah Baubau modern Islamic boarding school.²⁷ Ade S Anhar discussed the impact of parental divorce on the emotional development and learning interest of sixth-grade students at SDN 61 Karara in Bima City.²⁸ Nur Rahmadhani Sholehah discusses the developmental

²² Lestari, Insani, and Handayani, "Pengaruh Perceraian Orang Tua Terhadap Perkembangan Emosional Anak."

²³ Febianti et al., "Dampak Dan Pengaruh Perceraian Terhadap Perkembangan Psikologis Anak."

²⁴ Trenggono, Achdiani, and Nastia, "The Effect of Parental Divorce on Children's Mental Health."

²⁵ Andy Wasono et al., "Systematic Literature Review: The Impact of Divorce on Children's Mental Health," *Anterior Jurnal* 24, no. 2 (2025): 27–40.

²⁶ L Lin, "The Effect of Parental Divorce on Children's Mental Health in Contemporary China," *IJSSH* 15, no. 1 (2025): 1–6.

²⁷ DESI RAMADANI et al., "ANALISIS DAMPAK PERCERAIAN ORANGTUA TERHADAP PERKEMBANGAN PSIKOLOGIS DAN HASIL BELAJAR PAI PADA SANTRI PONDOK MODERN AL-AMANAH BAUBAU," *PAEDAGOGY: Jurnal Ilmu Pendidikan Dan Psikologi* 4, no. 4 (2024): 319–30.

²⁸ Ade S Anhar, "DAMPAK PERCERAIAN ORANGTUA TERHADAP PERKEMBANGAN EMOSIONAL DAN MINAT BELAJAR SISIWA

psychology of primary school children who are victims of parental divorce and its implications for learning motivation.²⁹ Citra Qur'ani Gunawan et al. discuss the impact of parental divorce on children's social behaviour and education with a case study in the Pondok Aren subdistrict of South Tangerang City.³⁰ Ahmad Haris et al. highlighting the reconstruction of religious court decision execution on the fulfilment of children's rights post-divorce in Indonesia.³¹ Sukniasih et al. highlighting the impact of divorce on children's rights and protection in educational development in the city of Cirebon.³² Sirajuddin Abror highlight the impact of parental divorce on children's motivation to learn.³³ Ade Irma Suryani et al. discuss

KELAS VI DI SDN 61 KARARA KOTA BIMA,” *Pendas: Jurnal Ilmiah Pendidikan Dasar* 10, no. 02 (2025): 222–31.

²⁹ Nur Rahmadhani Sholehah, “Psikologi Perkembangan Anak Sekolah Dasar Korban Perceraian Orang Tua Serta Implikasinya Terhadap Motivasi Belajar,” *Proper Journal* 1, no. 2 (2025): 29–50.

³⁰ Gunawan, Faisol, and Wafi, “PENGARUH PERCERAIAN ORANG TUA TERHADAP PERILAKU SOSIAL DAN PENDIDIKAN ANAK (STUDI KASUS DI KECAMATAN PONDOK AREN KOTA TANGERANG SELATAN).”

³¹ Haris, Lisdiyono, and Setiyowati, “The Reconstruction of Religious Court Decision Execution on the Fulfilment of Children’S Rights Post-Divorce in Indonesia.”

³² Sukniasih, Handoyo, and Waluyo, “Dampak Perceraian Terhadap Hak Dan Perlindungan Anak Dalam Perkembangan Pendidikan Di Kota Cirebon.”

³³ Sirojuddin Abror, “Dampak Pengaruh Perceraian Orang Tua Terhadap Motivasi Belajar Anak” 5, no. 2 (2025): 206–15.

the impact of parental divorce on children (children from broken homes).³⁴

Fundamental difference from the fiveteen previous studies is that this study specifically focuses on highlighting to Considerations of the Judge of the Makassar Class 1A Religious Court in a Divorce Decision Related to the Fulfillment of Children's Rights. Therefore, based on this new insight, the results of this study can contribute to regulations on mitigating and recovering the impact of parental divorce on children's through the fulfillment of children's rights in court decisions on divorce in Makassar City and Indonesia in general.

B. Method

This research is qualitative in nature, with a field research design. The focus of this research is to reveal the views and considerations of judges in determining divorce rulings in terms of fulfilling children's rights. This research was conducted at the Makassar Class 1A Religious Court as the object of research, and the legal decisions issued by the Makassar Class 1A Religious Court. The primary sources of this research are the judges' decisions and closed interviews with the judges to support the independence of the judges of the Makassar Class 1A Religious Court. Other supporting sources are jurisprudence, legislation documents, and other supporting scientific articles. All data results were processed, classified, and analysed in accordance with the direction of this research.

³⁴ Suryani et al., "Dampak Perceraian Orang Tua Terhadap Anak (Anak Broken Home)."

C. Judicial Considerations on Children's Rights Fulfillment in the Makassar Class 1A Religious Court

Religious court judges are the ones who directly handle divorce cases and have the authority to decide the fate of children whose parents are divorced.

The authority of judges in mediating domestic relationships has a significant influence when those relationships are shaken by problems. The capacity of judges in this case is not to interfere in the internal affairs of a family, but only to provide an assessment based on justice and welfare and to reject harm, regarding whether or not a relationship should be dissolved.³⁵

The Makassar Religious Court handles a large number of cases, making it difficult to meet with judges at the Makassar Religious Court due to their busy court schedules. Therefore, the researcher chose to conduct interviews on Fridays, as judges do not hold court on that day. Considering that all judges at the Makassar Religious Court handle cases with relatively similar numbers and types, the researcher selected four Religious Court judges as informants.

Based on the results of an interview with the first informant, a judge at the Makassar Religious Court, regarding the procedures for settling divorce cases involving children and those without children, it was stated that:

Procedurally, there is no differentiation in the examination of divorce cases between couples who have children and those who do not. The judge emphasised that the main focus in the examination of divorce cases is to evaluate the condition of the parties' household, the level of harmony, and the existence of grounds for divorce as stipulated in SEMA Number 3 of 2023.

³⁵ Endra Muhadi, *Aspek-Aspek Maqasid Syari'ah dalam Penetapan Alasan-Alasan Perceraian pada PP No. 9 Tahun 1975 dan Kompilasi Hukum Islam*, h. 26

Differentiation in handling only occurs when there is a hadhanah (child custody) claim accompanying the divorce claim.³⁶

The judge further explained hadhanah, which is

There is a conceptual misunderstanding in the implementation of hadhanah, where there is a tendency to interpret hadhanah as control over children rather than as child care. In fact, the term hadhanah etymologically derives from the word hadn, which means lap or care, emphasising the aspects of protection and care rather than ownership. The Compilation of Islamic Law (KHI) Article 156 letters a and c, which are referred to, state that the essence of hadhanah is to ensure the physical and spiritual safety of the child, not for the personal interests of the disputing parties.³⁷

The results of interviews with judges from the Religious Court, who were the second informants, identified several important aspects related to the handling of divorce cases involving children and their implications. The position of children in divorce cases based on the results of the interview analysis is that although procedurally the handling of divorce cases between couples who have children and those who do not is the same, the results of the interview reveal that children have a special position in the judge's considerations. This is in line with the principle of *maslahat* in Islamic law, which emphasises the importance of the welfare and interests of children. As stated by the informant:

Children have a special significance in their parents' divorce, because we must look ahead; there is no guarantee for these children. It should not be the case that when the parents'

³⁶ Hakim Informan Pertama, Hasil Wawancara dengan Hakim Pengadilan Agama Makassar di Ruang Hakim PA Makassar, tanggal 2 Mei 2025

³⁷ Hakim Informan Pertama, Hasil Wawancara dengan Hakim Pengadilan Agama Makassar di Ruang Hakim PA Makassar, tanggal 2 Mei 2025.

relationship ends, the relationship with their children also ends. It should not be like that.³⁸

The concept of welfare can also be identified by making the welfare of the child the primary consideration in deciding divorce cases involving children. This is reflected in the statement:

Our decision must truly consider whether the child's future can be guaranteed after their parents' divorce. So, solely for the benefit of the child, whatever the outcome, the point is how to ensure the child's welfare.³⁹

Efforts to maximise the welfare of children, as the most vulnerable party in divorce, can be realised through alimony and continued education. The findings of the interviews indicate that judges apply specific mechanisms in determining post-divorce alimony, with the main emphasis on the allocation of education and health costs.

Education and healthcare are regulated by law. We only decide on daily expenses, while school and healthcare costs are absolute and must be provided. Usually, the judge decides on school and healthcare costs outside of the existing expenses. For example, they may impose child support costs plus 10 per cent, as is usually the case.⁴⁰

Furthermore, regarding the mechanism for monitoring the implementation of child support decisions after divorce, the interviews revealed that there is no physical monitoring of the

³⁸ MT, Hakim Pengadilan Agama Makassar, Wawancara di Ruang Hakim Kantor Pengadilan Agama Makassar, 2 Mei 2025.

³⁹ MT, Hakim Pengadilan Agama Makassar, Wawancara di Ruang Hakim Kantor Pengadilan Agama Makassar, 2 Mei 2025.

⁴⁰ MT, Hakim Pengadilan Agama Makassar, Wawancara di Ruang Hakim Kantor Pengadilan Agama Makassar, 2 Mei 2025.

implementation of child support decisions, but there is a legal mechanism that allows mothers to file a lawsuit if fathers do not fulfil their obligations.

As long as the costs are not covered, for example, if one million rupiah per month is charged and the husband does not provide it, the wife can file a lawsuit. So there is no physical supervision, but the decision provides supervision, even though it opens the way for a lawsuit in court, based on that decision.⁴¹

Therefore, it does not fully guarantee the fulfilment of the child's needs. When judges emphasise the welfare of the child in divorce rulings, they are also indirectly seeking to protect the child's intellectual development. Even though the parents' marriage has ended, their responsibility for their child's education continues.

An interview with the third judge revealed the dilemma faced by judges in deciding divorce cases involving children.

That is a very difficult decision to make, but the judge has no choice because he himself requested it. If we do not decide, we also have rules, but if we do decide, we feel sorry for the impact it will have on his child.⁴²

This statement reveals that judges face a conflict between their legal obligations under the law and psychological considerations regarding the impact on children. On the one hand, judges are bound by the provisions of the law governing divorce, including the Compilation of Islamic Law (KHI). On the other hand, judges face the reality of the psychological impact of divorce on children.

⁴¹ MT, Hakim Pengadilan Agama Makassar, Wawancara di Ruang Hakim Kantor Pengadilan Agama Makassar, 2 Mei 2025.

⁴² MA, Hakim Pengadilan Agama Makassar, Wawancara di Ruang Hakim Kantor Pengadilan Agama Makassar, 2 Mei 2025.

The issue of custody after divorce is also discussed, as the main criterion in determining child custody is the welfare of the child: ‘for the benefit of the child, not the parents’. In the context of divorce, children are the most vulnerable party, so their welfare is used as the main parameter in determining custody. Age of the child: ‘the rule that children under 12 years of age are given to the mother’. However, the judge revealed:

However, it was also given to the father due to considerations regarding education and morals. If the mother is depraved, smokes, and goes to karaoke, then I feel sad for the child⁴³.

This statement indicates that the judge merely applied the provisions of fiqh textually, but considered the specific context of the case using a method of consideration of goodness that allows for exceptions to general provisions for the sake of greater benefit, in this case the education and moral development of the child. Ability to guarantee education: ‘the child was given to his father so that he could continue his education’..

The judge further revealed that ‘there were children who asked to live with their father so that they could continue their education.’ This statement indicates that in some cases, children themselves prioritise their educational interests when choosing a guardian. This shows children's awareness of the implications of divorce on their motivation and learning opportunities, which are important considerations in choosing a guardian.

These criteria indicate the application of the principle of hadhanah, which prioritises the interests of the child, with education being one of the important considerations. This indicates that the

⁴³ MA, Hakim Pengadilan Agama Makassar, Wawancara di Ruang Hakim Kantor Pengadilan Agama Makassar, 2 Mei 2025.

child's motivation to learn is a factor taken into account in child custody decisions.

Based on the results of interviews regarding the arrangement of educational support after the parents' divorce, the judge stated:

By observing the work of parents, if each of them has a job, then each of them provides for their children because it is obligatory to provide for them, for the sake of their welfare.⁴⁴

The judge further stated, 'But from the point of view of benefit, the child was given to his father so that he could continue his education.'⁴⁵ This statement indicates that in some cases, judges consider economic capacity in determining custody rights to ensure the continuity of the child's education. This demonstrates the integration of economic and educational considerations in custody decisions.

This approach emphasises that divorce does not eliminate parental obligations towards their children's education. This approach reflects the implementation of the principle that harm must be eliminated by minimising the negative impact of divorce on children's education through the provision of proportionate educational support.

After considering all of the judges' statements from the perspective of fulfilling the rights of the child, the following table provides a summary:

⁴⁴ MA, Hakim Pengadilan Agama Makassar, Wawancara di Ruang Hakim Kantor Pengadilan Agama Makassar, 2 Mei 2025.

⁴⁵ MA, Hakim Pengadilan Agama Makassar, Wawancara di Ruang Hakim Kantor Pengadilan Agama Makassar, 2 Mei 2025.

Table 2: The judge's considerations

Judge Code	Main Focus of Consideration	Legal Approach/Mechanism
Judge 1	Financial Capacity & Proportionality	Assess the father's ability to pay (<i>La yukallifullahu nafsan illa wus'aba</i>). Maintenance is calculated based on salary and dependents.
Judge 2	Future Security & Inflation	Legal innovation by increasing the percentage of alimony (10% per annum) to anticipate inflation in education/health costs.
Judge 3	Parental Education & Morality	Consider the <i>mumayyiz</i> (child's choice) and the morality of the custodial parent (if the mother behaves badly, custody should go to the father for the sake of the child's education).
Judge 4	Prevention & Family Integrity	Prioritise mediation and reconciliation. Recommend postponing divorce until the child

		reaches adulthood (20 years old) to prevent harm.
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Source: Compiled by the author based on interviews with judges

D. Analysis of Judicial Considerations Used in Fulfilling Children's Rights Following Divorce

The considerations of the Makassar Religious Court judge in deciding divorce cases reflect progressive efforts to actualise the mandate of Article 41 of Law Number 1 of 1974 concerning Marriage and Article 156 of the Compilation of Islamic Law (KHI), which emphasises that the dissolution of marriage does not eliminate the fundamental obligations of parents towards the maintenance of their children. The judge's tendency to make divorce difficult and even suggest postponing it until the child reaches adulthood is not categorised as an obstruction of civil rights, but rather a concrete implementation of the Principle of Making Divorce Difficult in order to guarantee the principle of providing the best for the child as outlined in Law No. 35 of 2014 on Child Protection. At the pre-judgment stage, this commitment is reinforced through the optimisation of mediation procedures in accordance with PERMA No. 1 of 2016, whereby judges act not only as adjudicators but also as moral mediators who seek to preserve the integrity of the family structure as the last line of defence for the psychological well-being and future of children.

However, the idealism of this legal consideration faces serious challenges in terms of execution due to the limitations of Civil Procedure Law (HIR/RBg), which adheres to the principle of passive judges in the implementation of verdicts. Although the judge

has determined the amount of education and health support in accordance with the father's ability, the current positive legal system in Indonesia does not yet provide automatic monitoring instruments or executive institutions authorised to enforce these obligations *ex officio* without a new lawsuit from the aggrieved party. The absence of this control mechanism results in decisions that should guarantee children's rights often ending up as non-executable paper judgments, where the burden of proof and collection falls back on the mother, who often has a weak bargaining position. This situation demonstrates a disconnect between the legal protection objectives of the KHI and the reality of law enforcement in the field, which ultimately violates the constitutional rights of children to a decent livelihood after their parents' divorce.

From the perspective of the Compilation of Islamic Law (KHI), the fulfilment of children's rights after divorce cannot be reduced to merely determining the formal holder of *hadhanah* rights, but must touch on the substance of child welfare as mandated in Article 156 letter (d) of the KHI, which imposes maintenance costs on the father. An analysis of the judge's considerations shows that although the principle of The Best Interest of the Child has become the main reference in line with Article 2 of Law Number 35 of 2014 concerning Amendments to the Child Protection Law, its application in determining the nominal amount of alimony is often still assumptive and not fully based on an audit of the father's real financial capacity or the actual needs of the child. The gap between the alimony awarded and the reality of increasing educational and health needs indicates that the legal protection provided is still procedural in nature has not yet reached a level of substantive justice that guarantees the child's livelihood in accordance with the

standards of the Convention on the Rights of the Child (CRC), which was ratified through Presidential Decree No. 36 of 1990, whereby the state (through court decisions) is obliged to guarantee the child's livelihood and development to the fullest extent possible.

On the other hand, the effectiveness of fulfilling children's rights faces structural obstacles due to the limitations of civil procedure law in Indonesia, which does not yet support automatic alimony enforcement mechanisms. Although SEMA Number 3 of 2018 emphasises the protection of women's and children's rights after divorce, the absence of a monitoring mechanism in civil procedure law (HIR/RBg) makes child support decisions vulnerable to becoming non-executable paper judgments. The passive position of judges in the enforcement stage forces mothers to bear a double burden: caring for their children while struggling through complicated and costly enforcement bureaucracy if their ex-husbands default. This situation confirms that without procedural law reforms that adopt the principle of effective *dwangsom* (coercive fines) or *ex officio* salary deduction mechanisms as implemented in several modern Muslim countries, the mandate of Article 41 of Law Number 1 of 1974 concerning parental obligations will continue to experience implementation dysfunction, which ultimately violates the constitutional rights of children.

From the perspective of the KHI and the Child Protection Law, the fulfilment of children's rights must touch on the substance of real welfare. The attitude of the Makassar Religious Court judges who prioritise the prevention of divorce actually has a strong sociological basis. This is reinforced by Trenggono's study, which proves that the impact of divorce on children's mental health is

often permanent and traumatic.⁴⁶ as well as Suprianto's findings confirming a decline in the quality of children's education after their parents' separation.⁴⁷ Therefore, the judge's consideration to protect Hifz al-Nafs and Hifz al-'Aql of the child by postponing the divorce is the right step.

However, this good judicial intention is undermined by the weak enforcement system in civil procedure law. Without a strict alimony monitoring mechanism, children in Makassar are at high risk of economic neglect. As Suryani pointed out, the vulnerability of children from broken homes will double if financial support is cut off without state intervention to compel fathers to fulfil their obligations.⁴⁸

E. Conclusion

This study concludes that the considerations of the judges of the Makassar Class 1A Religious Court in fulfilling children's rights are based on the principle of Maqasid al-Syari'ah—specifically the protection of life (hifz al-nafs) and intellect (hifz al-'aql)—which are realised through progressive ijtihad in the form of a 10% annual increase in alimony to anticipate inflation and flexibility in determining custody rights that prioritises the moral and educational guarantees of parents over simply the age of the child. However, even though judges have attempted to apply the principle of The

⁴⁶ Trenggono, Achdiani, and Nastia, “The Effect of Parental Divorce on Children’s Mental Health.”

⁴⁷ Suprianto, Syukri, and Suriyani, “Navigating Challenges: How Divorce Affects the Quality of Children’s Education.”

⁴⁸ Suryani et al., “Dampak Perceraian Orang Tua Terhadap Anak (Anak Broken Home).”

Best Interest of the Child, the effectiveness of fulfilling these rights in practice is still hampered by the limitations of the Civil Procedure Code (HIR/RBg), which does not provide an automatic monitoring mechanism, so that alimony decisions often end up as non-executable paper judgments due to the absence of effective instruments of enforcement. Therefore, procedural law reform is needed to adopt the principle of *dwangsom* or *ex-officio* enforcement to ensure that parental obligations are fulfilled in order to protect the constitutional rights of children

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