

Legal Analysis of Child Custody Rights Based on District Court Decision (Study of Decision No. 108/Pdt.G/2023/PN.Son)

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Article History

Received: 13/05/2025; Reviewed: 12/08/2025; Accepted: 21/08/2025

Abstract: This study aims to understand the regulations regarding child custody under civil law and to analyze child custody after divorce based on the decision of the Sorong District Court with number 108/Pdt.G/2023/Pn.Son. This study uses an empirical legal research method, which combines literature study with direct interviews. Primary legal sources include interviews with relevant parties and applicable laws and regulations, while secondary legal sources are obtained from relevant academic articles. Data collection was conducted through interviews, and data analysis was performed qualitatively to gain a deeper understanding of the legal issues under study. The novelty of this research lies in its focus on analyzing the decision of the Sorong District Court Number 108/Pdt.G/2023/Pn.Son, which provides an assessment of child custody rights after divorce in the broader context of civil law. The results of the study show that although the Civil Code does not explicitly regulate child custody after divorce, the substance of the law emphasizes that children are entitled to fair treatment from both parents, both mother and father. The implementation of custody in the Sorong District Court decision was rejected by the Panel of Judges, taking into account various relevant legal factors. Based on the analysis of the decision, it can be concluded that the Panel of Judges carefully considered all legal aspects and facts of the trial. Custody of the child was granted to the biological mother (Defendant) because there was insufficient evidence to prove negligence in parenting. This decision is in line with Article 45(1) of the Marriage Law and the jurisprudence of the Supreme Court, which prioritizes the best interests of the child in custody arrangements following divorce.

Keywords: Child custody; Civil law; Divorce; Child's interests.

Abstrak: Penelitian ini bertujuan untuk memahami pengaturan mengenai hak asuh anak menurut hukum perdata dan untuk menganalisis hak asuh anak setelah perceraian berdasarkan putusan Pengadilan Negeri Sorong dengan nomor 108/Pdt.G/2023/Pn.Son. Penelitian ini menggunakan metode penelitian yuridis empiris, yang mengkombinasikan studi kepustakaan dengan wawancara langsung. Sumber hukum primer yang digunakan meliputi wawancara dengan pihak terkait dan peraturan perundang-undangan yang berlaku, sementara sumber hukum sekunder diperoleh dari artikel ilmiah yang relevan. Pengumpulan data dilakukan melalui wawancara dan analisis data dilakukan secara kualitatif untuk menggali pemahaman yang mendalam terkait isu hukum yang diteliti. Kebaruan penelitian ini terletak

pada fokusnya yang menganalisis putusan Pengadilan Negeri Sorong Nomor 108/Pdt.G/2023/Pn.Son, yang memberikan penilaian terhadap hak asuh anak setelah perceraian dalam konteks hukum perdata yang lebih luas. **Hasil penelitian** menunjukkan bahwa meskipun Kitab Undang-Undang Hukum Perdata tidak secara eksplisit mengatur hak asuh anak setelah perceraian, substansi hukumnya menekankan bahwa anak berhak mendapatkan perlakuan yang adil dari kedua orang tuanya, baik ibu maupun ayah. Pelaksanaan hak asuh dalam putusan Pengadilan Negeri Sorong tersebut ditolak oleh Majelis Hakim dengan mempertimbangkan berbagai faktor hukum yang relevan. Berdasarkan hasil analisis terhadap putusan tersebut, dapat **disimpulkan** bahwa Majelis Hakim telah mempertimbangkan seluruh aspek hukum dan fakta persidangan dengan cermat. Hak asuh anak diberikan kepada ibu kandung (Tergugat), karena tidak terdapat bukti yang cukup kuat untuk membuktikan kelalaian dalam pengasuhan. Keputusan ini sejalan dengan Pasal 45 ayat (1) Undang-Undang Perkawinan dan yurisprudensi Mahkamah Agung, yang menempatkan kepentingan terbaik anak sebagai prioritas utama dalam pengaturan hak asuh setelah perceraian.

Kata Kunci: Hak asuh anak; Hukum perdata; Perceraian; Kepentingan anak.

1. INTRODUCTION

Marriage is an important moment in every individual's life. When a man and a woman decide to get married, that decision has both physical and emotional impacts on both families, as well as implications for the ownership of property owned before and during the marriage.¹

Basically, everyone wants a harmonious, lasting, and prosperous family life, as stated in the objectives of marriage in Law No. 1 of 1974.² However, not all couples succeed in achieving this ideal family, because various conflicts often arise in married life. If these conflicts cannot be resolved, they can lead to the end of the marriage bond, or what is known as divorce—whether due to the death of one of the spouses, divorce, or divorce based on a court decision.

In Indonesia, there is a national law governing marriage, namely Law No. 1 of 1974 concerning Marriage and its Implementing Regulations, Government Regulation No. 9 of 1975. According to Article 1 of Law No. 1 of 1974, marriage is defined as a bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the belief in the One Supreme God.³

In practice, maintaining a marriage is not easy, as there are always various challenges to face. If a husband and wife are unable to overcome these challenges, the dissolution of marriage or divorce is inevitable. A divorce lawsuit can give rise to various problems. In addition to the lawsuit itself, other issues may arise as a result of the divorce settlement, such

¹ Adjeng Rizka Suwarnoputri et al., "Analisis Pemahaman Mahasiswa Terhadap Konsep Kesiapan Pernikahan," *Jurnal Edukasi: Jurnal Bimbingan Konseling* 10, no. 1 (2024): 1–21, <https://doi.org/10.22373/jje.v10i1.22189>.

² Yana Indawati et al., "Faktor Dan Dampak Pernikahan Dini Dalam Perspektif Undang-Undang Perkawinan," *Indonesian Journal of Social Sciences and Humanities* 4, no. 1 (2024): 80–91.

³ Fitra Mulyawan, Kiki Yulinda, and Dora Tiara, "Politik Hukum Dalam Bidang Hukum Keluarga Islam Di Indonesia," *Ensiklopedia Sosial Review* 3, no. 2 (2021): 111–22, <https://doi.org/10.33559/esr.v3i2.764>.

as who has the right to custody of the children.⁴ In cases of divorce, especially for couples with children, the question arises as to which parent has more rights over the children and who will carry out the parenting duties.

In 2024, the number of divorces in Indonesia showed a significant increase, with a total of 408,347 cases. This figure represents approximately 10 percent of all marriages registered nationally. This information is sourced from official data released by the Directorate General of Religious Courts of the Supreme Court.

There are two types of courts for child guardianship, namely the District Court and the Religious Court, which have the authority to handle guardianship cases. The authority of the District Court is regulated in Article 50 of Law Number 2 of 1986, which states that the District Court has the duty and authority to examine, decide, and settle criminal and civil cases at the first instance.

Article 7 paragraph (1) of Law Number 23 of 2002 concerning Child Protection states that every child has the right to know his or her parents and to receive care and nurture from them. However, divorce often raises new issues. Generally, divorce results in two main consequences: first, regarding the division of assets acquired during the marriage; and second, regarding custody rights over children after the divorce occurs. In this context, property is divided into two categories: separate property and joint property. Separate property refers to assets owned by each party before marriage, while joint property consists of assets acquired during the marriage, often referred to as marital property. In divorce cases, joint property frequently becomes the subject of marital property disputes.⁵

The high divorce rate in Sorong City, West Papua, is generally triggered by various factors such as economic difficulties, domestic violence, alcoholism, gambling, infidelity, and other problems. Additionally, many young people today are accustomed to a fast-paced, instant-gratification lifestyle, leading them to seek happiness in marriage in the same way, without realizing that married life is filled with challenges. Often, the ideal expectations they hold about marriage do not align with reality, and when this discrepancy arises, divorce is frequently chosen as the easiest way out.⁶

This situation will certainly disrupt the child's psychological development, cause confusion, and even become a mental burden for them. Both parents should put their egos aside and prioritize the child's well-being, so that the child continues to receive love and care

⁴ Rachmi Sulistyarini, "Rasio Legis Pengaturan Batas Minimal Usia Perkawinan Menurut Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Arena Hukum* 15, no. 1 (2022): 135–59, <https://doi.org/10.21776/ub.arenahukum.2022.01501.7>.

⁵ Andi Nur, Fikriana Aulia, and A Ummu Fauziyyah Syafruddin, "Relasi Kuasa Dan Ketimpangan Gender Dalam Pembagian Harta Gono-Gini: Kajian Sosio-Legal Atas Putusan Perceraian Di Indonesia," *Risalah Hukum* 21, no. 1 (2025): 51–61.

⁶ Yohanes Don et al., "Kedudukan Istri Dalam Pembagian Harta Gono-Gini Menurut Hukum Keluarga Islam Dan Undang-Undang Perkawinan Di Indonesia The Position of the Wife in the Division of Marital Property According to Islamic Family Law and the Marriage Law in Indonesia," *Jurnal Kolaboratif Sains* 7, no. 10 (2024): 3812–15, <https://doi.org/10.56338/jks.v7i10.6262>.

even though the couple has divorced. The responsibility for the child remains a shared obligation. Child custody should not be entirely placed on one parent, as both the father and mother continue to play a role in nurturing, caring for, and providing love to ensure the child grows up in a suitable environment. However, in reality, this responsibility is often neglected by both parents who have separated.

Divorce often causes parents to underestimate the significant psychological impact it has on children. Moreover, for women who experience divorce, this experience often leaves emotional scars that influence their future lives. Researchers cited the case of the Sorong District Court's civil case No. 57/PDT.G/2020/PN. Son, where the custody dispute was primarily based on the fact that the plaintiff and defendant had divorced, and custody was awarded to the mother.

After approximately one year had passed since the decision was handed down, the father still wanted to gain custody of his three children, and took legal action by filing a lawsuit to revoke the custody/guardianship granted to the mother.⁷

As stated in the court decision No. 108/Pdt.G/2023/Pn.Son, the judge hereby dismisses the custody claim filed by the biological father and grants custody of the three children to the mother. This decision was made by the judge based on the considerations derived from the facts presented in court, in an effort to uphold the principles of justice and legal protection for the children.

2. METHOD

This research is a normative study that focuses on analyzing legal sources, both primary and secondary, to examine specific legal issues. The main objective of this research is to understand the applicable legal norms or provide legal solutions to existing problems. In this study, the data used is divided into two types, namely primary data and secondary data. For data collection techniques, this study uses literature research or document studies, where the data used as primary legal material includes the Civil Code, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974, Law No. 35 of 2014 on Child Protection, and Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974. With this approach, it is hoped that the research can provide a deeper understanding of the legal issues discussed.

3. DISCUSSION

3.1. Provisions on Child Custody under Civil Law

Marriage is a bond between a man and a woman as husband and wife that encompasses physical and emotional aspects, with the aim of forming a harmonious, lasting family based on religious teachings. Provisions regarding the institution of marriage are regulated in Law

⁷ Lulu Sandra and Yusuf Hidayat, "Analisis Royalti Lagu Sebagai Harta Gono Gini Dalam Perkawinan Menurut Perspektif Hukum Islam (Studi Putusan Nomor 1622 / PDT . G / 2023 / PA . JB)," *UNES Law Review* 6, no. 4 (2024): 12413.

No. 1 of 1974 concerning Marriage, which aims to guarantee legal certainty and protect and support family welfare.⁸

Marriage occurs because of a mutual decision between a man and a woman to choose each other.⁹ Marriage has a significant impact on individuals, families, and society, particularly in terms of social status within their communities. Marriage is a tradition based on sacred rules that unite two individuals with the common goal of building a family and having children. In ongoing marriages, child custody is usually held by both parents. According to Article 45 of Law No. 1 of 1974 on Marriage, parents are obligated to nurture and educate their children to the best of their ability until the children are able to stand on their own or marry. Article 45(1) of Law No. 1 of 1974 states: "Every child has the right to know his or her parents, to be raised, and to be cared for by his or her own parents."

All matters relating to marriage and divorce are governed by the Marriage Law and other regulations, ranging from marriage requirements to divorce procedures or the dissolution of marriage. The legal basis for divorce can be viewed from various perspectives, with four methods established to terminate a marriage: death, mitigating circumstances, separation of bed and board, and divorce. These four provisions are outlined in Article 38 of Law No. 1 of 1974 on Marriage. The following is the text of Article 38 of the Marriage Law governing this matter: Article 38 of Law No. 1 of 1974 on Marriage: "Marriage may end due to: (1) The death of one of the parties; Marriage ends if one of the parties dies. (2) Divorce decided by a court; Marriage may end through divorce decided by a court. (3) Separation of residence or bed and board between husband and wife for one consecutive year; This occurs if the husband and wife separate their residences or do not live together in the same place for one consecutive year without a valid reason. (4) Mitigating circumstances for one of the parties. In certain circumstances, mitigating circumstances or other valid reasons may lead to the termination of a marriage."¹⁰

The end of a marriage, whether through a court decision or based on customary law, has a significant impact on the children born from that marriage. The children born into the marriage become the full responsibility of both parents. Every right and obligation held by an individual or legal entity must be protected through the proper application of the law. In certain situations, the law will only take necessary steps to rectify, correct, and impose penalties on the party who has been wronged, without violating or disappointing the rights of other

⁸ E Jahwa et al., "Konsep Perkawinan Dalam Hukum Islam Dan Hukum Nasional Di Indonesia," *Innovative: Journal Of...* 4, no. 1 (2024): 1692–1705, <http://j-innovative.org/index.php/Innovative/article/view/8080>

⁹ Devita Komala and Maria Tri Warmiyati D.W., "Proses Pengambilan Keputusan Pada Pasangan Suami Istri Yang Memilih Untuk Tidak Memiliki Anak," *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 6, no. 1 (2022): 119–28, <https://doi.org/10.24912/jmishumsen.v6i1.13536.2022>.

¹⁰ Titania Brintney Angela Mandey, Karel Yossi Umbroh, and Deine R. Ringkuangan, "Hak Pengasuhan Anak Akibat Terjadinya Perceraian Menurut Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Lex Privatum* 9, no. 9 (2021): 63–72, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/36568>.

parties not involved in the matter.

The Civil Code (KUHPerdata) states that a child is an individual born and raised within the bonds of marriage, even if they may have been born out of wedlock. Nevertheless, the child is still recognized as the legitimate child of the mother's husband who is bound by marriage. On the other hand, according to Law No. 1 of 1974, a legitimate child is a child born from or resulting from a legally valid marriage between the child's parents. This definition emphasizes the importance of the legality of marriage in determining the legal status of a child.

An individual is categorized as a minor if they have not reached the age of 21 and are not married. Although Law No. 1 of 1974 does not directly provide a definition of the age of a child, an understanding of this can be found in Article 6 paragraph (2), which states, "A person who has not reached the age of 21 (twenty-one) must obtain permission from both parents."

One of the main issues arising from divorce is the dispute over child custody between the two parents. Although custody is generally granted to the mother, the father still has a responsibility in the care and education of his biological children. Divorce not only terminates the marital relationship but also has significant legal implications for the child. Both the mother and father are legally obligated to care for and guide the child until they reach adulthood, as this moral responsibility remains with both parents, even if they no longer live together.

In cases of divorce or separation of parents, the court must determine child custody arrangements with consideration for the best interests of the child. Whenever a divorce occurs, the decision regarding who will have full custody of the child rests entirely with the court. Typically, the court will grant custody to the mother if the child is young or has not reached a certain age, as she is considered to be closer to the child emotionally and physically.¹¹ However, custody may be granted to the father if the court deems that he is more suitable to raise the child. Article 41 of Law No. 1 of 1974 on Marriage: "In the event of divorce, the court shall determine who shall have custody of the child based on the best interests of the child."

Article 45(2): "In the event of divorce, custody of the child shall be determined by the court, giving priority to the best interests of the child." This provision emphasizes the child's right to be cared for by their parents. However, in the event of divorce, the court will decide who has the right to care for the child, giving priority to the best interests of the child. This includes emotional, psychological, and living conditions of the child.

In civil law, child custody is generally understood as a form of guardianship or custody. This guardianship and custody reflect the rights of children towards their parents, while also indicating the obligations that must be fulfilled by parents. Provisions regarding this matter are clearly stipulated in Article 45 paragraphs (1) and (2) of the Marriage Law, which states, "(1) Both parents are obligated to care for and educate their children to the best of their ability. (2)

¹¹ Retno Amelia et al., "Kepastian Hukum Terhadap Hak Asuh Anak Akibat Perceraian Terhadap Istri Yang Mengalami Gangguan Kejiwaan (Studi Putusan MA No. 114 K/Ag/2022)," *Jurnal Media Akademik (JMA)* 2, no. 1 (2024): 731-64, <https://jurnal.mediaakademik.com/index.php/jma/article/view/79>.

The obligations of parents referred to in paragraph (1) of this article apply until the child marries or becomes independent, which obligation continues even if the marriage between the two parents is dissolved," which states that both parents are responsible for caring for and educating their children to the best of their ability until the child marries or achieves economic independence.

The regulation of custody in civil law in Indonesia plays an important role, not only as an effort to resolve conflicts between parents, but also as a form of protection for children who are the most vulnerable parties in divorce situations. The applicable legal system is expected to ensure the welfare of children and prevent them from becoming victims in disputes between their parents. The court will decide who gets custody of the child based on a number of factors, including: (1) The age of the child: Younger children, especially those under the age of 12, will usually be given custody to the mother, as she is considered to need more attention and care from the mother. (2) The child's welfare: The court will consider factors such as the financial capacity and psychological stability of the parents. (3) The child's wishes: If the child is old enough (usually over 12 years old), the court may consider the child's preference regarding who they wish to be their primary caregiver.

After divorce, custody of children is not automatically granted to one parent. Here are some things to consider in this process: (1) Mother as primary caregiver: In general, the mother will be granted custody of children if they are young (under 12 years of age). This is based on the assumption that mothers are closer to their children emotionally and physically at that age. (2) Custody to the father: Although mothers are more likely to be granted custody of young children, custody may be awarded to the father if it is deemed to be in the child's best interest, or if the father has a more stable financial and psychological situation. (3) The role of the court: If there is a dispute over child custody, the competent court will make a decision based on the best interests of the child. The court does not only consider who is more "deserving" in material terms, but also the child's psychological and emotional well-being.

Child custody after divorce is regulated with the primary objective of ensuring the welfare and best interests of the child. The court will determine who is eligible for custody based on a number of considerations, including age, psychological condition, and the wishes of children who are of sufficient age. In cases of divorce, the principle of the child's best interests is paramount, and the law provides flexibility to modify custody decisions if the child's circumstances change. Child custody in divorce involves not only physical aspects but also the mental and emotional well-being of the child.

Therefore, child maintenance includes the parents' obligation to provide supervision, adequate services, and meet the child's overall needs. This responsibility must be carried out until the child reaches the age of majority according to the law, which is when they are able to live independently. This maintenance not only covers material aspects but also includes the physical and emotional well-being of the child until they are ready to face life socially and economically.

Although the Civil Code (KUHPerdata) does not explicitly regulate child custody, a closer examination reveals that the principle emphasized by the Civil Code is that children born from a valid marriage retain equal legal status, even if their parents divorce. The rights and obligations towards the child must still be fulfilled by both parents, both the father and the mother. Regarding custody, there is an exception stipulated in Article 299 of the Civil Code, which states that a marriage contract cannot be made orally and must be recorded in a notarial deed before the marriage takes place, including to identify the guardian of a minor child. In addition, based on Article 230 of the Civil Code, a child born to a woman while she is legally married is considered to be the child of her husband.

In the event that one of the parties responsible for the care of the child is unable to meet the needs of the minor, the judge has the authority to determine the amount of alimony to be paid by each party for the welfare of the child. The appointment of a guardian for a child is made through a court decision. In accordance with the provisions of Article 229 of the Civil Code (KUHPerdata), a marriage contract cannot be made orally and must be documented in a notarial deed before the marriage is solemnized.

3.2. Child Custody After Divorce In accordance with the decision of the District Court of Sorong No. 108/Pdt.G/ 2023/Pn.son

Children play an important role in the life of a nation and state.¹² Therefore, the government continues to strive to provide various legal instruments to ensure justice, certainty, and the benefits of the law for children, especially for children whose parents are divorced. Provisions regarding child custody have been detailed in various laws and regulations in Indonesia, including the Marriage Law, the Child Protection Law, the Compilation of Islamic Law, case law, and the Supreme Court Circular (SEMA).

In cases of divorce, child custody is a crucial aspect that must receive primary attention. This is because custody directly relates to the well-being and future of the child. Therefore, the determination of custody must be based on legal protection principles that ensure certainty regarding the best interests of the child.¹³ This principle is known as *the best interest of the child*, which must be used as a guideline by courts when dealing with custody disputes between parents. The essence of this principle is that decisions regarding child custody must always be based on what is in the best interests of the child.

This principle also emphasizes that every child has the fundamental right to receive optimal protection from their parents. Children's rights to life, survival, and development are enshrined in legislation and recognized as part of the most fundamental human rights. Therefore, these rights must be upheld and protected by all parties concerned. The granting of child custody in divorce proceedings aims to ensure that the rights of children are fulfilled

¹² Wahab Aznul Hidayat, "Penerapan Diversi Dalam Sistem Peradilan Pidana Anak," *Justisi* 5, no. 2 (2019): 84–96, <https://doi.org/10.33506/js.v5i2.543>.

¹³ Ratna Dew et al., "Tinjauan Yuridis Penetapan Hak Asuh Anak Akibat Perceraian," *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 3 (2024): 4359–66.

after the separation of their parents. Therefore, legal protection for children in the context of custody is essential. As the authorized institution, the court is required to play an active role in ensuring the protection of children, including ensuring that their rights are fulfilled and providing fair and clear legal certainty.

The decision of the panel of judges must be based on applicable positive law, referring to the provisions of the legislation, the subject matter of the case, and the arguments that are recognized and not contested. The facts proven in court must be analyzed juridically from all relevant aspects. The petition submitted by the plaintiff must be considered and adjudicated in detail, one by one, in order to determine whether the claim is proven and eligible to be granted or not in the verdict. The judge's considerations are entirely normative, in accordance with applicable legal provisions.

Every case examination requires a process of evidence as the basis for consideration in making a decision. This stage is the most crucial part of the trial, because through evidence, it can be ascertained that the events or facts presented actually occurred. The main purpose of evidence is to achieve legal certainty, so that the decision handed down by the judge is appropriate and fair. Before the truth of a fact is proven beyond reasonable doubt, the judge does not have sufficient grounds to render a decision. The evidence also demonstrates the existence of a clear legal relationship between the parties involved in the case.¹⁴

The judge has a crucial role in deciding this case, as the decision will have a direct impact on the survival of a minor child. The following is a case regarding child custody along with an analysis prepared by the author. In this child custody case, the plaintiff is the biological father named Yasron Kole, while the defendant is the biological mother named Katrin Friska Saranga. Both are parents of three minor children named Gabriel Imanuel Kole, Jelita Gloria Kole, and Nadine Nahtania Kole. The dispute over child custody was brought before the Sorong District Court following the divorce between the two parents. The background to this child custody case stems from the Plaintiff's concerns about his children's religious condition after the divorce.

The defendant is known to have married a man who was previously her lover and subsequently adopted her new husband's religious beliefs. This situation has raised concerns among the plaintiff that the minor children may be influenced and convert to the new religion, which is considered contrary to the values and religious education instilled by the plaintiff.

The determination of which party shall be granted custody of the child, as stipulated in Article 41(a) of Law No. 1 of 1974 on Marriage, must prioritize the interests of the child, not the interests of both parents. The case was heard on November 7, 2023, with case number 108/Pdt.G/2023/PN Son, and the Plaintiff presented the following grounds for the lawsuit: (1) That based on documentary evidence and witness testimony, it has been established that the

¹⁴ Wahyu Adiva Nurfauzi et al., "Pembuktian Dan Alat Bukti Dalam Perkara Hukum Acara Perdata Di Pengadilan Guna Menegakan Kepastian Hukum," *Journal of Multidisciplinary Inquiry in Science, Technology and Educational Research* 1, no. 4 (2024): 2447–53.

Plaintiff and the Defendant are a married couple who entered into a valid marriage on May 29, 2006, and during their marriage, the Plaintiff and the Defendant were blessed with three children, namely Gabriel Imanuel Kole, Jelita Gloria Kole, and Nadine Nahtania Kole. (2) That based on the divorce decree between the Plaintiff and the Defendant, which was read on November 23, 2020, in point 3 of the decree, it is stated that the three children from the marriage between the Plaintiff and the Defendant, namely Gabriel Imanuel Kole, Jelita Gloria Kole, and Nadine Nahtania Kole, are under the custody of Katrin Frisca Saranga as their biological mother. (3) That after the divorce, the Defendant married Mr. Iim Abdul Hosim (her then-lover) and brought along her children Jelita Gloria Kole and Nadine Nahtania Kole to live with the Defendant and Mr. Iim Abdul Hosim. Subsequently, Siva was born, while the eldest child of the Plaintiff and the Defendant: Gabriel Imanuel Kole chose to live with the Plaintiff on the grounds that the Defendant had converted from Christianity to Islam and become a convert. (4) That without the knowledge or consent of the Plaintiff as the biological father, the Defendant forced her minor child, Nadine Nathania Kole, who was born in Sorong on June 17, 2017, to wear a hijab in her daily life, as is customary for children who practice Islam. However, based on the divorce decree between the Plaintiff and the Defendant, the children, including Nadine, are still registered as Christians. The Defendant's actions are deemed contrary to legal norms and religious values, and potentially disruptive to the psychological, social, and future development of the child in question. (5) That the child named Jelita Gloria Kole is also experiencing a more concerning condition, where the child shows signs of significant emotional distress. Currently, Jelita has an unstable personality, tends to be withdrawn, easily provoked, and is no longer under the control of the Defendant. This is evident from her behavior, which openly insults the Defendant and her brother, Gabriel Imanuel Kole, when her brother tries to take her to church. It is also known that Jelita has never participated in religious activities with her peers at church due to restrictions imposed by the Defendant, which indirectly hindered the spiritual and social development of the child. (6) That the Defendant's failure to ensure the fulfillment of the children's rights to practice their religion in accordance with their beliefs, as well as their right to think and express themselves in accordance with their age and intellectual development under the guidance of their parents, as stipulated in Article 6 of Law No. 23 of 2002 on Child Protection, constitutes a breach of parental obligations. Therefore, pursuant to the provisions of Article 30(1) and (2) of the same Law, the Court has the authority to revoke the defendant's custody rights over the children and transfer custody of the three children to the plaintiff as their biological father, in the best interests of the children.

The Plaintiff submitted 10 (ten) valid legal documents and presented 4 (four) witnesses who provided direct testimony before the Panel of Judges in court to support and strengthen the arguments in his lawsuit. Throughout the entire court proceedings, the Defendant never appeared in court nor appointed a legal representative or agent to represent him in the legal proceedings. The Defendant's absence resulted in the court proceedings continuing in

accordance with the applicable rules of procedure.¹⁵ Therefore, the Panel of Judges decided this case in absentia, namely by issuing a verdict without the presence of the Defendant, as stipulated in Article 125 of the *Herziene Inlandsch Reglement* (HIR), because the Defendant was deemed to have been summoned legally but did not appear in court.

The Court, after considering all the facts and evidence presented during the trial, decided to dismiss the lawsuit filed by the Plaintiff. In its ruling, the Court determined that custody of the children Gabriel Imanuel Kole, Jelita Gloria Kole, and Nadine Nahtania Kole remains with the Defendant.

On May 8, 2025, I had the opportunity to interview Mr. Lutfi Tomu, S.H., as the Deputy Chairman of the Sorong District Court. During the interview, Mr. Lutfi provided an explanation regarding the basis for the Court's decision. According to Mr. Lutfi, the Panel of Judges decided the case based on an analysis of the arguments presented by the Plaintiff. However, after considering the evidence presented, the Panel determined that the arguments were not supported by sufficient evidence to revoke or terminate the custody rights that the Defendant, as the biological mother of the three children involved in the case, had been exercising.

Mr. Lutfi added that "Although the defendant was absent and did not appoint a representative to attend the hearing, from the evidence presented by the plaintiff, it can be concluded that the defendant, as the biological mother, did not restrict the interaction between the three children and the plaintiff as the biological father. This is evident from the defendant's continued allowance for their first child, Gabriel Imanuel Kole, to choose to live with the plaintiff, despite the custody rights of the three children being in the defendant's hands. Furthermore, the defendant did not prevent the plaintiff from meeting and interacting with the other two children who live with her." Regarding the custody issue, Mr. Lutfi explained that the judge's decision in this case was based on and reinforced by the provisions of Article 45(1) of the Marriage Law, as well as supported by relevant Supreme Court precedents as legal references. After reading and carefully considering the contents of Decision No. 108/Pdt.G/2023/PN Son, and further strengthening my understanding through direct explanations from Mr. Lutfi, I hereby present my analysis of the decision. The issue of child custody after divorce is closely related to the principles of the best interests of the child. If a dispute arises between the two parents regarding the custody of the child, the court has the authority to make a decision that is deemed best for the child concerned.

The implementation of child custody rights based on Decision Number 108/Pdt.G/2023/PN Son has followed the procedures and provisions applicable at the Sorong District Court. In the decision, the Panel of Judges rejected the Plaintiff's claim regarding the request for child custody, as the evidence and witness statements submitted by the Plaintiff were insufficient to prove the allegations that the Defendant had failed to fulfill her

¹⁵ Bustanul Arifien Rusydi, "Problem Kehadiran Dan Upaya Hukum Tergugat Dalam Putusan Verstek Perkara Perceraian Pada Pengadilan Agama Bandung," *Muslim Heritage* 5, no. 2 (2020): 393, <https://doi.org/10.21154/muslimheritage.v5i2.2362>.

responsibilities as a mother in caring for and educating the children under her custody. On the contrary, during the trial, it was revealed that although custody was in the hands of the Defendant, she did not prevent their first child, Gabriel Imanuel Kole, from choosing to live with the Plaintiff.

The second consideration is that the children in question are still under the age of 12. In accordance with legal provisions and judicial precedents, particularly referring to the Supreme Court's Judicial Precedent No. 102 K/Sip/1973. Additionally, the legal basis relied upon by the Court in rendering this decision is the provisions of Law No. 1 of 1974 on Marriage, particularly Article 41(a) and (b), which govern the obligations of parents toward their children following divorce. Pursuant to these provisions, despite the divorce, both parents remain responsible for the upbringing and education of their children. In the decision I analyzed, custody of the child was granted to the mother, thereby making her directly responsible for the child's upbringing. Meanwhile, the father remains obligated to provide monthly maintenance to support the child's upbringing and education.

Supreme Court Jurisprudence No. 102 K/Sip/1973 dated October 15, 1973, states that: "The biological mother is given priority, especially for young children, as the child's best interests are the criterion, unless it is proven that the mother is unfit to care for her children." This case law reaffirms that in cases of divorce, custody of minor children should be granted to the mother, unless it is proven that the mother is unfit or unable to care for the child. This decision serves as an important precedent in custody cases, prioritizing the best interests of the child. Supreme Court Case No. 102 K/Sip/1973 prioritizes granting custody to the mother because it considers that, in general, mothers are deemed more capable of providing attention, affection, and meeting the emotional needs of children, especially for young children or minors.

The mother is considered to have a stronger emotional bond and a primary role in childcare from birth, which is crucial for the child's psychological and social development. Based on an analysis of Decision No. 108/Pdt.G/2023/PN Son and the explanations provided by the judge who heard the case, it can be concluded that the panel of judges thoroughly considered all legal aspects and facts presented in court. Custody was granted to the defendant as the biological mother because there was insufficient evidence to prove negligence in child custody. This decision is also in line with the provisions of Article 45(1) of the Marriage Law and the jurisprudence of the Supreme Court, which prioritize the best interests of the child as the top priority.

4. CONCLUSION

Child custody after divorce is regulated with the primary objective of ensuring the welfare and best interests of the child. The court will determine who is eligible for custody based on a number of considerations, including age and psychological condition. The Civil Code does not explicitly address child custody, but if we interpret it more deeply, what the Civil Code intends is that children born from a valid marriage and subsequently separated by

divorce should retain equal status and that their rights and obligations must continue to be fulfilled by both parents, whether the father or the mother. The implementation of child custody rights in the Sorong District Court Decision No. 108/Pdt.G/2023/PN Son relates to a custody dispute between the Plaintiff, the father, and the Defendant, the mother. The Panel of Judges decided to grant custody to the Defendant, the mother, considering various legal factors. One of the main considerations used by the Judge was the child's age, which is under 12 years old, where, in general, child custody at that age is prioritized for the mother. Additionally, there were no arguments or evidence presented by the Plaintiff that were sufficient to burden the Defendant or prevent her from exercising her right to custody of the child.

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