

# The Legal Consequences of Divorce Due to Apostasy on Child Custody from the Perspective of Islamic Law and Indonesian Positive Law

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## Article History

Received: 08/06/2024; Reviewed: 17/08/2024; Accepted: 24/10/2024; Published: 20/12/2024

**Abstract:** This study aims to analyze the legal consequences of divorce due to apostasy on child custody (*hadhanah*) and to examine the judges' considerations in resolving such cases in the Religious Court. The method used is normative legal research employing a statutory approach and a case study of Decision No. 0117/Pdt.G/2016/PA.Prgi. The novelty of this study lies in the integration of Islamic law, positive law, and judicial practice in determining child custody in divorce cases due to apostasy. The results indicate that apostasy does not automatically constitute grounds for divorce under Indonesian positive law in the absence of marital discord. Regarding *hadhanah*, judges prioritize the child's best interests over religious considerations alone. Custody of a child who has not yet reached the age of discernment may still be granted to the mother even if she has apostatized, subject to certain restrictions to safeguard the child's religious upbringing. This study concludes that the legal consequences of divorce due to apostasy not only result in the dissolution of the marriage but also involve complex considerations regarding child protection that prioritize the principle of the child's best interests.

**Keywords:** Apostasy; Divorce; Custody; Islamic Law; Child Custody

**Abstrak:** Penelitian ini bertujuan untuk menganalisis akibat hukum perceraian karena murtad terhadap hak asuh anak (*hadhanah*) serta mengkaji pertimbangan hakim dalam penyelesaiannya di Pengadilan Agama. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan dan studi kasus pada Putusan Nomor 0117/Pdt.G/2016/PA.Prgi. Kebaruan penelitian ini terletak pada integrasi antara perspektif hukum Islam, hukum positif, dan praktik peradilan dalam menentukan hak asuh anak pada kasus perceraian karena murtad. Hasil penelitian menunjukkan bahwa murtad tidak serta-merta menjadi alasan perceraian dalam hukum positif Indonesia tanpa adanya ketidakrukunan rumah tangga. Dalam hal *hadhanah*, hakim lebih mengutamakan kepentingan terbaik bagi anak dibandingkan faktor agama semata. Hak asuh anak yang belum mumayyiz dapat tetap diberikan kepada ibu meskipun murtad, dengan pembatasan tertentu guna menjaga perkembangan akidah anak. Penelitian ini menyimpulkan bahwa akibat hukum perceraian karena murtad tidak hanya berdampak pada putusnya perkawinan, tetapi juga melibatkan pertimbangan kompleks terkait perlindungan anak yang mengedepankan prinsip

kemaslahatan.

**Kata Kunci:** Murtad; Perceraian; Hadhanah; Hukum Islam; Hak Asuh Anak

## INTRODUCTION

Under the Indonesian legal system, marriage is viewed not only as a civil relationship but also as an institution with a strong religious dimension.<sup>1</sup> Law No. 1 of 1974 stipulates that the validity of a marriage is determined by the religious laws of each party, making spiritual aspects the cornerstone of building a harmonious and enduring family. In practice, the dynamics of family life often give rise to conflicts that lead to divorce, influenced by various social, economic, and ideological factors.<sup>2</sup> One particularly complex issue is the conversion to another religion or apostasy by one spouse, which not only affects the continuation of the marital relationship but also has legal implications for the status and protection of children, particularly regarding custody (*hadhanah*).

From the perspective of Islamic law, apostasy is viewed as a legal event that can lead to the dissolution of a marriage through *fasakh*. Conversely, under Indonesian positive law, divorce does not occur automatically as a result of apostasy; rather, it must be filed through the judicial system and the existence of marital discord must be proven, as stipulated in the Compilation of Islamic Law.<sup>3</sup> This difference in approach highlights the duality of norms between Islamic law and national law, which has implications for case resolution practices in Religious Courts. The complexity increases further when the divorce involves children, as custody determinations must take into account not only religious norms but also the child's best interests from psychological, emotional, and developmental perspectives.

A number of previous studies have examined divorce resulting from apostasy from various perspectives. A study by Munarif et al. emphasizes that apostasy does not automatically constitute grounds for divorce in the absence of marital conflict,<sup>4</sup> Meanwhile, Nadia's research focuses more on the normative aspects of Indonesian positive law regarding apostasy as grounds for divorce.<sup>5</sup> Other studies have also addressed the implications of *hadhanah* in divorce cases, but they tend to separate the study of Islamic law from judicial

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<sup>1</sup> Elen Anedya Frahma, "Perkembangan Hukum Perkawinan Campuran: Perspektif Perbandingan Hukum Perdata Barat Dan Kompilasi Hukum Islam," *Isti'dal: Jurnal Studi Hukum Islam* 11, no. 2 (December 31, 2024): 190–206, <https://doi.org/10.34001/ijshi.v11i2.7078>.

<sup>2</sup> Andy Litehua, "Faktor-Faktor Cerai Gugat Di Pengadilan Agama Kabupaten Madiun," *Pro Justicia: Jurnal Hukum Dan Sosial* 1, no. 2 (December 31, 2021): 144–66, <https://doi.org/10.55380/projus.v1i2.154>.

<sup>3</sup> Muhammad Hirzi Qomarul Akbar, "Perceraian Suami Istri Murtad Perspektif Hukum Positif Di Indonesia Dan Masalah Mursalah," *Sakina: Journal of Family Studies* 3, no. 4 (2019), <https://urj.uin-malang.ac.id/index.php/jfs/article/view/312>.

<sup>4</sup> Munarif. Achmad Salim Musaad, "PERCERAIANNYA KARENA DIVERGENSI AGAMA: ANALISIS HUKUM ISLAM DAN UNDANG-UNDANG PERKAWINAN TAHUN 1974," *Jurnal Al-Mashadir: Ilmu Hukum Dan Ekonomi Islam* 6, no. 1 (2024), <https://jurnalfaiunisa.com/index.php/JAM/article/view/26>.

<sup>5</sup> Nadia Arina Ilma, "Jurisprudential Analysis on the Determination (Itsbat) of Marriage and the Potential Cancellation of Marriage for Illegal Guardianship (Case Study of the Marriage of Mahalini and Rizky Febian)," *Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 11, no. 2 (December 31, 2024): 271, <https://doi.org/10.31942/iq.v11i2.12490>.

practice, and thus have not yet provided a comprehensive analysis that simultaneously integrates legal norms, judicial rulings, and child protection.<sup>6</sup>

Based on this review, there is a significant research gap: no study has yet comprehensively analyzed the legal consequences of divorce due to apostasy on child custody by integrating the perspectives of Islamic law, Indonesian positive law, and concrete court rulings. Furthermore, previous studies tend to prioritize religious aspects as the dominant factor without thoroughly exploring the principle of the child's best interests—which serves as the primary consideration for judges in judicial practice.

This study aims to analyze child custody arrangements resulting from divorce due to apostasy and to examine the legal consequences arising from court rulings. The novelty of this study lies in its integrative approach that connects Islamic legal norms, provisions of positive law, and judges' legal considerations in determining hadhanah, thereby providing theoretical and practical contributions to the development of family law in Indonesia, particularly in addressing interfaith divorce cases that impact child protection.

## **METHOD**

This study is a normative legal study that focuses on analyzing the legal norms governing divorce due to apostasy and their implications for child custody (hadhanah) within the Indonesian legal system. The approaches used are the statutory approach and the case approach. The statutory approach involves examining various relevant regulations, including Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law as the primary sources for analyzing the normative basis of divorce and child custody. Meanwhile, the case approach is carried out through an analysis of court decisions, specifically Decision No. 0117/Pdt.G/2016/PA.Prgi, to understand the application of the law in judicial practice.<sup>7</sup>

The types and sources of legal materials in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and court decisions that have binding legal force. Secondary legal materials include books, academic journals, and legal literature relevant to the research topic, particularly those discussing divorce due to apostasy and child custody from the perspectives of Islamic law and positive law. Tertiary legal materials consist of legal dictionaries and encyclopedias used to support the understanding of legal concepts.

The collection of legal materials was conducted through library research, involving the systematic searching, cataloging, and reviewing of relevant legal sources. The obtained legal materials were then analyzed using a qualitative analysis method with a normative approach. The analysis is conducted by interpreting legal norms, examining legal doctrines, and relating

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<sup>6</sup> Salsabillah Nilam Zahra, I Nyoman Sujana, and Ni Made Puspasutari Ujjanti, "Implikasi Yuridis Perceraian Terhadap Hak-Hak Anak Dalam Perspektif Hukum Islam (Studi Kasus Pengadilan Agama Denpasar)," *Jurnal Konstruksi Hukum* 4, no. 3 (December 16, 2023): 253–60, <https://doi.org/10.22225/jkh.4.3.8032.253-260>.

<sup>7</sup> Muhaimin, *Metode Penelitian Hukum* (Nusa Tenggara Barat: Mataram University Press, 2020).

them to the legal facts contained in court decisions.<sup>8</sup>

The analytical process employs deductive reasoning, whereby legal norms serve as the major premise and legal facts as the minor premise, from which a logical conclusion is drawn. This approach is used to address issues regarding child custody arrangements resulting from divorce due to apostasy, as well as the legal consequences arising in judicial practice. Through this method, it is hoped that a comprehensive understanding will be gained regarding the relationship between legal norms and their implementation in judicial decisions, particularly in the context of protecting the best interests of the child.

## DISCUSSION

### Child Custody Following Divorce Due to Apostasy

The concept of hadhanah in Islamic law positions the child as a subject who must be fully protected, not only physically but also morally and spiritually. Hadhanah is not merely a relationship of authority between parent and child, but rather an inherent responsibility to ensure the child's optimal growth and development. Within the normative framework, the Compilation of Islamic Law, through Article 105, grants priority to the mother for the care of a child who has not yet reached the age of discernment. The reasoning underlying this provision is rooted in the assumption that the mother possesses a stronger emotional bond and a natural ability to provide love and care during the early stages of a child's life.

The problem arises when this principle is confronted with the reality of a mother's conversion to another religion (apostasy).<sup>9</sup> In classical fiqh doctrine, apostasy is often viewed as a factor that can nullify the right to custody because it is considered to have the potential to disrupt the child's religious upbringing. This perspective stems from the paradigm of religious protection (hifz al-din) as one of the primary objectives of Islamic law. The child is positioned as an entity that must be safeguarded from potential deviations in belief, so that custody by a party deemed to be ideologically incompatible is deemed risky. However, an overly normative approach to this issue risks overlooking another equally important dimension: the child's psychological and emotional well-being. In judicial practice in Indonesia, a significant paradigm shift is evident. Judges no longer rigidly rely on religious factors as the sole basis for determining custody, but instead adopt a more contextual approach by prioritizing the best interests of the child as the primary consideration.

This approach demonstrates an interaction between Islamic legal values and modern legal principles, particularly those related to child protection. Children are no longer viewed as objects subject to their parents' legal status, but as subjects with independent rights to receive the best possible care. In this context, hadhanah has undergone a transformation in meaning from merely a parental right to a child's right that must be guaranteed by the state through a court ruling.

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<sup>8</sup> Zuchri Abdussamad, *Metode Penelitian Kualitatif* (CV. syakir Media Press, 2021).

<sup>9</sup> Zelfeni Wimra, "Keterlibatan Tuanku Dalam Pergesekan Identitas Adat, Agama, Dan Negara Di Minangkabau," *Analisis: Jurnal Studi Keislaman* 20, no. 1 (July 8, 2020): 69–94, <https://doi.org/10.24042/ajsk.v20i1.6571>.

An analysis of judicial practices shows that judges often consider the child's age as a key factor in determining custody. Children who have not yet reached the age of discernment tend to remain in the mother's care, even if she has converted to another religion. This consideration is based on the child's need for an attachment figure, which is psychologically crucial to their emotional development.<sup>10</sup> Separating a child from its mother at an early age can potentially lead to trauma, developmental disorders, and even personality instability later in life.

On the other hand, concerns regarding the influence of religious beliefs remain a key consideration for judges. This is evident in the time limit placed on custody granted to a mother who has renounced her faith, which is generally only granted until the child reaches a certain age, such as 7 or 12 years old. After that, custody may be transferred to the Muslim father. This pattern reflects an effort to strike a balance between protecting the child's spiritual well-being and fulfilling their emotional needs during the early stages of life.

Such legal constructs demonstrate flexibility in the application of hadhanah norms. Judges are not confined to a rigid textual approach but employ adaptive legal reasoning tailored to the concrete circumstances at hand. Within this framework, apostasy does not automatically nullify custody rights; rather, it must be assessed based on its impact on the child's overall well-being.

The child's best interests approach also shifts the focus from the parents' status to the quality of care they can provide. Parents who are considered "ideal" from a religious perspective do not automatically obtain custody if they are unable to ensure the child's well-being. Conversely, parents with limitations in certain aspects may still be granted custody if they are proven capable of providing a safe, stable, and loving environment.

In this context, it is important to recognize that protecting religious beliefs does not necessarily require a physical separation between children and parents of different faiths.<sup>11</sup> The cultivation of religious values can be achieved through other mechanisms, such as formal education, supervision by the extended family, or social interactions that support the formation of a child's religious identity. An approach that places too much emphasis on separation risks sacrificing the child's emotional needs, which are no less important.

A judicial approach that balances normative and empirical aspects demonstrates progress in family law thinking in Indonesia. Law is no longer understood as a static set of rules, but as an instrument that must be capable of addressing the complexities of social reality. In cases of custody resulting from divorce due to apostasy, these complexities encompass the tension between religious values, children's rights, and the dynamics of modern families. However, this flexibility also presents its own challenges. The absence of clear

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<sup>10</sup> Wahab Aznul Hidayat, "The Role of Witness and Victim Protection Agency for Imekko Tribe in Criminal Justice System in Sorong," *Law and Justice* 8, no. 2 (2023): 176–91, <https://doi.org/10.23917/laj.v8i2.2363>.

<sup>11</sup> Ulya Himatul. Muhammad Faiz. Putri Umala. Muhammad Rian. Muhammad Lukman, "No Title," *Jaksa: Jurnal Kajian Ilmu Hukum Dan Politik* 2, no. 3 (2024), <https://doi.org/https://doi.org/10.51903/jaksa.v2i3.1894>.

parameters in defining the boundaries of the “best interests of the child” can create room for subjectivity in judicial decisions. Differences in judges’ backgrounds, understanding, and perspectives have the potential to result in inconsistent rulings across cases with similar characteristics. This situation creates legal uncertainty that can harm the parties involved, particularly the child as the most vulnerable party.

Furthermore, an approach that is overly contextual without a strong normative foundation risks obscuring the fundamental principles of Islamic law, which serve as the primary reference in cases before the Religious Courts. A balance between flexibility and consistency is necessary to ensure that the law retains both its legitimacy and relevance. From a broader perspective, this paradigm shift also reflects the influence of developments in international law, particularly the principles enshrined in the Convention on the Rights of the Child. The principles of non-discrimination, the best interests of the child, and the right to grow and develop are increasingly being prioritized in judicial practice. The integration of these principles into the national legal system demonstrates a process of harmonization between domestic law and global standards.<sup>12</sup>

Nevertheless, the application of the principle of the best interests of the child cannot be separated from the social and cultural context of Indonesian society, which remains heavily influenced by religious values. Judges face the difficult task of balancing the normative demands of religion with the practical needs of children in their daily lives. The decisions made must maintain harmony between the two without sacrificing either to an extreme degree.

Analysis of this phenomenon indicates that custody in divorce cases involving apostasy cannot be resolved through a single-pronged approach. A multidimensional approach is required that simultaneously considers legal, psychological, social, and religious aspects. The child, as the primary subject, must be placed at the center of consideration, not merely as a consequence of the legal relationship between the parents.

Within this framework, the role of the judge becomes highly strategic as an interpreter of the law who must be able to carefully assess social realities. The resulting rulings not only impact the parties involved but also set precedents that influence the future development of the law. Therefore, sensitivity and depth of analysis are essential in every decision-making process.

Ultimately, the issue of child custody resulting from divorce due to apostasy demonstrates that family law operates within a highly dynamic landscape. Social changes, the evolution of legal thought, and demands for child protection drive the reinterpretation of existing norms. Custody is no longer narrowly understood as a parental right but as an instrument to ensure a better future for the child.

An approach prioritizing the child’s best interests creates space for more substantive

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<sup>12</sup> Febriani Tri Utami, Rohmad Adi Yulianto, and Siti Nur Intihani, “Perlindungan Hukum Atas Hak Kebebasan Beragama Pada Anak Yang Dilahirkan Dari Perkawinan Orang Tua Beda Agama Dalam Perspektif Perlindungan Anak,” *Jurnal Hukum Jurisdiction* 6, no. 1 (August 29, 2024): 99–115, <https://doi.org/10.34005/jhj.v6i1.167>.

justice, though it simultaneously demands caution in its application. The tension between religious norms and the child's practical needs will remain a central part of family law discourse, and it is here that the role of law as a tool of social engineering is tested in its ability to address the challenges of the times.

### **Legal Consequences of Divorce Due to Apostasy in Court Rulings**

Decision No. 0117/Pdt.G/2016/PA.Prgi provides a fairly clear picture of how religious courts in Indonesia view apostasy in the context of divorce. Apostasy is not treated as the sole cause that automatically dissolves a marriage, but rather as a factor whose relevance to the breakdown of the marriage must be assessed. This approach indicates a shift from the classical normative paradigm toward a legal approach grounded in evidence and social reality.

Under Indonesian positive law, divorce is not a direct consequence of a change in the religious beliefs of one of the parties.<sup>13</sup> The legal system requires sufficient grounds to demonstrate that the marital relationship can no longer be sustained. This is reflected in the judge's reasoning, which emphasizes the importance of proving apostasy as a legal fact, as well as demonstrating its impact on marital harmony. In other words, apostasy must be understood as a variable with social consequences, not merely a personal change in religious status.

This requirement for proof is a key point in distinguishing between the classical Islamic legal approach and legal practice in Indonesia. In fiqh, apostasy is often positioned as an event that automatically leads to fasakh. Meanwhile, in national judicial practice, judges do not merely consider normative aspects but also assess whether the apostasy genuinely causes irreconcilable conflict. This assessment is conducted through the evidentiary process in court, including witness testimony, documents, and the parties' statements.<sup>14</sup>

Furthermore, this ruling reaffirms that divorce must be considered a last resort (ultimum remedium) after various reconciliation efforts have failed. The mediation process, which is part of the judicial procedure, plays a crucial role in assessing whether the marital relationship can still be sustained. The judge does not automatically grant a divorce petition but first ensures that all efforts to preserve the integrity of the marriage have been exhausted to the fullest extent. This approach reflects the value placed on protecting the family institution, which remains a priority within the Indonesian legal system.

In this context, apostasy will only have legal relevance if it is proven to be a source of ongoing discord. If a change of religion does not cause significant conflict, then the grounds for divorce become legally weak.<sup>15</sup> This logic shows that the law does not directly intervene in

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<sup>13</sup> Rina Nur Azizah, "DAMPAK PERCERAIAN ORANG TUA TERHADAP PERKEMBANGANPSIKOLOGIS ANAK," *Al-Ibrah: Jurnal Pendidikan Dan Keilmuan Islam* 2, no. 2 (2017), <https://www.ejournal.stital.ac.id/index.php/alibrah/article/view/34>.

<sup>14</sup> Noeranisa Adhadianty Gunawan and Nunung Nurwati, "PERSEPSI MASYARAKAT PADA PERCERAIAN Society Perception Of Divorce," *Share: Social Work Journal* 9, no. 1 (August 5, 2019): 20, <https://doi.org/10.24198/share.v9i1.19863>.

<sup>15</sup> Muhammad Syrif Muhammad Syrif, "AMPAK PERCERAIAN TERHADAP PSIKOLOGIS, EMOSIONAL DAN MENTAL

matters of belief, but rather focuses on the social consequences arising from such differences.

The legal implications of this approach are not limited to the dissolution of the marriage, but also extend to other aspects such as the legal status of the parties and child custody. In the case analyzed, the judge not only granted the divorce but also established a child custody arrangement that reflects a balance between religious values and the child's needs. Here we see how court rulings serve not only as a means of dispute resolution but also as an instrument for regulating post-divorce social life.

The determination of child custody in this ruling reflects an approach that can be characterized as progressive.<sup>16</sup> Children who are still at a young age remain in the care of their mother, even if she has converted to another religion. This decision is based on the child's need for intensive care, which is psychologically closer to the mother figure. The judge recognizes that in the early stages of life, emotional closeness plays a very significant role in shaping a child's personality.

However, recognition of the mother's rights is not absolute. The Supreme Court sets a time limit until the child reaches the age of 7, after which custody transfers to the father. This limitation reflects an effort to maintain a balance between the child's emotional needs and the protection of religious aspects. At that age, the child is considered to be entering a phase of cognitive development that allows for the formation of a more directed understanding of religion.

This temporary parenting arrangement demonstrates a legal framework that is adaptive to the child's development. Custody is not viewed as a permanent right but rather as one that can change according to the child's needs and circumstances. This approach differs from the traditional paradigm, which tends to view custody as a fixed right attached to one party.

It is noteworthy that in this ruling, the judge did not entirely negate the mother's role despite her apostasy. The mother was still granted the opportunity to interact with and show affection toward her child. This indicates that the relationship between the child and the parents is not completely severed due to divorce. The child's right to maintain a relationship with both parents remains recognized as part of the protection of children's rights.

This approach reflects the influence of child protection principles within the national legal system. The child is not positioned as an object that must passively follow legal decisions, but as an individual with the right to receive love from both parents. In this context, the role of the law becomes crucial in maintaining a balance between the rights and obligations of the parties.

The harmonization between Islamic legal principles and modern law is clearly evident in the construction of this ruling. Sharia values emphasizing the importance of preserving

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ANAK DALAM PERSPEKTIF HUKUM ISLAM," *SYARIAH: Journal of Islamic Law* 4, no. 2 (2022), <https://doi.org/https://doi.org/10.55721/3erp0b85>.

<sup>16</sup> Laily Lukita Nilam Sari, Wasis Suprayitno, and Kuku Dwi Kurniawan, "Pelaksanaan Eksekusi Hak Asuh Anak Dalam Perkara Perceraian (Studi Kasus Putusan No 1618/Pdt.G/2020/PA.Smp)," *Indonesia Law Reform Journal* 2, no. 2 (November 12, 2022): 166–81, <https://doi.org/10.22219/ilrej.v2i2.22075>.

religious faith are upheld through the limitation of the mother's custody rights, while child protection principles are accommodated through the granting of custody rights during the early stages of life. This integration demonstrates that Islamic law possesses the flexibility to be interpreted in accordance with the needs of the times without losing its fundamental essence.<sup>17</sup>

Although this approach appears ideal, there are several critical points that need to be considered. First, the lack of clear standards for determining the age limit for custody could potentially lead to inconsistencies in rulings. In some cases, the age limit may vary depending on the judge's discretion, thereby creating legal uncertainty. Second, assessments of the impact of apostasy on children are often based on assumptions and are not supported by adequate empirical research.

Furthermore, an approach that places too much emphasis on doctrinal aspects risks overlooking the social realities children face in their daily lives. Children living in pluralistic environments do not necessarily experience religious identity crises simply because they are raised by parents of different faiths. Environmental factors, education, and social interactions also play a crucial role in shaping a child's identity.

On the other hand, the progressive approach adopted by the judge also faces challenges in its implementation. The transfer of custody from the mother to the father after the child reaches a certain age does not always proceed smoothly. This transition process has the potential to create new conflicts that could negatively impact the child's psychological well-being. Therefore, a more comprehensive mechanism is needed to ensure that changes in custody are implemented gradually and take the child's readiness into account.

This ruling also opens up a discussion regarding the need for legal reforms that are more responsive to societal dynamics. The provisions in the Compilation of Islamic Law, which remain general in nature, require more operational interpretations to provide better legal certainty. The role of the Supreme Court as the guardian of the consistency of rulings becomes particularly important in this context.

From a broader perspective, this ruling indicates that family law in Indonesia is currently in a transitional phase. Traditional values rooted in Islamic law are beginning to interact with modern principles emphasizing the protection of individual rights, particularly those of children. This interaction does not always proceed smoothly, but it serves as a space for the development of more adaptive legal thinking.

The legal consequences of divorce due to apostasy are no longer simply understood as the dissolution of the marital relationship. Its impact extends to encompass the restructuring of family relationships, parental rights and obligations, and the protection of children. This complexity demands an approach that is not merely norm-based but also takes into account

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<sup>17</sup> Anggit Wasesa Praja, Andy Apriansah, and Burhanuddin Susamto, "Pemberian Hak Asuh Anak Kepada Ayah Antara Positivisme Hukum Dan Hukum Progresif," *Fundamental: Jurnal Ilmiah Hukum* 12, no. 2 (January 4, 2024): 527–36, <https://doi.org/10.34304/jf.v12i2.184>.

evolving social realities.

In this context, court rulings play a strategic role as a bridge between legal norms and societal needs. Judges function not only as interpreters of the law but also as actors who shape the direction of legal development through the rulings they issue. Therefore, every ruling must reflect a balance between legal certainty, justice, and public benefit. Finally, an analysis of this ruling demonstrates that an approach combining religious values and child protection principles can yield more comprehensive solutions. The challenges that arise are inevitable, but they are, in fact, part of the ongoing legal evolution that adapts to the dynamics of society.

## CONCLUSION

Under Indonesian positive law, divorce due to apostasy does not automatically occur merely because of a change of religion; rather, it must be accompanied by marital discord proven in court. Regarding child custody, Islamic law and judicial practice demonstrate flexibility while prioritizing the best interests of the child. Custody of a child who has not yet reached the age of discernment is, in principle, granted to the mother; however, in cases of apostasy, it may be restricted or transferred to the father, taking into account the protection of the child's faith and development. Court rulings indicate that the approach taken is not merely normative but also comprehensively considers humanitarian aspects and the child's well-being.

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