

CHILDREN'S CONCERNS AND FAMILY LAW CONFLICTS IN THE CIVIL REALM

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Abstract

In light of Law no. 35 of 2014 concerning Child Protection and its application in Case Number 300/Pdt.G/2022/PA.Tg., this study aims to examine the regulation of children's hadhanah rights after divorce. Finding out how the law protects children's rights after a divorce and the obstacles to implementing such protection is the goal of this study. Normative research using a legislative approach and content analysis is the research technique used. Case Number 300/Pdt.G/2022/PA.Tg-related court records and secondary data pertaining to the Child Protection Law will be gathered and analysed. With an emphasis on the maintenance of children's hadhanah rights after a divorce, this study seeks to enhance comprehension of legislative provisions and their implementation in court practice. A solid legislative foundation for safeguarding children's rights after a divorce, with the primary focus being on the child's best interests, is provided by the Child Protection Law, according to the study. As shown in Case Number 300/Pdt.G/2022/PA.Tg., this concept is put into reality by the courts in order to make fair judgements about child custody and maintenance in order to protect the well-being of children after a divorce. But this case study also shows that there are problems with the law's implementation, such as how to determine whether parents can afford it and what the kids need.

Keywords: *Hadhanah, divorce, Child Protection Law*

1. Introduction

The Republic of Indonesia's constitution places a basic emphasis on the protection and wellbeing of all citizens, with a particular focus on children ¹. This is mirrored in a number of policies and laws that seek to safeguard children from any kind of abuse or exploitation and to ensure that they have access to fundamental rights. Children, being the most defenceless members of society, require particular

¹ Mohamad Hidayat Muhtar et al., 2023, *Teori & Hukum Konstitusi : Dasar Pengetahuan dan Pemahaman Serta Wawasan Pemberlakuan Hukum Konstitusi di Indonesia*, PT. Sonpedia Publishing Indonesia.

consideration and robust legal safeguards to guarantee that they may flourish in an atmosphere free from harm ²

Dissolution of a marriage is a life event that may disrupt families and harm children's well-being. Kids' mental health might take a hit when their parents go through a divorce because of all the changes that occur within the family and the difficulties that youngsters face. To avoid making children suffer as a result of their parents' arguments, the legal system must provide a sufficient framework to handle matters pertaining to child custody after a divorce.

Indonesia passed Law No. 35 of 2014 on the Protection of Children in response to this need. This law is an extensive attempt at child protection legislation that covers a wide range of topics, including the rights of children after a divorce. In addition to recognising the critical nature of safeguarding children from prejudice and violence, this legislation lays out fundamental guidelines for the treatment, instruction, and development of children in the aftermath of a divorce ³.

Law no. 35 of 2014 concerning Child Protection is one of many statutes and regulations that govern the administration of hadhanah rights to children after a divorce. The primary goal of this arrangement is to guarantee that, regardless of the family's changing circumstances as a result of a divorce, the child's best interests will always take precedence. Anyone who has not attained the legal age of eighteen, even while still in the womb, is considered a kid under Indonesian law. Children are seen as a precious gift from God and a responsibility of the state to ensure their safety and well-being. They also represent the nation's values for generations to come.

Not only does Indonesian law acknowledge the need to safeguard children during a divorce, but so do international legal mechanisms like the Convention on the Rights of the Child, which Indonesia has signed. As a result, we can see that national legal concepts and international standards for the protection of children's rights are compatible ⁴. The Child Protection Law elaborates on the rights of children, including the right to an education, health care, and safety from abuse and prejudice, which are outlined in the Convention on the Rights of the Child, which establishes these rights alongside the rights to life, development, protection, and participation.

To safeguard children's hadhanah rights in the event of a divorce, a number of statutes and regulations are in place, including the Child Protection Law, the Marriage Law, and the Compilation of Islamic Law (KHI). Divorce alters the dynamics of a family, but the law states that children still have the right to a stable, caring home setting where they may develop to their full potential. Included in this

² Dolot Alhasni Bakung et al., 2022, *Tanggung Jawab Anak Terhadap Orang Tua Lanjut Usia (Lansia) Di Desa Kaaruyan Kecamatan Mananggu Kabupaten Boalemo*, NUSANTARA Jurnal Pengabdian Kepada Masyarakat, Vol. 2, No. 3: 142-55.

³ Dolot Alhasni Bakung et al., 2023, *Tanggung Jawab Keperdataan Orang Tua Terhadap Anak-Anak Pasca Perceraian Di Wilayah Gorontalo (Penyuluhan Di Desa Kaarayaan Kecamatan Mananggu Kabupaten Boalemo)*, Jurnal Pelayanan Hubungan Masyarakat, Vol. 1, No. 2: 51-68.

⁴ Warren Binford et al., 2023, *Report on Enforcing the Rights of Children in Migration*, Laws, Vol. 12, No. 5.

is the right to be brought up by caring adults who can attend to one's psychological, emotional, and intellectual requirements.

The Indonesian legal community understands the gravity of the problem of child inheritance after a divorce and works tirelessly to ensure that the interests of children are put first in all court decisions on this matter. Case 300/Pdt.G/2022/PA.Tg. is an example of a divorce case where the court must consider the child's rights in light of the parents' respective responsibilities and abilities after the split. For a court to make a fair and appropriate judgement in a divorce case, the best interest of the child must take precedence ⁵.

When it comes to protecting children's rights, the courts and everyone involved must keep in mind the vital role that children play in ensuring the survival of our country and state ⁶. A thorough and considerate approach to the specific needs of children is necessary to resolve the issue of their hadhanah rights following a divorce, both in general and in relation to the rules established by Law no. 35 of 2014 on Child Protection and its implementation in particular cases like Case Number 300/Pdt.G/2022/PA.Tg. Even when family circumstances change due to a divorce, the Child Protection Law establishes a solid legal basis to guarantee that the children's best interests remain the main priority in all decisions pertaining to them. Nevertheless, the unique requirements of each kid and the intricacy of family relations sometimes make it difficult to put these rules into practice ⁷.

In the context of a divorce in Indonesia, the courts strive to guarantee that children's rights to adequate care, education, and support are still met; Case Number 300/Pdt.G/2022/PA.Tg. sheds light on this reality. In reality, the best way to ensure that children thrive after a divorce is for the court, the parents, and any family support organisations to collaborate in making that happen ⁸.

Ultimately, the best way to address the problem of child hadhanah after a divorce is for communities, schools, and other social organisations to work together for the benefit of children in difficult familial circumstances. It is believed that all children will be able to overcome the difficulties brought on by their parents' divorce and develop into strong, independent adults through teamwork and a common dedication to putting children's needs first.

Questions that need answering include: (1) How does Law no. 35 of 2014, which deals with Child Protection, govern the hadhanah rights of children after a divorce, and (2) What are the obstacles to putting this law into practice? In case

⁵ Yuni Harlina and Siti Asiyah, 2020, *Putusan Hakim Pengadilan Agama Pekanbaru Tentang Hadhanah Pasca Perceraian Menurut Perspektif Hukum Islam*, Jurnal An-Nahl, Vol. 7, No. 2: 130-44.

⁶ Harriot Beazley and Dyann Ross, 2017, *Dominant Positionings and Paradoxical Mobilities: Child Migrants in Java, Indonesia, Movement, Mobilities, and Journeys*, Springer Singapore, Singapore.

⁷ H Hidayat, 2021, *Acara Pidana Dengan Qanun No 7 Tahun 2013 Tentang Qanun Hukum Acara Jinayah (Studi Kasus Pengadilan Negeri Medan Dan Mahkamah Syar'iyah Banda Aceh ...*, <http://repository.uinsu.ac.id/13457/>.

⁸ Mohamad Hidayat Muhtar et al., 2024, *Critical Study of Sharia Regional Regulations on Women's Emancipation*, International Journal of Religion, Vol. 5, No. 2: 23-26.

300/Pdt.G/2022/PA.Tg., how is the child's wellbeing affected by the implementation of their hadhanah rights after a divorce?

2. Method

The research methodology used in this study is content analysis and normative research using a statutory approach. legislation no. 35 of 2014 concerning Child Protection and Case Number 300/Pdt.G/2022/PA.Tg. are the target of this normative research method's examination of relevant positive legislation. Legal rules pertaining to children's gift rights during a divorce are examined and assessed via a legislative lens.

As a first stage, our technique seeks for and gathers secondary data from pertinent legal papers, such as the Child Protection Law and court records pertaining to Case Number 300/Pdt.G/2022/PA.Tg. Afterwards, these legal rules are examined in order to evaluate the regulation and implementation of children's hadhanah rights following a divorce. We conducted content analysis to have a better grasp of these laws and their significance. We looked at how the law protects children's rights and the difficulties in putting it into practice.

Finding the application and execution of child protection principles requires analysing judicial judgements in particular circumstances and evaluating legislative texts. It is believed that by doing this study, a thorough comprehension of the legal system controlling the hadhanah rights of children after a divorce, as well as its practical implementation, may be achieved. In addition to recommending changes to legal rules and procedures that may benefit children following a divorce, this research seeks to uncover any loopholes or other legal issues that could prevent children from exercising their rights.

3. Discussion

3.1. Regulation of Children's Rights After Divorce in View of Law no. 35 of 2014 concerning Child Protection

According to Article 1 of the kid Protection Law, a person is considered a kid if they are not yet eighteen years old, and this includes unborn children. The best interests of the child principle governs child protection regulations, which state that the government, society, legislative, and judiciary must prioritise the best interests of the child in all actions involving children. Pancasila and the Constitution of the Republic of Indonesia, which was ratified in 1945, provide the basis for the child protection measures outlined in this legislation⁹.

Having children is a profound privilege and a blessing from God. Being totally human bestows upon him the dignity. It is believed that children represent the future of a nation and its state, embodying the principles that the younger generation fought for. They also play a crucial part in national strategy and possess unique qualities

⁹ S. Laurensius Arliman, 2017, *Politik Hukum Pembentukan Undang-Undang Perlindungan Anak Untuk Mewujudkan Perlindungan Anak Yang Berkelanjutan*, Syiar Hukum, Vol. 15.

that will ensure the country's survival ¹⁰. As a result, safeguards are put in place to ensure that children are treated fairly and given the chance for optimum physical, mental, and social development, as well as the formation of high moral principles.

The Child Protection Law is based on Islamic teachings that aim to fulfil children's rights, and the 1945 Constitution of the Republic of Indonesia and the Convention on the Rights of the Child provide the legal basis for this. This law's declaration of children's rights integrates national legal standards with those of the Child Rights Convention, therefore legitimising children's rights ¹¹.

Children have the right to exist, to develop and flourish, to be protected, and to have a fair say in their own destinies, as outlined in Articles 4–19 of the Child Protection Law. To go into more depth, the Child Protection Law outlines the following rights of children:

- a. The right to an environment free from violence and discrimination; the right to an acceptable life; the right to develop and participate; and the right to an appropriate life course in line with human dignity (Article 4).
- b. A person's right to a name in connection with their citizenship and individuality (Article 5).
- c. The right to practice one's religion as one sees fit, with the support of one's parents or legal guardians, and to think and speak at one's own intellectual and chronological age (Article 6).
- d. One's right to know and be known by one's parents, as well as to be nurtured and cared for by one's own parents, is guaranteed in Article 7, paragraph 1. If a child's parents are unable to provide adequate care for their development, the law recognises the right of the child to be placed in the care of another person, either via adoption or foster care, as stated in this article (Article 7 paragraph (2)).
- e. Access to social security and health care that takes into account one's psychological, spiritual, and social demands (Article 8).
- f. The right to an education that takes into account one's interests and abilities in order to foster personal growth and intellect (Article 9 paragraph (1)). As part of their right to an education, children have the right to be safe from sexual assault and other forms of violence perpetrated by adults in their school, other pupils, or by other individuals (Article 9 paragraph (2)). Article 9 paragraph (3) states that all children, regardless of disability, have the right to a free and appropriate public education.
- g. Every child with disabilities has the right to receive rehabilitation, social assistance and maintenance of social welfare levels (Article 12).
- h. The freedom to freely communicate one's thoughts and ideas, as well as the ability to receive, seek, and impart knowledge appropriate to one's age and intellect, in order to foster personal growth in line with moral and ethical principles (Article 10).

¹⁰ Nasir Djamil, 2017, *Anak Bukan Untuk Dihukum*, Sinar Grafika, Jakarta.

¹¹ Muhammad Ridho Sinaga, 2023, *Jaminan Perlindungan Hukum Anak: Optimalisasi Unit Perempuan dan Anak Institusi POLRI*, Legitimasi: Jurnal Hukum Pidana dan Politik Hukum, Vol. 11, No. 2: 198–209.

- i. The right to take breaks and enjoy leisure time, play with peers their own age, engage in recreational activities, and develop their interests, abilities, and intellect in a way that is conducive to their own growth and development (Article 11).
- j. It is the right of every child, while in the care of their parents or guardians, to be protected from the following: a. discrimination; b. economic and sexual exploitation; c. neglect; d. cruelty, violence, abuse; e. injustice; and f. other forms of wrongful treatment (Article 13 paragraph (1)).
- k. The right to be brought up by one's biological parents, unless there are good grounds and/or legal requirements showing that the child would be better off separated (Article 14). In theory, the state should do everything it can to keep children with their parents rather than taking them away from them against their will. The right of children to remain with their parents against their will is upheld in this article, unless there are good grounds to separate them legally and doing so is in the child's best interest.
- l. 1. The right to be safe from: a. Political abuse; b. Armed conflict; c. Social disturbance; d. Events with violent features; e. War; and f. Sexual offences (Article 15).
- m. It is only possible to exercise the right to be free from abuse, torture, or inhumane punishment, as well as the right to be free from arrest, detention, or criminal acts of child imprisonment, if done so in accordance with the law and as a last resort (Article 16).
- n. 1. It is the right of every child who is deprived of their liberty to: a. be treated humanely and placed in an environment distinct from adults. b. Have competent counsel or other aid available at all times throughout the relevant legal process; and c. Present one's case to a children's court that is both objective and impartial in order to get a fair trial that is not open to the public (Article 17 paragraph (1)).
- o. 1. The right to secrecy is a fundamental right for every child, regardless of whether they have been victims or perpetrators of sexual assault or are in legal trouble (Article 17 paragraph (2)).
- p. First, access to legal representation and other forms of support should be available to all children who are victims or perpetrators of crime.

The rights of children after a divorce, as outlined in Law no. 35 of 2014 on Child Protection, are the only subject of this study's analysis. A judge's decision to dissolve a marriage at one spouse's request is known as a divorce. Nevertheless, regardless of whether a parent's marriage has ended in divorce or dissolution, the responsibility for their children's rights will remain with both parents. The classic problem of hadhanah and its fulfilment arises frequently when parents divorce. Many children suffer as a result, including neglect due to unfulfilled children's rights and educational and caregiving conflicts between the parents. This is despite the fact that the Compilation of Islamic Law clearly states in Articles 105 and 106.

In the case of a divorce, according to Article 105 of the Compilation of Islamic Law: a. The mother has the right to support her children who are not yet Mumayyiz, or less than 12 years old. b. After receiving care from Mumayyiz, children are allowed to select between their parents as the legal guardians of their pet. d. His father pays all of the upkeep expenses.

According to Article 106 of the Compilation of Islamic Law, parents have a responsibility to take good care of their children's assets, even if they are not yet Mumayyiz or under guardianship. It is forbidden to transfer or control these assets unless there are urgent reasons, such as when the child's interests and safety are at risk or when there is no other way to avoid it.

Children who are not yet Mumayyiz have the right of hadhanah to their mothers, and it is the father's responsibility to provide for their upkeep or finance, according to the articles cited above. The explanation of children's hadhanah rights in this Compilation of Islamic Law is quite clear. Article 41 paragraphs (1) and (2) of the Marriage Law, which specifies that parents are still obligated to care for and educate their children, provides good legal support for this statement in the KHI. It follows that both parents are obligated to care for and educate their children, as stated in the KHI and the Marriage Law in this case.

When it comes to a kid's upbringing and development, it's crucial for both parents to be on the same page in order to foster family unity and ensure that the child gets all the rights that are rightfully theirs. However, securing the child's rightful benefits will be very challenging in the event that the parents do not get along. The kid suffers during a divorce if neither parent is willing to be a good parent to them. Article 14 and paragraph (1) of the Child Protection Law also spell out explicitly how children may get care.

In Article 7, paragraph 1, it is stated that "Every child has the right to know his parents, to be raised and cared for by his own parents."

As this article shows, the realisation of children's rights requires that all children born into a marriage live with and be nurtured by their biological parents. Text of Article 14:

- a. It is the fundamental right of every child to be brought up by their biological parents unless there are compelling reasons and/or legal requirements that make it clear that the kid would be better off separated.
- b. The child's rights persist in the case of a separation as stated in paragraph (1), including the following:
 - 1) The right to see both parents face-to-face and maintain consistent personal contact with each parent.
 - 2) Grow and develop with the help of both parents, who will provide for their needs in a way that is consistent with their interests, skills, and capacities.
 - 3) Get the rights of other children and get living costs from both parents.

According to this article, parents still have responsibility to uphold their children's rights even after they and their children are separated. Factors like parental autonomy, access to resources, quality education, and nurturing care have a lasting impact on a child's character and development. It is very obvious from these two paragraphs that children have an inherent right to be raised and cared for by their biological parents. The fulfilment of a child's hadhanah rights and the maintenance of a child's bond with both parents continue even after a divorce has taken place.

According to CHAPTER XA of the Child Protection Law, which deals with Prohibitions, it is possible to punish a father legally for failing to support his children. The following is stated: "Everyone is prohibited from placing, allowing, involving, ordering to involve children in situations of abuse and neglect."

The following is stated: "Any person who violates the provisions as intended in article 76B, shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of IDR 100,000,000.00 (one hundred million rupiah)."

The above reasoning leads one to the conclusion that Article 7 paragraph (1) and Article 14 of Law no. 35 of 2014 concerning Child Protection control the regulation of children's hadhanah rights after divorce. The realisation of children's rights includes the need that all children born into a marriage remain under the care of their biological parents. The fulfilment of a child's hadhanah rights and the maintenance of a child's bond with both parents continue even after a divorce has taken place. Parental rights, including the right to parenting, financial support, education, and loving care, continue even after a parent and child have legally separated. These rights have a profound impact on the development of the kid's character and how he or she handles the challenges of adulthood. Articles 76B and 77B of the Child Protection Law govern corporal punishment for fathers who fail to meet their children's hadhanah rights, which is a kind of child neglect.

3.2. Implementation of Fulfillment of Children's Rights After Divorce in Case Number 300/Pdt.G/2022/PA.Tg.

Education, financial stability, parental love, and meeting a kid's fundamental needs are all aspects of child care that mostly fall on the shoulders of both parents¹². Consequently, until the kid becomes an adult, the most essential thing for a husband and wife to do while caring for their children is to work together, support each other, and aid one other. Even when there is a physical separation between them, parents still have an obligation to fulfil their children's hadhanah rights¹³.

Care, maintenance, education, living expenses, and protection for the child's growth and development are all responsibilities that parents are still obligated to fulfil after a separation, according to Article 14 of the Child Protection Law. inherit from each parent in accordance with his or her skills, hobbies, and personality¹⁴. The development of the child's character and outlook on life are profoundly affected by these rights.

A parent's duty to provide for and educate their kid differs from that of a guardian. In accordance with the interests of the children, both parents, whether married or not, have a responsibility to provide for and educate their offspring. All expenses related to their child's upkeep and education must be covered equally by both of them. The court may hold the mother financially liable for the child's expenditures if the ex-husband is unable to pay. At the same time, a court decides whether a husband or a wife should be named guardian of a minor kid.

¹² Lara Walker, 2020, *Child Support and the Government's Children's Socio-Economic Rights Obligations*, The International Journal of Children's Rights, Vol. 28, No. 4: 860–93.

¹³ Ardiansyah Ardiansyah and Ferdricka Nggeboe, 2019, *Kajian Yuridis Penelantaran Anak Oleh Orang Tua Menurut Perspektif Hukum Indonesia*, Legalitas: Jurnal Hukum, Vol. 10, No. 1: 146–74.

¹⁴ Vevi Alfi Maghfiroh, 2020, *Diskursus Radha'ah Dan Hadhanah Berperspektif Gender*, Equalita: Jurnal Studi Gender Dan Anak, Vol. 2, No. 2: 257–73.

Custody of any children conceived during the marriage is a common source of contention in divorce proceedings. Every kid has the inherent right to care since they need an adult to attend to their physical and mental needs as well as their academic and developmental milestones. The moms, meantime, are the ones with the most rights when it comes to caring for their children¹⁵. Separation due to divorce does not eliminate the child's relationship with both parents, including fulfilling the child's hadhanah rights. If a parent (father) neglects his obligation to provide for his child, it can be called abandonment and can be sued in relation to fulfilling the child's right to hadhanah.

The fulfilment of a child's hadhanah rights and the maintenance of a child's bond with both parents continue even after a divorce has taken place. The right to hadhanah may be enforced by legal action taken against a parent (usually a father) who fails to meet his financial responsibilities to his kid. This is known as abandonment¹⁶. But as was the case in case 300/Pdt.G/2022/PA.Tg, there are a number of rights that children do not get following a divorce.

The parties here were initially married on November 8, 1992, before the PPN KUA Officer of the East Tegal District, Tegal City. They had four children together, which is the number of children at issue in this case. Following their April 13, 2022, divorce, the Plaintiff is now the legal guardian of the three young children: Faizal Anjariesta, Risky Desita, and XXXX. The defendant has failed in his paternal duty by failing to provide enough financial support for his dependent child, XXXX, who is not yet of legal age to live on his own. The plaintiff is responsible for providing financial support for the kid since the defendant only contributes IDR 1,500,000 (one million five hundred thousand rupiah) every month.

The defendant is able to support the kid because he is a merchant and owner of a food stand called Ketupat Sayur Padang in the Tegal city square. The stand has been there since January 2007 and earns an average of ten million rupiah each month. As the biological father of the minor child XXXX, the Defendant has the legal duty and responsibility to ensure that XXXX has financial security from the time he is a minor until he becomes an adult. The Plaintiff has presented the following grounds and arguments in its request for a judgement from the panel of judges reviewing and ruling on the case:

PRIMARY:

- a. Grant the Plaintiff's claim in its entirety;
- b. Sentencing the Defendant to pay the plaintiff's hadhanah (support for the child named XXXX) every month at a minimum of IDR 3,000,000 (three million rupiah) until the child is an adult or 21 years old;
- c. Charge the costs of this case in accordance with applicable regulations;

¹⁵ Yusuf Krisman Gea, Budi Muhammad Taftazani, and Santoso Tri Raharjo, "PENGASUHAN POSITIF ORANGTUA DALAM MELINDUNGI HAK ANAK DENGAN DISABILITAS," *Share : Social Work Journal* 13, no. 1 (August 11, 2023): 60-73, <https://doi.org/10.24198/share.v13i1.46432>.

¹⁶ A. A. Candra, "Upaya Perlindungan Anak Terhadap Perkara Hadhanah," *Jurnal HAM* 13, no. 2 (2022): 187.

SUBSIDIARIES:

If the Panel of Judges has a different opinion, ask for the fairest possible decision (ex aequo et bono).

When considering and ruling on cases involving children's rights, judges have a responsibility to put children's best interests first and work to guarantee that children's rights are met. This will allow children to live, develop, and contribute fully, in line with their inherent dignity and value. However, in the case of children's rights after a divorce in the Legal Area of the Tegal City Religious Court, it is observed that the mother is granted full legal custody of any children born out of a valid marriage, and the mother is also granted almost all child support rights. Beyond that, the judge from the Religious Court will decide who is responsible for paying child support, and it will be the father. The decision about child custody affects the kid's life after a divorce in many ways, including the amount of love between the parents and the amount of money the child needs to cover basic living expenditures, such as schooling and transportation.

According to the definition of hadhanah, the time limit for a child's care and education begins at birth, or at the first sign of need for support, and ends when the child reaches maturity and is capable of meeting his or her own material and spiritual requirements¹⁷. There are no clear provisions regarding the expiry date of the hadhanah period, only the measurement used is tamyiz and the ability to stand alone. If the child is able to differentiate between what needs to be implemented and what needs to be abandoned, does not need women's services and can meet his own basic needs, then the period of hadhanah is over or finished. Thus, the period of hadhanah which has not yet been mumayyiz becomes an obligation for the mother as long as she has not remarried. If the child is mumayyiz, then he is given the freedom to choose between the two (father/mother), who he feels can care for, provide security and protect him (the child)¹⁸.

The rights of hadhanah for children, as outlined in Articles 105 and 106 of this Compilation of Islamic Law, are as follows: children who are not yet mumayyiz have the right of hadhanah to their mother, and the father is responsible for financing or paying for the child's maintenance. Both parents in Indonesia are legally obligated to provide for and educate their children, as stated in Article 41 paragraphs (1) and (2) of the Marriage Law. Both parents are legally obligated to provide for and educate their children, as stated in the KHI and the Marriage Law. Similarly, the right to receive care for a kid is regulated by the kid Protection Law in Article 7 paragraph (1) and Article 14, where the child's right is to be nurtured and cared for by his own parents. The fulfilment of a child's hadhanah rights and the maintenance of a child's bond with both parents continue even after a divorce has taken place.

In response to the Plaintiff's lawsuit (case number 300/Pdt.G/2022/PA.Tg), the Defendant gave an oral response on June 23, 2022. The Defendant basically admitted to some of the Plaintiff's claims but denied others. For example, he admitted to only giving his children Rp. 1,500,000,- (one million five hundred thousand

¹⁷ Irfan Islami and Aini Sahara, 2019, *Legalitas Penguasaan Hak Asuh Anak Dibawah Umur (Hadhanah) Kepada Bapak Pasca Perceraian*, ADIL: Jurnal Hukum, Vol. 10, No. 1.

¹⁸ Supardi Supardi, 2014, *Hadhanah Dan Tanggung Jawab Perlindungan Anak*, Al-Manahij: Jurnal Kajian Hukum Islam, Vol. 8, No. 1: 57-68.

rupiah). However, he did admit to giving a child named XXXX Rp. 20,000,- (twenty thousand rupiah) daily for school expenses. Additionally, he acknowledged that he had paid for the Plaintiff's and her children's PDAM money and electricity. The Defendant was opposed to paying Rp. 3,000,000,- (three million rupiah) monthly to support a child named XXXX. However, the Defendant was willing to pay Rp. 80,000,- (eighty thousand rupiah) daily to cover the children's kitchen expenses, with Rp. 60,000,- (sixty thousand rupiah) designated for kitchen money and Rp. 20,000,- (twenty thousand rupiah) for XXXX's school pocket money. This amounts to a total of Rp. 2,400,000,- (two million four hundred thousand rupiah) when multiplied by 30 days.

In their deliberations, the judges in this case took into account no less than four acts of legislation: (1) the Marriage Law of the Republic of Indonesia, Number 1 of 1974; (2) the Human Rights Law of the Republic of Indonesia, Number 39 of 1999; (3) the Child Protection Law, Number 23 of 2002, as amended by Law Number 35 of 2014; and (4) the Instruction of the President of the Republic of Indonesia, Number 1 of 1991, regarding the Compilation of Islamic Law pertaining to child custody (hadhanah) and children's rights.

The Plaintiff's witnesses testified that the minor, XXXX, lived with the Plaintiff, received excellent care from the Plaintiff, and attended school alongside the Plaintiff. As a result, the Defendant, being XXXX's biological father, was mainly responsible for covering the child's living expenses, which were determined by the Defendant's ability and income. Though the Defendant does sell vegetable ketupat at Tegal City Square, the claim that he earns an average of Rp. 10,000,000 (ten million rupiah) monthly is false. On a daily basis, the Defendant earns a meagre two hundred thousand rupiah (IDR).

It is reasonable to suspect the Defendant's income every day around IDR 400,000 (four hundred thousand rupiah), as stated in the Plaintiff's first witness statement at the trial. However, it is important to note that this information was derived from the Plaintiff's story, so it is not perfect testimony; it is only preliminary evidence. The Plaintiff's second witness testified that he was unaware of the Defendant's daily income as he was unaware of the Plaintiff's daily income, according to the Plaintiff's statement given at trial. We can't know for sure how much the Defendant earned every day because the Plaintiff couldn't prove the witness's testimony, which was in the form of an audit test. This is why the Panel of Judges ruled that this matter could not proceed.

In his statement, the defendant has managed to provide a daily income of Rp. 80,000,- (eighty thousand rupiah) for a child named XXXX, along with Rp. 20,000,- (twenty thousand rupiah) for food expenses. Multiplying this amount by 30 days results in Rp. 2,400,000,- (two million four hundred thousand rupiah). The judges took into account the provision in the Compilation of Islamic Law that reads "maintenance costs are borne by the father" (Article 105, letter (c)) while reaching a decision on the application of the hadhanah rights of children. It is the legal duty of a father (in this case, the Defendant) to perform the substantial financial burden associated with the upkeep of the child of the Plaintiff and Defendant. Article 105 letter (c) of the Compilation of Islamic Law and Article 41 letter (b) of Law Number 1 of 1974 concerning Marriage both affirm this. Judgement from Islamic courts is

based on the principle that "A father's obligation to provide for their children" (AlMuhadzdzab II: 177), which is consistent with this practice.

Based on these factors pertaining to the support of Hadhanah 1 (one) child named XXXX, who is currently residing with and under the care of the Plaintiff, the Panel of Judges decided to partially grant the Plaintiff's claim and found that it would be appropriate to have the Defendant sentenced to pay, via the Plaintiff, support of Hadhanah 1 (one) child in the amount of Rp. 2,400,000,- (two million four hundred thousand rupiah) per month until the child reaches adulthood and/or 21 years old, excluding expenses related to education and health care. To account for potential increases in living expenses, the Panel of Judges establishes a minimum 10% annual increase.

It follows from the foregoing discussion and research that the provisions of Article 105 letter (c) of the Compilation of Islamic Law and Law Number 1 of 1974 concerning Marriage are the basis for the implementation of the fulfilment of children's hadhanah rights after divorce in case number 300/Pdt.G/2022/PA.Tg. While it is still the responsibility of the bapak and mothers to raise and educate their children, the responsibility for the care of children under the age of twelve or who are not yet Mumayyiz falls on the mother. Once a child reaches the age of twelve, he or she is allowed to choose between his or her parents as the custodian of his or her pet, with the father covering the expenses of maintenance.

4. Conclusion

It is clear from the conversation around the application of Law no. 35 of 2014 concerning Child Protection in Case Number 300/Pdt.G/2022/PA.Tg. and how it regulates children's hadhanah rights after a divorce that the Child Protection Law offers a solid legal framework to ensure the protection of children's rights, even in a divorce. The fundamental concept being the best interests of the child, this legislation affirms the state's dedication to safeguarding children up to the age of 18, even those who have not yet been born, via its broad definition of children. Although the dynamics of the family may change after a divorce, the law states that children still have the right to an adequate standard of living, including care, education, health, and protection from abuse and discrimination. In such a situation, the burden of responsibility is shared between the parents, with the father's financial obligations for child support being particularly heavy.

The court takes into account the child's requirements, the parents' financial means, and fairness in fulfilling the child's hadhanah rights in Case Number 300/Pdt.G/2022/PA.Tg, which demonstrates the practical application of these concepts and laws. To ensure the kid gets sufficient assistance to grow and develop optimally following his parents' divorce, the court finds a solution that prioritises the child's welfare. In order to ensure that children may continue to develop in a caring and loving environment, it is crucial to provide them with legal protection and justice that guarantees their rights, particularly in sensitive family circumstances like divorce.

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