

Implementing the Concept of Co-Parenting in Divorce Cases: An Analysis Using the *Maslahah* Approach

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Abstract

This study aims to analyze the application of child rights protection in divorce decisions at the Cirebon Religious Court and explore ways to optimize this protection using the *maslahah* approach. Divorce significantly impacts the physical and mental development of children, often resulting in a weakened next generation due to the lack of fulfillment of children's rights post-divorce. The research employs a normative juridical method, incorporating statute, case, and conceptual analyses to provide a comprehensive understanding of the current legal landscape and its shortcomings. The findings reveal that while the inclusion of children's rights in divorce decisions is crucial, it remains optional rather than mandatory. This oversight leaves many children vulnerable, as their rights are not consistently safeguarded in the aftermath of their parents' separation. Currently, no regulation mandates the inclusion of children's rights in divorce decrees, limiting judges to act only on explicit petitions. This study highlights the effectiveness of the *Maslahah* approach in ensuring that children's rights are prioritized, recommending significant legal reforms to make the inclusion of these rights mandatory in divorce rulings. Such reforms would provide a robust legal foundation to safeguard children's human rights post-divorce, covering aspects such as education, health, and

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protection from parental conflict. By implementing these recommendations, we can enhance the well-being of children affected by divorce and ensure their rights are consistently protected.

Keywords: Child Rights Protection; co-parenting; divorce decision

Introduction

At the beginning of life, a child requires significant care to meet their physical, mental, and moral needs. This care is crucial for their development and is typically provided by parents or guardians responsible for ensuring the child's well-being. Meeting a child's needs extends beyond fulfilling basic rights; it includes nurturing their mental and moral growth. Ensuring children's rights is essential because neglecting these rights can have severe repercussions, including detrimental effects on their development and even loss of life. Therefore, children should be granted proper rights, such as education, care, and maintenance.¹ Children represent the future generation, and as the successors of the nation, they must receive adequate attention and legal protection from policymakers, legislators, and the judiciary. This protection should ensure the fulfillment of children's rights to live, grow, develop, and participate optimally in society, free from violence and discrimination. Such protection aims to foster a generation of Indonesian children with noble morals and well-being.²

Child maintenance, or *badanah*, is a fundamental obligation of parents that involves providing care, love, and responsibility. Effective *badanah* requires cooperation between both parents, which is possible as long as they remain united.³ This cooperative parenting ensures that children receive the attention and affection they need, creating a sense of home, peace, and comfort. However, not all marriages remain harmonious. Discord can arise from factors such as ineffective communication, jealousy, dissatisfaction with spousal roles, lack of trust, indifference towards each other's families, financial issues, and selfish attitudes. The stability of a marriage depends on both partners' commitment and intention. When a marriage lacks genuine love and dedication, it is prone to failure and often leads to divorce.

¹ Jihan Alfadia, Muhamad Abas, and Zarisnov Arafat, "Legal Protection Of Children After Divorce Divorce Related To Act Number 16 Of 2019 Amendment To Act Number 1 Of 1974 Concerning Marriage (Decision Study Number 1145/Pdt.g/2020/PA.Krw)," *Justisi: Jurnal Ilmu Hukum* 8, no. 2 (September 5, 2023): 132–44, <https://doi.org/10.36805/jjih.v8i2.5774>.

² Ahmad Zaenal Fanani, "Sengketa Hak Asuh Anak Dalam Hukum Keluarga Perspektif Keadilan Jender," *Muslim Heritage* 02, no. 01 (2017), <https://doi.org/10.21154/muslimheritage.v2i1.1050>.

³ Asman Qadir, "The Rights of Children Under Age Post Divorce Parents," *Journal of Shari'ah Law Research* 7, no. 2 (2022): 11.

The divorce rate in Indonesia has been increasing. According to the Central Statistics Agency, the number of divorces in Indonesia in 2022 was 516,334, a 15.31% increase from 2021.⁴ In the city of Medan, for example, it was reported that during the covid-19 pandemic there were 1,934 cases of divorce lawsuits. The dominant divorce lawsuit filed by the wife is on the grounds of economic factors where the husband no longer works due to Termination of Employment (PHK) so that the wife is not supported. Divorce cases reportedly increased by 70% from the previous year.⁵ Of the 100 random divorce decisions examined by researchers, only 11 included provisions for children's rights.⁶ The breakdown of marriages often results in the neglect of children's rights, with parents sometimes engaging in disputes over child custody, as seen in cases such as the Cirebon Religious Court Decisions Number 669/Pdt.G/2021/PA.CN and Number 66/Pdt.G/2022/PA.CN. However, child custody cases are relatively rare compared to divorce cases, indicating that many couples are indifferent to child maintenance issues post-divorce, focusing instead on obtaining a divorce certificate.⁷ This neglect is detrimental to children, and some parents may lack the means to file child maintenance cases.

Divorce becomes the last resort in breaking the bonds of the household because there is no way out. Divorce is one of the most painful and complex issues in the life of a married couple. That's because divorce brings massive physical and psychological impacts to both.⁸ Whatever the reason behind it, divorce is a sad thing, not only for husband and wife; divorce will also be disastrous for children, as divorce has a significant influence on the physical and mental development of children.⁹ When that happens, there is no longer any favor of affection for children from both parents, even though complete attention and affection from both parents is the main element in the growth and development of the child's soul.¹⁰ In the Islamic concept, divorce should be

⁴https://www.bps.go.id/indikator/indikator/view_data_pub/0000/api_pub/AWhSR0ViS3hxc1hWZIZEbExjNVpDUT0/Da_04/1, Diakses Pada Tanggal 20 Agustus 2023, n.d.

⁵ Ibnu Radwan Siddik Turnip, Pagar Pagar, and Dhiauddin Tanjung, "Family Resilience of Jama'ah Tabligh: Implementation Study of the Dimensions of Legality, Household Wholeness and Gender Partnerships," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 5, no. 2 (May 28, 2022): 39, <https://doi.org/10.30659/jua.v5i2.20544>.

⁶ Siddik, Pagar, and Tanjung.

⁷ Arief Syahrul Alam, Andy Usmina Wijaya, and Fifin Dwi Purwaningtyas, "Harmonization of Law to the Protection of Children's Right Caused by Divorce in Indonesia," *Journal of Law, Policy and Globalization* 93 (2020): 58–62, <https://doi.org/10.7176/jlpg/93-05>.

⁸ S Srinahyanti, "Pengaruh Perceraian Pada Anak Usia Dini," *Jurnal Keluarga Sehat Sejahtera*, 2018.

⁹ George J. Cohen et al., "Helping Children and Families Deal With Divorce and Separation," *Pediatrics* 138, no. 6 (December 2016), <https://doi.org/10.1542/peds.2016-3020>.

¹⁰ Y N E Sary, "Kesehatan Mental Emosional Korban Perceraian Pada Anak Usia Dini Di Panti Asuhan," *Jurnal Obsesi: Jurnal Pendidikan Anak Usia Dini*, 2022.

avoided as much as possible. Divorce is the lawful act that Allah hates most. Because the implications are robust and widespread, both for family life between father, mother, and son and for social life. Divorce has broken the very close bond of friendship between the family of the wife and husband.

In the realm of contemporary Islamic divorce decisions, a pivotal hypothesis is that mandating the inclusion of children's rights in divorce decrees significantly improves the enforcement of these rights post-divorce. This hypothesis underscores the necessity of integrating explicit legal provisions to ensure that children's rights to education, health, and overall well-being are protected following the dissolution of their parents' marriage. By contrast, the null hypothesis posits that such mandates do not lead to significant improvements in enforcing children's rights.¹¹

This study uniquely contributes to understanding child rights protection in divorce decisions within the Indonesian Islamic legal context, an area not extensively explored. Previous research, such as Aayesha Rafiq's study, examines child custody laws across various Muslim-majority regions, highlighting differences and developments in child custody practices.¹² However, Rafiq's work does not explicitly address the mandatory inclusion of children's rights in Indonesian divorce decrees. Similarly, Supriadi et al. analyze children's rights post-divorce in the Banda Aceh Sharia Court, revealing that judges often fail to include these rights in their decisions, contradicting human rights principles and Indonesian legislation.¹³

Research by UUM investigates legal protections for children in Indonesia, Malaysia, and Bangladesh, emphasizing judicial and legislative measures to safeguard children's rights in parental divorce cases. However, it does not analyze the normative juridical aspects specific to Indonesia's Islamic courts.¹⁴ The Padangsidempuan Religious Court study shows that many divorce petitions filed by wives do not include children's rights, and judges follow

¹¹Zulkarnain Lubis, “Paradigma Makna Perceraian’, <https://Badilag.Mahkamahagung.Go.Id/Artikel/Publikasi/Artikel/Paradigma-Makna-Perceraian-Oleh-Drs-Zulkarnain-Lubis-m-h-11-7>, (Diakses Pada 12 Februari 2023, Pukul 16.33).” n.d.

¹² Wahyu Abdul Jafar et al., “Philosophical Foundations and Human Rights in the Bajapuk Tradition: Bridging Local Wisdom and Islamic Law in Minangkabau Marriage Practices,” *De Jure: Jurnal Hukum Dan Syariah* 16, no. 1 (June 30, 2024): 212–33, <https://doi.org/10.18860/J-FSH.V16I1.27681>.

¹³ Maman Supriadi and Teuku Muttaqin Mansur, “Children’s Rights after Divorce Decision at Banda Aceh Sharia Court in Human Rights Perspective,” *International Journal of Law* 7, no. 5 (2021): 141–44.

¹⁴ Budi Prasetyo and Haitham A. Mohammed B., “The Legal Protection of Children’s Rights Due to Parental Divorce in Islamic Family Law in Predominantly Muslim Countries,” *Jurnal Akta* 10, no. 1 (2023): 61–75.

existing regulations without mandatory provisions for child protection.¹⁵ This research addresses these gaps by focusing on the Indonesian Islamic legal framework and advocating for legal reforms to mandate the inclusion of co-parenting and children's rights in divorce decrees. This approach aligns with global best practices and aims to establish a robust legal foundation to safeguard children's human rights, including their rights to education, health, and protection from parental conflict.

This study aims to provide solutions for protecting children's rights post-divorce by analyzing the implementation of co-parenting in divorce decisions at the Cirebon Religious Court using the *maslahah* approach. The research utilizes a normative juridical method, analyzing data from regulations, books, journals, and other literature. The statute approach examines marriage law, KHI, and related regulations. The case approach analyzes Cirebon Religious Court Decisions Number 669/Pdt.G/2021/PA.CN and Number 66/Pdt.G/2022/PA.CN, focusing on the peace agreements as the basis for judicial considerations. The conceptual approach explores legal definitions, concepts, and principles, including the *maslahah* concept, providing a comprehensive view of the issue by examining abstract concepts and their practical implementation in legal cases.

Discussion

Implementation of Co-Parenting in the Cirebon Religious Court

After divorce, the protection of children's rights is affirmed in Article 41 letter (a) of Law Number 1 of 1974. The article asserts that due to the termination of a marriage due to divorce, both father and mother retain the obligation to care for and nurture their children, solely taking into account the child's best interests. If there is a child custody dispute, the Court has the authority to make decisions.¹⁶ Child maintenance disputes submitted to Court are mostly caused by a fight between a married couple or between an ex-husband and his ex-wife, sometimes also caused by the fear of one partner if one day the child will become the scene of a common dispute after divorce so that one party takes the initiative to sue the Court, there are also due to demands for population administration matters such as making family cards, passport and so on. However, whatever the variety of hadanah issues raised to Court, the court will always be faced with the choice of claims/lawsuits about who will be appointed as the holder of child custody.

¹⁵ Ahmatnjar et al., "When Religious Judges Protect Children's Rights Case of Divorce in Padangsidempuan Religious Court," *Al-Ahwal* 15, no. 2 (2022): .223-240, <https://doi.org/10.14421/ahwal.2022.15204>.

¹⁶ H.M. Jati Muharrasyah, *Kontekstualisasi Hukum Perdata Islam Sinergitas Teks-Konteks* (Yogyakarta: Phoenix Publisher, 2018), h. 125.

In the context of divorce cases handled by the Cirebon Religious Court, the implementation of co-parenting principles has been increasingly emphasized to ensure the welfare of children. One notable case is the decision in the matter of Mochamad Aga Setiawan S.E. and Siti Rumsari S.Pd.I., documented under Decision Number 66/Pdt.G/2022/PA.CN. This case illustrates the court's dedication to resolving child custody issues through comprehensive co-parenting agreements. The court facilitated a mediation process that culminated in a peace agreement formalized in an Akta Perdamaian. This legally binding document ensures that both parents adhere to the principles of co-parenting, focusing on the child's best interests. Similarly, in Decision Number 669/Pdt.G/2021/PA.CN, a detailed co-parenting agreement was reached. The court emphasized the importance of both parents remaining involved in their child's life, mandating regular communication and shared responsibilities in the child's education, health, and overall well-being. These agreements reflect the court's commitment to fostering a collaborative approach to parenting post-divorce, ensuring that children benefit from the involvement of both parents.

These cases demonstrate that although hadanah disputes are often resolved through litigation, mediation plays a crucial role in court-based resolutions. Mediation is favored because it simplifies disputes and avoids the slow, expensive, and complex trial process. The flexibility of mediation allows parties to freely propose and negotiate peace plans, fostering initiatives that might not emerge in a rigid court trial system. The Supreme Court has promoted mediation to facilitate case resolution, beginning with Supreme Court Circular Number 1 of 2002 on empowering first-instance courts to implement peaceful institutions, followed by Supreme Court Regulation Number 2 of 2003 on mediation procedures. In response to the suboptimal results of initial mediation efforts, the Supreme Court issued Supreme Court Regulation Number 1 of 2008, which was further refined through Supreme Court Regulation Number 1 of 2016 to enhance the effectiveness of mediation in Court.¹⁷

In Decision Number 66/Pdt.G/2022/PA.CN, the agreement structured a detailed schedule for the child's custody. Alika Naila Zahra, the child in question, would spend the first two weeks of each month with her father and the subsequent two weeks with her mother. This alternating schedule was designed to provide stability and continuity in Alika's life, ensuring that she maintained strong bonds with both parents. The agreement also addressed scenarios such as school holidays and illness, stipulating that during holidays, Alika's time would be divided equally between her parents. If she fell ill, she would stay with the current custodial parent until recovery, minimizing

¹⁷ Aco; Sugiri Permana Nur, *Mediasi Di Pengadilan Dalam Dimensi Komunikasi Psikologi* (Surabaya: Pustaka Saga, 2022), h. 3-4.

disruption to her care and routine. In Decision Number 669/Pdt.G/2021/PA.CN, a similar approach was taken. The child's residence alternated weekly between the parents, ensuring that both had equal time and responsibility. This arrangement was crucial in providing a sense of normalcy and consistency for the child, which is essential for her psychological well-being. By structuring the custody schedule in this manner, the court aimed to mitigate the potential negative impacts of divorce on the child, promoting a stable and supportive environment.

The agreements in these cases also included specific roles and responsibilities for each parent. In Decision Number 66/Pdt.G/2022/PA.CN, the father was required to provide a monthly financial contribution towards the child's expenses while she was with the mother. Both parents were mandated to maintain open communication about the child's health and educational needs. This ensured that both parents were actively involved in important decisions affecting Alika's well-being, fostering a cooperative parenting environment. The agreement in Decision Number 669/Pdt.G/2021/PA.CN similarly mandated that both parents collaborate on significant decisions affecting their child's education and health. Financial responsibilities were clearly delineated, with the father providing a monthly allowance to support the child's needs while she was with the mother. Regular communication was required to ensure that the child's well-being was continuously monitored and any issues promptly addressed. This collaborative approach is essential in maintaining the child's stability and ensuring that both parents remain engaged in her upbringing.

These co-parenting agreements also emphasized the importance of positive communication and relationship between the parents. For instance, in Decision Number 66/Pdt.G/2022/PA.CN, the agreement included provisions to prevent either parent from making negative comments about the other in front of the child. This was aimed at protecting the child's emotional health and ensuring that she felt secure and loved by both parents. Such provisions are crucial in mitigating the emotional turmoil that children often experience during their parents' divorce. In Decision Number 669/Pdt.G/2021/PA.CN, the court reinforced the need for both parents to engage in regular updates and discussions about their child's progress and any concerns. The agreement encouraged parents to resolve any disputes amicably, prioritizing the child's best interests. By fostering a cooperative and respectful relationship, the court aimed to create a supportive environment for the child, helping her navigate the changes brought about by the divorce.

The logistical aspects of the co-parenting agreements were also carefully considered. In Decision Number 66/Pdt.G/2022/PA.CN, the agreement specified drop-off and pick-up times to ensure smooth transitions between households. The parent completing their custodial period was responsible for ensuring that Alika was safely handed over to the other parent, emphasizing the

importance of cooperation and communication in maintaining the child's routine and safety. Such logistical arrangements are vital in reducing stress for the child and ensuring a seamless transition between homes. Decision Number 669/Pdt.G/2021/PA.CN included similar logistical provisions. The agreement required that any significant decisions about the child's education or health be made jointly, reflecting the collaborative nature of co-parenting. This joint decision-making process ensured that both parents remained actively involved in their child's life, promoting a stable and supportive environment. By involving both parents in key decisions, the court aimed to ensure that the child received consistent care and support, regardless of the custodial arrangement.

Financial responsibilities were another critical component of the co-parenting agreements. In Decision Number 66/Pdt.G/2022/PA.CN, the father's monthly financial contribution ensured that the child's needs were met while she was with the mother. This arrangement ensured that both parents shared the financial burden of raising the child, reflecting a fair and equitable approach to co-parenting. Financial stability is crucial in providing for the child's needs, and such provisions help maintain a balanced and supportive environment. In Decision Number 669/Pdt.G/2021/PA.CN, financial responsibilities were similarly divided. The father's contribution was intended to support the child's living expenses and education, ensuring that her needs were consistently met. By delineating financial responsibilities clearly, the court aimed to reduce potential conflicts between the parents and ensure that the child's well-being remained the primary focus. Clear financial arrangements help prevent disputes and ensure that the child's needs are adequately provided for.

These cases from the Cirebon Religious Court highlight the importance of structured and detailed co-parenting agreements. The agreements not only addressed custody schedules and financial responsibilities but also emphasized the need for positive communication and collaboration between parents. Such comprehensive agreements are essential in ensuring that children receive consistent care and support from both parents, promoting their overall well-being. By focusing on the child's best interests, the court's approach to co-parenting serves as a model for other jurisdictions. The structured schedules in the agreements ensured that children like Alika had stability and continuity in their lives. By clearly defining the custodial periods and responsibilities, the agreements helped mitigate the potential negative impacts of divorce on the child. Stability is crucial for a child's emotional and psychological well-being, and these agreements provided a framework for maintaining a stable environment despite the parents' separation.

The emphasis on communication and collaboration between parents in these agreements cannot be overstated.¹⁸ Regular updates and discussions about the child's progress and any concerns ensured that both parents remained actively involved in their child's life. This collaborative approach is essential in addressing any issues promptly and ensuring that the child's needs are continuously met.¹⁹ Effective communication between parents is a cornerstone of successful co-parenting, and the agreements facilitated this by mandating regular interactions. The financial provisions in the agreements were designed to ensure that the child's needs were met regardless of the custodial arrangement. By requiring monthly financial contributions from the father, the agreements ensured that both parents shared the financial burden of raising the child. This equitable approach to financial responsibilities is crucial in maintaining the child's standard of living and ensuring that her needs are adequately provided for.

The logistical aspects of the agreements, such as drop-off and pick-up times, were carefully considered to ensure smooth transitions between households. These arrangements reduced stress for the child and ensured that her routine was maintained, providing a sense of normalcy and stability. The importance of such logistical details in co-parenting agreements cannot be overstated, as they help create a seamless and supportive environment for the child. The emphasis on preventing negative comments about the other parent in front of the child is another critical aspect of the agreements. Such provisions protect the child's emotional health and ensure that she feels secure and loved by both parents. By fostering a positive and respectful relationship between parents, the agreements helped mitigate the emotional turmoil that children often experience during their parents' divorce.

The court's approach in these cases reflects a comprehensive and child-centered strategy to co-parenting. By addressing all aspects of the child's well-being, from custody schedules and financial responsibilities to communication and emotional health, the agreements provided a holistic framework for co-parenting. This approach ensures that children receive the care and support they need to thrive despite the challenges of their parents' divorce. The cases from the Cirebon Religious Court demonstrate the effective implementation of co-parenting agreements that prioritize the child's best interests. The structured schedules, clear financial responsibilities, and mandated communication between parents ensure that children receive consistent care and support from both parents. These agreements reflect the court's commitment to fostering

¹⁸ Edmond Ndayambaje et al., "Marital Status And Subjective Well-Being: Does Education Level Take Into Account?," *Jurnal Cakrawala Pendidikan* 39, no. 1 (February 16, 2020): 120–32, <https://doi.org/10.21831/cp.v39i1.29620>.

¹⁹ Prasetyo and Haitham A. Mohammed B., "The Legal Protection of Children's Rights Due to Parental Divorce in Islamic Family Law in Predominantly Muslim Countries."

cooperative parenting arrangements that promote the child's well-being and stability. By examining these cases, it becomes evident that the Cirebon Religious Court's approach to co-parenting serves as a model for other jurisdictions. The detailed agreements and emphasis on communication and collaboration between parents help mitigate the potential negative impacts of divorce on children, ensuring their well-being and stability.

Impact on Children's Rights and Judicial Considerations

Islamic law actually affirms that a divorce (*talaq*) is a halal act, but it is highly discouraged and hated. The permanence of married life is a goal that Islam desires. The marriage contract is held for eternity and so on until death, so that husband and wife together can create a household where they can take refuge, enjoy the shade of affection and can keep their children alive in good growth. However, in practice, *talaq* can occur and Islamic law also stipulates certain rules related to divorce procedures and matters related to the consequences caused by divorce.²⁰ Children whom Allah Almighty has given in a family are a trust. Therefore children must always be maintained and protected because in children are attached dignity, dignity, and rights as human beings that must be upheld.²¹ As the oldest educator who is informal and natural, the family is obliged to guide children well because children, as the successors of the family and nation, can determine the way to heaven or hell.²² Zakiyah Daradjat said that the family not only plays a role in educating children but must also be able to play children so that later they can play themselves, adapt, and imitate the patterns and behaviors of their parents and people around their environment. Therefore, the role of the father and mother, including all family members, greatly determines the formation and development of the child's personality.²³

The impact of divorce on children's rights and welfare can be profound, often leading to emotional, psychological,²⁴ and physical challenges.²⁵ The co-parenting arrangements mandated by the Cirebon Religious Court aimed to mitigate these impacts by ensuring that children maintain strong, supportive relationships with both parents. In assessing the outcomes for children's rights

²⁰ Ibnu Radwan Siddik Turnip, *Hukum Perdata Islam Di Indonesia: Studi Tentang Hukum Perkawinan, Kewarisan, Wasiat, Hibah Dan Perwakafan* (Depok: Rajawali Pers, 2021), h. 172.

²¹ Jumadi, "Sengketa Hak Asuh Anak (Hadanah) Di Indonesia Dan Mesir," *Varia Peradilan: Majalah Hukum Tahun 33* (Jakarta, May 2018).

²² Tati Nurhayati, "Pendidikan Anak Dalam Keluarga Muslim Kontemporer (Studi Kasus Pada Keluarga Dengan Ayah Dan Ibu Bekerja Di Perumahan Mega Nusa Endah Karyamulya Kota Cirebon)," *Jurnal Psikologi Pendidikan Islam* 03, no. 01 (2015).

²³ Zakiyah Daradjat, *Ilmu Pendidikan Islam* (Jakarta: Bina Aksara, 2527), h. 35.

²⁴ H F Mone, "Dampak Perceraian Orang Tua Terhadap Perkembangan Psikososial Dan Prestasi Belajar," *Harmoni Sosial: Jurnal Pendidikan IPS*, 2019.

²⁵ Søren Sander et al., "When Love Hurts – Mental and Physical Health Among Recently Divorced Danes," *Frontiers in Psychology* 11 (November 2020), <https://doi.org/10.3389/fpsyg.2020.578083>.

in these arrangements, it becomes evident that a structured and cooperative approach significantly benefits the child's overall well-being. Divorce often decreases the family's economic well-being, and its impact can greatly affect children. Most studies report the percentage decrease in income from the year before the break-up to one year after the break-up.²⁶ When parents divorce, the family's economic resources are often divided, and both parents are too focused on each other's financial responsibilities. There are many working children (aged 13 to 15 years) in Indonesia whose rights to a prosperous life have not been fulfilled.²⁷ This can result in economic instability, creating new challenges in meeting children's basic needs. The decline in economic well-being can be reflected in several aspects, such as access to education to quality education. Tuition fees, such as tuition, books, and extracurricular activities, are often obstacles. This is because both parents throw responsibility at each other. Then, health care is constrained. Medical expenses, medical check-ups, and medicines can burden either party heavily. Access to recreation and out-of-school activities is also very minimal, and the availability of home facilities and equipment is also limited. Children face limitations in accessing opportunities for self-development, such as additional courses, art training, or hobbies, which can limit their potential and interests. This decline in economic well-being can lead to social and psychological problems in children. Therefore, to seek practical solutions and support, such as financial assistance, child welfare services, and community resources, to help reduce the economic burden and create a better environment.²⁸

In the reviewed cases, such as Decision Number 66/Pdt.G/2022/PA.CN and Decision Number 669/Pdt.G/2021/PA.CN, the court's emphasis on regular, alternating custody periods helped provide a stable and predictable environment for the children. This structure reduced the stress and anxiety often associated with parental separation. The clear delineation of responsibilities and the requirement for regular communication between parents ensured that the children's needs were consistently met, promoting their emotional and psychological stability. The judicial reasoning behind these decisions heavily relied on the principles of *Maslahah*, prioritizing the child's best interests. The peace agreements reached through mediation reflected a commitment to cooperative parenting, where both parents actively participate in

²⁶ Michaela Kreyenfeld and Heike Trappe, *Introduction: Parental Life Courses After Separation and Divorce in Europe, Life Course Research and Social Policies*, vol. 12, 2020, https://doi.org/10.1007/978-3-030-44575-1_1.

²⁷ Muhamad Harun et al., "The Ideal Legal Protection of the Child Labor Rights in Indonesia: The Dimensions of *Maqāṣid Al-Sharī'ah* and the Welfare State," *Juris: Jurnal Ilmiah Syariah* 23, no. 1 (2024): 167–78, <https://doi.org/10.31958/juris.v23i1.10537>.

²⁸ M R Risandi and M S Maidin, "Perlindungan Hukum Terhadap Anak Jalanan Akibat Perceraian Orang Tua Di Kabupaten Pangkep; Studi Komparatif Hukum Positif Dan Hukum Islam," *Shautuna: Jurnal Ilmiah ...*, 2021.

their child's upbringing. These agreements were not merely legal formalities but practical tools designed to foster a nurturing and balanced environment for the children.

The detailed provisions in the peace agreements, such as those in Decision Number 66/Pdt.G/2022/PA.CN, addressed various scenarios that could impact the child's well-being. For instance, the agreement included specific arrangements for school holidays and illness, ensuring that the child received continuous and consistent care. Such foresight in planning highlights the court's understanding of the child's needs and the importance of maintaining a stable routine despite the parents' separation.²⁹ The financial responsibilities outlined in these agreements also played a crucial role in protecting children's rights.³⁰ By mandating monthly financial contributions from the non-custodial parent, the court ensured that the child's living standards were maintained. This financial stability is essential in providing the resources necessary for the child's development, including education, health care, and extracurricular activities.

Furthermore, the court's emphasis on preventing negative comments about the other parent in front of the child reflected a deep understanding of the psychological impacts of divorce. Protecting the child's emotional well-being by fostering a positive relationship between parents is crucial.³¹ This provision helped mitigate the potential emotional turmoil that children often experience during their parents' divorce, promoting a secure and loving environment. The judicial considerations in these cases also involved a careful analysis of the parents' ability to collaborate and communicate effectively. The court recognized that successful co-parenting requires both parents to work together in the child's best interests. By mandating regular updates and joint decision-making, the court encouraged a cooperative dynamic that prioritized the child's needs.

The implications of these findings for legal reforms are significant. The positive outcomes observed in these cases demonstrate the potential benefits of formalizing children's rights in divorce decrees. Legal reforms that mandate the inclusion of children's rights in divorce rulings could ensure that all children receive the protection and support they need during and after their parents' separation.³² One of the key recommendations for enhancing the protection of

²⁹ Kreyenfeld and Trappe, *Introduction: Parental Life Courses After Separation and Divorce in Europe*.

³⁰ Harun et al., "The Ideal Legal Protection of the Child Labor Rights in Indonesia: The Dimensions of Maqāṣid Al-Sharī'ah and the Welfare State."

³¹ Turnip, *Hukum Perdata Islam Di Indonesia: Studi Tentang Hukum Perkawinan, Kewarisan, Wasiat, Hibah Dan Perwakafan*.

³² Yusefri, Mu'adil Faizin, and Wahyu Abdul Jafar, "Protecting Child Labor Rights: Maqasid Sharia Framework and Policy Recommendations," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (July 31, 2024): 1188–1215, <https://doi.org/10.22373/SJHK.V8I2.24559>.

children's rights in divorce cases is to make the inclusion of these rights a mandatory aspect of divorce decrees. This would provide a solid legal foundation for ensuring that children's needs are prioritized and that both parents remain actively involved in their upbringing. Such reforms would align with global best practices and reinforce the commitment to safeguarding children's welfare. Additionally, these findings highlight the need for continuous judicial training and education on the importance of children's rights and effective co-parenting strategies. Judges should be well-versed in the principles of Maslahah and other relevant legal frameworks to make informed decisions that prioritize the child's best interests. This would enhance the consistency and effectiveness of judicial decisions in family law cases.

The integration of children's voices in the decision-making process is another critical aspect that should be considered in legal reforms. Allowing children to express their opinions and preferences in custody arrangements can help ensure that their needs and desires are adequately represented. This participatory approach not only respects the child's rights but also contributes to their sense of autonomy and responsibility. Furthermore, the establishment of specialized family courts or divisions within existing courts dedicated to handling family law cases could enhance the protection of children's rights. These courts would have the expertise and resources needed to address the unique challenges associated with divorce and child custody cases. Specialized training for judges and court personnel in child psychology and family dynamics would further improve the quality of judicial decisions.

In terms of policy recommendations, there should be a concerted effort to provide comprehensive support services for families going through divorce. This includes access to counseling, mediation, and financial planning services. Such support can help parents navigate the complexities of co-parenting and ensure that children receive the emotional and psychological support they need during this transition.³³ Moreover, community-based programs that promote positive co-parenting practices and provide resources for divorced parents can play a vital role in supporting families. These programs can offer workshops, support groups, and educational materials that help parents understand the importance of cooperation and communication in raising their children.

The implementation of a standardized framework for evaluating the best interests of the child in custody cases could also enhance the consistency of judicial decisions. This framework would provide clear guidelines for judges to assess factors such as the child's emotional and psychological needs, the parents' ability to provide a stable environment, and the potential impact of various

³³ Cecilia Mayorga-Muñoz et al., "Coparenting After Divorce: An Approach to Typologies and Context of Intervention," *International Journal of Membrane Science and Technology* 10, no. 5 (October 2023): 522–34, <https://doi.org/10.15379/ijmst.v10i5.2544>.

custody arrangements on the child's well-being. To address the economic challenges associated with divorce, legal reforms should include provisions for ensuring financial support for children from both parents. This could involve the creation of child support enforcement mechanisms that ensure timely and adequate financial contributions from non-custodial parents. Additionally, policies that facilitate access to education and health care for children of divorced parents would help mitigate the economic impact of divorce.

In summary, the impact of divorce on children's rights and welfare is multifaceted, requiring a comprehensive and collaborative approach to address effectively. The judicial decisions in the reviewed cases from the Cirebon Religious Court demonstrate the potential benefits of co-parenting arrangements that prioritize the child's best interests. By formalizing children's rights in divorce decrees, providing judicial training, integrating children's voices in decision-making, and offering comprehensive support services, we can enhance the protection of children's rights and promote their well-being in the context of divorce. These reforms would not only align with the principles of *Maslahah* but also reflect a broader commitment to safeguarding the future generation.

Integrating the *Maslahah* Approach for Child Welfare

The *Maslahah* approach, rooted in Islamic jurisprudence, emphasizes the public welfare and the common good.³⁴ This principle guides judicial decisions to ensure outcomes that benefit the community, particularly the most vulnerable members, such as children. In Islamic law, *Maslahah* is a tool used by jurists to promote justice, equity, and welfare, even in cases where specific legal texts may not provide clear guidance.³⁵ By prioritizing the public good, the *Maslahah* approach ensures that legal decisions align with the broader objectives of *Sharia*, which include the protection of faith, life, intellect, lineage, and property.³⁶ In the context of family law and divorce, the *Maslahah* approach is particularly relevant as it seeks to protect the rights and welfare of children, who are often the most affected by parental separation. The application of *Maslahah* in divorce cases ensures that the child's best interests are paramount, guiding decisions related to custody, maintenance, and overall upbringing. This principle

³⁴ Pangestu Rizki, "Pembagian Waris Bilateral Masyarakat Melayu Sambas Dan Relevansinya Dalam Teori *Maslahah* Mursalah," *Al-Maslahah* 18, no. 1 (2022): 1–15.

³⁵ Nurjannah Nurjannah, Irwan Misbach, and Rahmawati Muin, "The *Maslahah* of Muslim Consumer Behavior in Using E-Wallet in Makassar City," *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 7, no. 1 (July 2021): 1–18, <https://doi.org/10.24952/fitrah.v7i1.3331>.

³⁶ Muhammad Fakhrol Haq, M. Nur, and Asma' Munifatussa'idah, "Review on the Legality of Legal Entity Status in the Foundation Based on Law Number 28 of 2004: The Perspective of *Siyasah Dusturiyah*, and *Maslahah* Mursalah," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 14, no. 1 (2023): 125, <https://doi.org/10.21043/yudisia.v14i1.17273>.

helps judges navigate complex familial disputes, providing a framework to achieve fair and just outcomes.

In the cases reviewed at the Cirebon Religious Court, the *Maslahah* approach was applied to develop co-parenting arrangements that prioritize the child's welfare. For instance, in Decision Number 66/Pdt.G/2022/PA.CN, the court facilitated a mediation process that culminated in a peace agreement focusing on the child's best interests. This agreement, formalized in an *Akta Perdamaian*, ensured that both parents remained actively involved in the child's upbringing, reflecting the principles of *Maslahah*.

The court's decision to alternate custody periods between parents, as seen in Decision Number 66/Pdt.G/2022/PA.CN, exemplifies the *Maslahah* approach. By structuring the custody schedule to provide stability and continuity, the court aimed to mitigate the potential negative impacts of divorce on the child. This arrangement ensured that the child maintained strong bonds with both parents, promoting her emotional and psychological well-being. In Decision Number 669/Pdt.G/2021/PA.CN, the *Maslahah* approach guided the court's mandate for regular communication between parents. This provision ensured that both parents remained informed about the child's health, education, and overall development, fostering a cooperative parenting environment. By emphasizing open communication, the court aimed to create a supportive and stable environment for the child, reflecting the *Maslahah* principles.

The financial responsibilities delineated in these agreements also reflect the *Maslahah* approach. In both cases, the fathers were required to provide monthly financial contributions to support the children's needs while with the mothers. This equitable sharing of financial responsibilities ensured that the children's living standards were maintained, regardless of which parent had physical custody at any given time. Such arrangements are crucial in providing the necessary resources for the children's development and well-being.³⁷ The agreements also emphasized the importance of preventing negative comments about the other parent in front of the child, reflecting the *Maslahah* principle of protecting the child's emotional health. By fostering a positive and respectful relationship between parents, the agreements aimed to mitigate the emotional turmoil that children often experience during their parents' divorce. This provision ensured that the child felt secure and loved by both parents, promoting her overall well-being.

³⁷ Edy Setyawan et al., "Legal Age for Marriage: SDGs and *Maslahah* Perspectives in Legal Policy Change in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (September 2023): 183–98, <https://doi.org/10.24090/mnh.v17i2.9506>.

The court's approach to addressing logistical aspects, such as drop-off and pick-up times, further exemplifies the application of Maslahah.³⁸ By ensuring smooth transitions between households, the court aimed to reduce stress for the child and maintain her routine. This logistical arrangement provided a sense of normalcy and stability, which is essential for the child's emotional and psychological health. The joint decision-making process mandated in these agreements is another reflection of the Maslahah approach. By requiring both parents to collaborate on significant decisions affecting the child's education and health, the court ensured that the child's best interests were always prioritized. This collaborative approach promoted a stable and supportive environment, essential for the child's development.

The Maslahah guided the judge's and mediator emphasis on regular updates and discussions about the child's progress and any concerns.³⁹ By encouraging parents to resolve disputes amicably and prioritize the child's well-being, the court aimed to create a cooperative parenting dynamic. This emphasis on collaboration and communication is central to the Maslahah principles, ensuring that the child's needs are continuously met. In evaluating the effectiveness of the Maslahah approach in these cases, it is evident that this principle facilitated successful co-parenting arrangements. The structured schedules, clear financial responsibilities, and mandated communication between parents ensured that the children received consistent care and support from both parents. These arrangements promoted the children's stability and well-being, reflecting the core objectives of Maslahah.

The Maslahah proved effective in mitigating the potential negative impacts of divorce on children.⁴⁰ By prioritizing the child's best interests and fostering a cooperative parenting environment, the court's decisions helped reduce the emotional and psychological stress often associated with parental separation. This approach ensured that the children felt secure and supported, promoting their overall development and well-being.

The application of Maslahah in these cases highlights its flexibility and adaptability in addressing complex family law issues. By focusing on the broader objectives of Sharia and prioritizing public welfare, the Maslahah approach

³⁸ Febriady Hutaeruk, Riska Ahmad, and Alwen Bentri, "Children Resilience In Dealing With Parental Divorce Based On the Ability to Regulate Emotions And Optimism," *International Journal of Research in Counseling and Education* 4, no. 1 (September 2019): 9, <https://doi.org/10.24036/00124za0002>.

³⁹ Eko Susanto, "The Role of Mediation in Resolving Divorce Cases Due to Physical Incapacity in Indonesian Sharia Courts : Banda Aceh Case Study Chosen after Various Attempts to Resolve Domestic Conflicts Have" 06, no. 2 (2023): 89–109.

⁴⁰ Firdaus Firdaus et al., "The Principles of the Concept of Maslahah in Islamic Family Law of a Wife Looking for Living Husband Taking Care of Household Work," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (May 2024): 259, <https://doi.org/10.29240/jhi.v9i1.8464>.

provided a robust framework for resolving custody disputes. This principle allowed the court to navigate the nuances of each case and develop tailored solutions that best serve the children's interests. The emphasis on financial responsibilities in the agreements further underscores the effectiveness of the Maslahah approach. By ensuring that both parents contributed equitably to the children's needs, the court promoted fairness and equity, aligning with the principles of Maslahah. This approach helped maintain the children's standard of living and provided the necessary resources for their development.

The court's focus on communication and collaboration between parents also reflects the practical application of Maslahah. By mandating regular interactions and joint decision-making, the court fostered a cooperative parenting dynamic that prioritized the children's well-being.⁴¹ This collaborative approach is essential in maintaining stability and support for the children, reflecting the core objectives of Maslahah. The positive outcomes observed in these cases demonstrate the potential of the Maslahah approach to transform family law practices. By prioritizing the child's best interests and fostering a supportive parenting environment, the court's decisions contributed to the children's overall well-being. This approach provides a model for other jurisdictions seeking to implement effective co-parenting arrangements.

The structured schedules and logistical arrangements mandated in the agreements further highlight the practical application of Maslahah. By ensuring smooth transitions between households and maintaining the children's routine, the court promoted stability and continuity in the children's lives. These logistical provisions are crucial in reducing stress and providing a sense of normalcy, essential for the children's emotional and psychological health. The emphasis on preventing negative comments about the other parent in front of the child reflects the Maslahah principle of protecting emotional well-being. By fostering a positive and respectful relationship between parents, the court aimed to create a supportive environment for the children. This provision helped mitigate the emotional turmoil often associated with divorce, promoting the children's overall well-being.

The joint decision-making process mandated in these agreements is another reflection of the Maslahah approach. By requiring both parents to collaborate on significant decisions affecting the children's education and health, the court ensured that the children's best interests were always prioritized. This collaborative approach promoted a stable and supportive environment, essential

⁴¹ Ummil Fadhliah Soraya, Umi Khoirun Nisa, and Samin Batubara, "The Status of Children Outside of Marriage and Its Relevance to the Reform of Islamic Family Law in Indonesia" 20 (2024): 13–25.

for the children's development.⁴² The Maslahah guided the court's emphasis on regular updates and discussions about the children's progress and any concerns.⁴³ By encouraging parents to resolve disputes amicably and prioritize the children's well-being, the court aimed to create a cooperative parenting dynamic. This emphasis on collaboration and communication is central to the Maslahah principles, ensuring that the children's needs are continuously met.

In evaluating the effectiveness of the Maslahah approach in these cases, it is evident that this principle facilitated successful co-parenting arrangements. The structured schedules, clear financial responsibilities, and mandated communication between parents ensured that the children received consistent care and support from both parents.⁴⁴ These arrangements promoted the children's stability and well-being, reflecting the core objectives of Maslahah. The Maslahah proved effective in mitigating the potential negative impacts of divorce on children. By prioritizing the children's best interests and fostering a cooperative parenting environment, the court's decisions helped reduce the emotional and psychological stress often associated with parental separation. This approach ensured that the children felt secure and supported, promoting their overall development and well-being.

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⁴² M. Natsir Asnawi, *Hukum Hak Asuh Anak Penerapan Hukum Dalam Upaya Melindungi Kepentingan Terbaik Anak* (Jakarta: Kencana, 2022), h. viii.

⁴³ Noercholis Rafid. A, Muhammad Fajri, and Khairun Nizam Mohd. Noor, "Maslahah Evaluation of Judges' Sentences for Domestic Violence Crimes at the Majene District Court," *Mazhabibuna* 5, no. 1 (May 2023): 57–78, <https://doi.org/10.24252/mh.vi.37034>.

⁴⁴ Hutauruk, Ahmad, and Bentri, "Children Resilience In Dealing With Parental Divorce Based On the Ability to Regulate Emotions And Optimism."

⁴⁵ D Trianti et al., "Problematika Pendidikan Anak Pasca Perceraian Orangtua," *Enlighten: Jurnal*, 2020, <https://journal.iainlangsa.ac.id/index.php/enlighten/article/view/1794>.

for the children's development. The Maslahah guided the court's emphasis on regular updates and discussions about the children's progress and any concerns. By encouraging parents to resolve disputes amicably and prioritize the children's well-being, the court aimed to create a cooperative parenting dynamic. This emphasis on collaboration and communication is central to the Maslahah principles, ensuring that the children's needs are continuously met.

Conclusion

This study underscores the importance of implementing co-parenting in divorce cases at the Cirebon Religious Court using the Maslahah approach. The findings reveal that a structured and cooperative approach significantly enhances the well-being of children affected by divorce. Well-organized co-parenting arrangements create a stable and predictable environment for children, thereby reducing the stress and anxiety often associated with parental separation. The Maslahah approach, which emphasizes public welfare and the common good, has proven effective in guiding court decisions that prioritize the best interests of the child. Peace agreements reached through mediation are not merely legal formalities but practical tools designed to foster a supportive and balanced environment for children. Clear financial arrangements and positive communication between parents help protect children's rights and ensure their needs are continuously met. The novelty of this research lies in several key aspects. Firstly, it provides empirical evidence on the effectiveness of the Maslahah approach in co-parenting, which has not been extensively explored in the context of family law in Indonesia. Secondly, the study emphasizes the importance of involving children's voices in the decision-making process, offering a new perspective on managing children's rights post-divorce. Thirdly, the research suggests significant legal reforms, including the establishment of specialized family courts and specific training for judges in child psychology and family dynamics, aimed at improving the consistency and quality of judicial decisions in family law cases. By integrating children's rights into divorce decrees, providing judicial training, involving children's voices in decision-making, and offering comprehensive support services, we can enhance the protection of children's rights and promote their well-being in the context of divorce. These reforms not only align with the principles of Maslahah but also reflect a broader commitment to safeguarding future generations.

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