

Ensuring The Best Interests of the Child in Divorce Judgments Through the Lens of Maslahah Principles

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Abstract This research analyzes the concept of the child's best interests in divorce judgments from the perspective of the principle of maslahah, with a focus on Verdict Number 225/Pdt.G/2023/PA.Bkls. The study aims to explore how court decisions consider the welfare of the child in the context of divorce, particularly concerning custody and post-divorce financial arrangements. The analytical approach encompasses legal aspects and judicial considerations related to the principle of maslahah. The identified academic problem is the ambiguity in applying the best interests of the child principle in divorce judgments in Indonesia, which often overlooks the aspect of maslahah. The research findings indicate that although the principle of maslahah is frequently mentioned, its implementation is still limited and requires enhancement in judicial practice. This study provides an in-depth understanding of the implementation of the child's best interests in the context of divorce and recommends improvement measures to effectively protect the rights and interests of children in the future. This research is expected to guide wise decision-making among legal practitioners and judicial institutions in handling divorce cases involving children.

Abstrak Penelitian ini menganalisis konsep kepentingan terbaik bagi anak dalam putusan perceraian dari perspektif prinsip maslahah, dengan fokus pada Putusan Nomor 225/Pdt.G/2023/PA.Bkls. Penelitian ini bertujuan untuk mengeksplorasi bagaimana keputusan pengadilan mempertimbangkan kesejahteraan anak dalam konteks perceraian, terutama terkait dengan hak asuh dan pengaturan keuangan pasca-perceraian. Pendekatan analitis mencakup aspek hukum dan pertimbangan yudisial yang berkaitan dengan prinsip maslahah. Masalah akademis yang diidentifikasi adalah adanya ketidakjelasan dalam penerapan prinsip kepentingan terbaik bagi anak dalam putusan perceraian di Indonesia, yang seringkali mengabaikan aspek maslahah. Hasil penelitian menunjukkan bahwa meskipun prinsip maslahah sering disebutkan, implementasinya masih terbatas dan memerlukan peningkatan dalam praktik pengadilan. Penelitian ini memberikan pemahaman mendalam tentang penerapan kepentingan terbaik bagi anak dalam konteks perceraian dan merekomendasikan langkah-langkah perbaikan untuk melindungi hak dan kepentingan anak secara efektif di masa depan. Diharapkan penelitian ini dapat memberikan panduan bagi pengambilan keputusan yang bijaksana bagi praktisi hukum dan lembaga yudisial dalam menangani kasus perceraian yang melibatkan anak-anak.

Keywords Judgment; Maslahah; Custody; Child Protection



Introduction

In the system of *aḥwāl syakhṣiyyah*, marriage is the union between a man and a woman who fulfill the requirements stipulated in Islamic law. It is a manifestation of the natural human inclination to live together with one's partner.¹ Moreover, through this partnership, the continuity of human biological existence is ensured, thereby upholding the perpetuity of the administration of the caliphate mandate on Earth.² However, in cases where marriage ends in divorce, the child's best interests must be a primary consideration in judicial decisions. This research focuses on the principle of *maslahah* as it applies to the best interests of the child in divorce judgments, highlighting the necessity of prioritizing the child's welfare in custody and post-divorce financial arrangements. Understanding how courts integrate these considerations can provide critical insights into improving the protection of children's rights in divorce cases.

Marriage in the system of *aḥwāl syakhṣiyyah* (Islamic family law) is oriented towards enduring happiness, tranquility (*sakīnah*), affection (*mawaddah*), and mercy (*rahmah*), based on transcendental eschatological principles.³ This orientation compels every couple within a marriage to have a long-term awareness, avoiding short-term predispositions and desires that could potentially harm family harmony, not only within the spousal relationship but also within the family as a whole and in their interactions with the external environment.⁴ Ironically, not all marital relationships can proceed harmoniously toward the goal of marriage orientation.⁵ In situations where husband and wife are no longer compatible, and reconciliation becomes difficult, divorce, whether desired or not, must become the epilogic solution to terminate the marriage relationship.⁶

It is undeniable that behind divorce lies wisdom and benefits for both husband and wife. Instead of perpetuating unresolved conflicts, divorce (*talāq*) is a benevolent step God provides to end it.⁷ However, behind this benefit also lies harm, especially for couples who have offspring (*niyyah*).

¹ Nur Hadi and Al-Muzakir Al-Muzakir, 'The Wisdom of Syari'ah Al-Ahwal Al-Sakhṣiyyah According To Ali Ahmad Al-Jurjawi', *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 18, no. 2 (12 December 2018): 153–74, <https://doi.org/10.30631/alrisalah.v18i2.157>.

² Ismail Hashim Abubakar, 'The Thoughts and Views of Ja'far Mahmud Adam on Marriage, Family Institution and Women Issues', *Al-Manhaj: Journal of Indonesian Islamic Family Law* 5, no. 1 (30 June 2023): 1–29, <https://doi.org/10.19105/al-manhaj.v5i1.7915>.

³ Imam Syafi'i, 'Konsep Kafaah Dan Keluarga Sakinah (Studi Analisis Tentang Korelasi Hak Kafa'ah Terhadap Pembentukan Keluarga Sakinah)', *Asy-Syari'ah: Jurnal Hukum Islam* 6, no. 1 (15 February 2020): 31–48, <https://doi.org/10.55210/assyariah.v6i1.266>.

⁴ Siti Marifah and Toha Muhaimin, 'Dampak Pernikahan Usia Dini di Wilayah Pedesaan A Systematic Review', *Jurnal Ilmu Kesehatan Bhakti Husada: Health Sciences Journal* 10, no. 1 (4 July 2019): 18–27, <https://doi.org/10.34305/jikbh.v10i1.79>.

⁵ Amra Bone, 'Islamic Marriage and Divorce in the United Kingdom: The Case for a New Paradigm', *Journal of Muslim Minority Affairs* 40, no. 1 (2 January 2020): 163–78, <https://doi.org/10.1080/13602004.2020.1737412>.

⁶ Hidayatul Ma'unah, Nanik Sutarni, and Purwadi Purwadi, 'Pertimbangan Hakim Dalam Memutuskan Perkara Perceraian Karena Adanya Perselisihan Dan Pertengkar (Studi Putusan Nomor : 0708/Pdt.G/2019/Pa.Bi)', *Jurnal Bedah Hukum* 4, no. 1 (8 May 2020): 1–14, <https://doi.org/10.36596/jbh.v4i1.341>.

⁷ Fitri Ika Rahmawati, 'Perselingkuhan Sebagai Faktor Pertimbangan Hakim Dalam Putusan Perkara Perceraian No. 0047/Pdt.G/2018/PA.Kdr' (undergraduate, IAIN Kediri, 2021), <http://etheses.iainkediri.ac.id/3816/>.

Beneath the happiness of divorce, some children will suffer as they become the victims of their parents' divorce.⁸ It means that divorce not only impacts the husband and wife's relationship but also has negative consequences for the children born from that marriage, as their upbringing and education are now divided. Furthermore, if, in reality, the economic conditions of both parents are far from stable, the harm and suffering experienced by the children will undoubtedly be even more significant.⁹

Article 26 Paragraph (1) of Law No. 23/2003 concerning Child Protection affirms that parents should nurture, care for, educate, and protect their children.¹⁰ The Marriage Law, Law No. 1/1974, also affirms that parents must adequately care for and educate their children.¹¹ Based on these two regulations, the parents' responsibility towards their children remains even in the event of divorce. However, how they are cared for differs from before, as they are now separated and divided. Furthermore, in determining custody rights after divorce, the court refers to jurisprudence, where usually the children are entrusted to close and familiar relatives, such as the mother, especially for children under the age of discernment.¹²

It not only affects child custody (haḍānah) but also impacts psychological aspects (*nafsiyyah*).¹³ As victims of divorce, they become involved in their parents' conflicts and experience heavy mental pressure.¹⁴ Children feel ashamed and inferior¹⁵ and have difficulty concentrating in school.¹⁶ Some children seek negative escape routes and are influenced by bad company. Moreover, they are sometimes blamed by their parents, further adding to their mental burden and causing emotional instability.¹⁷

However, divorce is a complex process with significant implications, especially for the children involved. In the context of divorce, the well-being and best interests of the child must be the primary

⁸ Ladan Hashemi and Halleh Homayuni, 'Emotional Divorce: Child's Well-Being', *Journal of Divorce & Remarriage* 58, no. 8 (17 November 2017): 631–44, <https://doi.org/10.1080/10502556.2016.1160483>.

⁹ Debra A. Dunstan, Catherine J. Talbot, and Andrea Del Pozo De Bolger, 'Supporting Children's Well-Being: Outcomes of a Rural Child-Focused Education Program for Separating or Divorced Parents: Supporting Children's Well-Being', *Australian Journal of Rural Health* 25, no. 2 (April 2017): 132–33, <https://doi.org/10.1111/ajr.12250>.

¹⁰ Hani Sholihah, 'Perbandingan Hak-Hak Anak Menurut Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak Dan Hukum Islam', *Al-Afkar, Journal For Islamic Studies*, 9 July 2018, 88–112, https://doi.org/10.31943/afkar_journal.v2i1.21.

¹¹ Umul Khair, 'Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian', *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (30 March 2020): 291–306, <https://doi.org/10.33760/jch.v5i2.231>.

¹² Anjar S. C. Nugraheni-C. Nugraheni, Diana Tantri C, and Zeni Luthfiyah, 'Komparasi Hak Asuh Dan Hak Nafkah Anak Dalam Putusan-Putusan Perceraian Di Pengadilan Negeri Dan Pengadilan Agama Kota Surakarta', *Yustisia* 2, no. 3 (1 September 2013), <https://doi.org/10.20961/yustisia.v2i3.10158>.

¹³ 'Divorce, Psychological Issues', in *The SAGE Encyclopedia of Trans Studies*, by Abbie E. Goldberg and Genny Beemyn (2455 Teller Road, Thousand Oaks California 91320: SAGE Publications, Inc., 2021), <https://doi.org/10.4135/9781544393858.n69>; Hashemi and Homayuni, 'Emotional Divorce'.

¹⁴ Aurelie M. C. Lange et al., 'Parental Conflicts and Posttraumatic Stress of Children in High-Conflict Divorce Families', *Journal of Child & Adolescent Trauma* 15, no. 3 (September 2022): 615–25, <https://doi.org/10.1007/s40653-021-00410-9>.

¹⁵ M. Harwansyah Putra Sinaga, Latipa Hannum Harahap, and Yuni Fatharani, 'Gambaran Umum Permasalahan Anak Korban Perceraian', *Jurnal Pendidikan Dan Konseling (JPDK)* 4, no. 6 (16 November 2022): 4398–4408, <https://doi.org/10.31004/jpdk.v4i6.8961>.

¹⁶ Neil Kalter, 'School-Based Support Groups for Children of Divorce', *Special Services in the Schools* 8, no. 1 (29 December 1993): 39–66, https://doi.org/10.1300/J008v08n01_03.

¹⁷ Harry Ferdinand Mone, 'Dampak perceraian orang tua terhadap perkembangan psikososial dan prestasi belajar', *Harmoni Sosial: Jurnal Pendidikan IPS* 6, no. 2 (14 September 2019): 155–63, <https://doi.org/10.21831/hsjpi.v6i2.20873>.

focus for the courts and stakeholders.¹⁸ The child's best interests involve protecting and fulfilling their rights and ensuring their physical, emotional, and developmental well-being.¹⁹ Therefore, judges should not think narrowly and solely consider the primary divorce petition, but they must also consider subsidiary claims to adjudicate with fairness while considering the child's best interests. It means that decisions should not be made solely for the benefit of the divorcing parents while neglecting the well-being of the child as the victim.²⁰ Such decisions are automatically rejected by the principle of benefit, for example, the principle that "blocking harm takes precedence over acquiring benefit" (*dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*).²¹

This research highlights Verdict Number 225/Pdt.G/2023/PA.Bkls., issued by the Religious Court of Bengkalis.²² The primary claim in this decision relates to a divorce petition filed by the husband (petitioner) against the wife (respondent) and determining child custody rights in the case of the divorce. Although the father, as the petitioner, is responsible for the cost of child custody (*ḥaḍānah*), the decision does not explicitly address this matter. Indeed, a decision like this raises concerns about potential harm to the children who become victims of the divorce following the issuance of the decision, and such a situation is clearly against the commitment to the principle of benefit mentioned earlier. The hope is that this research will provide a deeper understanding and recommendations for improvement to protect the interests of children in divorce cases in the future, involving relevant parties, including the court.

This research adopted a normative legal analysis approach to examine the child's best interests in divorce petition decisions, taking the perspective of the benefit principle (*maṣlahah*), specifically focusing on Verdict Number 225/Pdt.G/2023/PA.Bkls. This normative legal analysis approach identifies and analyzes legal aspects of protecting children's interests in divorce, such as custody and financial provisions. The theory of *maṣlahah* employed in this research is based on the framework developed by Al-Ghazali, who emphasizes that *maṣlahah* should aim to preserve essential elements such as religion, life, intellect, lineage, and property.²³ Through this approach, this research provides a deeper insight into the implementation of the child's best interests in divorce cases, considering the principle of benefit articulated by Al-Ghazali in legal handling.

¹⁸ J. M. Muslim, Nanda Humairatuzzahrah, and Suci Ratnawati, 'Habitual Residence on Children Victims of Divorce in Mixed Marriage: Masalahah Mursalah Perspective', 2022, <https://eudl.eu/doi/10.4108/eai.20-10-2021.2316346>.

¹⁹ Dunstan, Talbot, and Del Pozo De Bolger, 'Supporting Children's Well-Being'; Hashemi and Homayuni, 'Emotional Divorce'.

²⁰ Jayusman Jayusman and Nurul Huda, 'Perspektif Masalahah terhadap Pertimbangan Hakim pada Putusan Perkara Nomor: 1376/Pdt.G/2019/PA.Tnk. tentang Penetapan Hak Hadanah kepada Ibu Kandung', *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 14, no. 2 (2021): 249–76, <https://doi.org/10.24042/ijpmi.v14i2.10119>.

²¹ Abu Hamid Ghazali, *Al-Mustasfa Fi 'Ilmi al-Usul* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1983), 286.

²² Rhezza Pahlawi, 'Putusan PA Bengkalis Nomor 225/Pdt.G/2023/PA.Bkls', 2023, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee05d0e799da7e9f3e313434383439.html>.

²³ Ghazali, *Al-Mustasfa Fi 'Ilmi al-Usul*; Abu Hamid Ghazali, *Al-Mankhul Min Ta'liqat al-Usul* (Damsyiq: Dar al-Fikr, 1980).

Best Interests of The Child

The child's best interests are a fundamental principle recognized internationally in laws and regulations and in various social and cultural contexts.²⁴ This principle indicates that in every decision or action involving a child, the primary consideration should be the child's best interests and well-being.²⁵ The child's best interests are based on the principle that children have the right to grow and develop in a safe, supportive environment that meets their needs and potential.²⁶ It means that in divorce or other conflicts, judges, parents, and relevant institutions are responsible for ensuring that every decision will maximize the child's physical, emotional, social, and educational well-being.²⁷ The principle of the child's best interests requires decision-makers to distance themselves from selfish or personal interests instead of focusing on the most advantageous for the child.²⁸ It implies that judges, parents, and relevant institutions must gather relevant information about the child's situation, aspirations, and the environment that can provide the most optimal benefits for their growth.²⁹

This principle necessitates thoroughly evaluating how custody, financial arrangements, and the post-divorce environment affect the child. It enables judges and parents to formulate considerate and fair decisions that minimize the child's negative impact and maintain a positive relationship with both parents.³⁰ Furthermore, the child's best interests also recognize their right to participate in decision-making processes that affect them, especially when their age and maturity allow. This principle views children as individuals who have the right to be respected and heard and who possess the potential to contribute meaningfully in determining their life path.³¹

In principle, the child's best interests extend beyond the realm of law to encompass various aspects of a child's life, including education, health, and the right to participate in culture and society.³² Therefore, cross-sector cooperation and integration are essential in various policies and programs related to children, ensuring that all aspects of a child's interests are holistically addressed.³³ When

²⁴ T. S. Tomlyak, 'The Best Interests of the Child: Adoption under Martial Law', *Al'manah prava*, no. 13 (1 October 2022): 425–425, <https://doi.org/10.33663/2524-017X-2022-13-68>.

²⁵ Mashuril Anwar and M. Ridho Wijaya, 'Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum: Studi Putusan Pengadilan Tinggi Tanjung Karang', *Undang: Jurnal Hukum* 2, no. 2 (2019): 265–92, <https://doi.org/10.22437/ujh.2.2.265-292>.

²⁶ Hashemi and Hodayuni, 'Emotional Divorce'.

²⁷ Kalter, 'School-Based Support Groups for Children of Divorce'.

²⁸ Tomlyak, 'The best interests of the child'.

²⁹ Anwar and Wijaya, 'Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum'.

³⁰ Jayusman and Huda, 'Perspektif Maslahah terhadap Pertimbangan Hakim pada Putusan Perkara Nomor'.

³¹ Rika Saraswati and V. Hadiyono, 'Penghargaan Hak Berpendapat Anak di Pengadilan: Studi Kasus di Pengadilan Negeri Semarang', *Sawwa: Jurnal Studi Gender* 13, no. 2 (11 October 2018): 237–60, <https://doi.org/10.21580/sa.v13i2.3016>.

³² Mei Lan Lestari, 'Analisis Tentang Peranan Pemerintah Dan Orang Tua Terhadap Perlindungan Anak Ditinjau Dari Peraturan Perundang-Undangan', *Hukum Islam* 17, no. 1 (2017): 17–30, <https://doi.org/10.24014/hi.v17i1.5865>.

³³ Mansari Mansari et al., 'Hak Asuh Anak Pasca Terjadinya Perceraian Orangtua dalam Putusan Hakim Mahkamah Sya'iyah Banda Aceh', *Gender Equality: International Journal of Child and Gender Studies* 4, no. 2 (12 September 2018): 103–24, <https://doi.org/10.22373/equality.v4i2.4539>.

applying this principle, decision-makers often face complex challenges, especially in divorce or other conflict situations. In such scenarios, the roles and responsibilities of judges, lawyers, social workers, and psychologists are crucial. They must work collaboratively to gather accurate and comprehensive information about the child, identify solutions that meet the child's needs, and minimize negative impacts.³⁴

Moreover, when making decisions focused on the child's best interests, it must be acknowledged that each child is unique. The diversity in each child's needs, interests, and development must be respected and specifically considered. Every decision should be contextual and tailored to each child's specific characteristics and circumstances.³⁵ Applying the best interests of the child principle also requires strong collaboration among various stakeholders involved in a child's life. In addition to parents and the judiciary, schools, healthcare centers, community organizations, and the surrounding environment also play a crucial role in supporting the well-being of children. This collaboration can help identify risks, provide necessary support, and create an environment conducive to children's growth and development.³⁶ Parents' active involvement and responsibility are also necessary to ensure optimal protection of the child's best interests. Parents have a primary role in shaping the post-divorce environment and child upbringing. Therefore, they need support and understanding about how to support children's well-being amidst changing family situations.³⁷

Furthermore, it is essential to remember that the child's best interests principle is an ongoing endeavor. Decision-makers at the legal and societal levels must continually evaluate and adjust their approaches according to the child's development and environmental dynamics. The decisions made should be flexible and able to accommodate changes in the child's needs and aspirations as time progresses.³⁸

Considering all these factors, integrating the perspective of the principle of benefit into the Best Interests of the Child principle can provide broader and deeper guidance in ensuring the protection and well-being of children amidst complex and diverse situations.³⁹ It creates a stronger foundation for making fair, wise, and future-oriented decisions for the betterment of our children.⁴⁰

³⁴ Anwar and Wijaya, 'Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum'.

³⁵ Lange et al., 'Parental Conflicts and Posttraumatic Stress of Children in High-Conflict Divorce Families'.

³⁶ Hashemi and Homayuni, 'Emotional Divorce'.

³⁷ Jayusman and Huda, 'Perspektif Masalah terhadap Pertimbangan Hakim pada Putusan Perkara Nomor'.

³⁸ Lestari, 'Analisis Tentang Peranan Pemerintah Dan Orang Tua Terhadap Perlindungan Anak Ditinjau Dari Peraturan Perundang-Undangan'.

³⁹ Abubakar, 'The Thoughts and Views of Ja'far Mahmud Adam on Marriage, Family Institution and Women Issues'.

⁴⁰ Hadi and Al-Muzakir, 'The Wisdom of Syari'ah Al-Ahwal Al-Sakhsiyyah According To Ali Ahmad Al-Jurjawi'.

The Principle of Benefit and The Context of The Best Interests of The Child

The principle of *maṣlahah* (benefit) is an ethical and legal concept in Islam that refers to seeking benefits and well-being when making decisions.⁴¹ Al-Ghazali stated that *maṣlahah* (public interest) is the core of the objectives of Islamic law.⁴² In the child's best interests, integrating the *maṣlahah* principle becomes relevant and valuable as it can provide a more comprehensive view of ensuring the protection and well-being of children in situations like divorce or other family conflicts.⁴³

The principle of *maṣlahah* emphasizes enhancing well-being and benefits for individuals and society.⁴⁴ When applied to the child's best interests, every decision made should positively impact the child's development and well-being. This principle teaches the importance of avoiding harmful and detrimental effects on the child and ensuring that the decisions hold long-term positive value for both the child and the community.⁴⁵

In divorce, the principle of *maṣlahah* can assist decision-makers in identifying the most advantageous solutions for the child, in alignment with the best interests of the child principle. These decisions will involve considering how custody, education, and financial provisions for the child will contribute to their well-being in the future. This principle also recognizes that the child's circumstances and needs can change over time, and therefore, decisions should be flexible and adaptive.⁴⁶ In the context of the child's best interests, this principle can aid judges and decision-makers in avoiding prioritizing personal or selfish interests over the child's well-being. The principle of *maṣlahah* reminds us that long-term benefits and harmony within society are more important than short-term interests.⁴⁷

In the context of the best interests of the child, one of the essential principles of benefit (*maṣlahah*) used by the Religious Courts in Indonesia is "blocking harm takes precedence over acquiring benefit" (*dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*), which is a significant part of the concept of the principle of benefit.⁴⁸ This principle states that in decision-making, avoiding harm (*mafsadah*) has a higher priority than seeking benefit (*maṣlahah*).⁴⁹

Concerning the child's best interests, this principle underscores the importance of identifying and avoiding all risks or negative impacts on the child in divorce or family conflict. While the main goal

⁴¹ Sudarmawan Samidi, Mohammad Faby Rizky Karnadi, and Dety Nurfadilah, 'The Role of Maqasid Al-Shariah and Maslahah in Ethical Decision Making: A Study of Professionals in Indonesia', *International Journal of Business Studies* 1, no. 2 (25 September 2018): 85–92, <https://doi.org/10.32924/ijbs.v1i2.23>.

⁴² Ghazali, *Al-Mustasfa Fi 'Ilmi al-Usul*, 310.

⁴³ Muslim, Humairatuzzahrah, and Ratnawati, 'Habitual Residence on Children Victims of Divorce in Mixed Marriage'.

⁴⁴ Ghazali, *Al-Mustasfa Fi 'Ilmi al-Usul*, 286.

⁴⁵ Jayusman and Huda, 'Perspektif Maslahah terhadap Pertimbangan Hakim pada Putusan Perkara Nomor'.

⁴⁶ Hayatun Nufus, 'Perbedaan Putusan Hak Asuh Anak Pasca Perceraian pada Mahkamah Agung dalam Perspektif HAM, Gender, dan Maslahah Mursalah' (masterThesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2021), <https://repository.uinjkt.ac.id/dspace/handle/123456789/55720>.

⁴⁷ Jayusman and Huda, 'Perspektif Maslahah terhadap Pertimbangan Hakim pada Putusan Perkara Nomor'.

⁴⁸ Ghazali, *Al-Mustasfa Fi 'Ilmi al-Usul*, 286; Ghazali, *Al-Mankhul Min Ta'liqat al-Usul*, 360.

⁴⁹ Samidi, Karnadi, and Nurfadilah, 'The Role of Maqasid Al-Shariah and Maslahah in Ethical Decision Making'.

is to ensure the well-being and benefit of the child, this principle reminds us that actions or decisions that could endanger or harm the child must be avoided, even if potential benefits might be gained.⁵⁰

In integrating the principle of “blocking harm takes precedence over acquiring benefit” with the child’s best interests, decision-makers must carefully analyze each option. Consideration of risks, long-term harmful effects, and potential harms must be an integral part of the decision-making process. This principle teaches us that safeguarding the child from losses and negative impacts is paramount.⁵¹

However, applying this principle also requires a proper balance. Some situations might involve a conflict between potential risks and benefits. In the context of divorce, for example, maintaining the child’s relationship with both parents might offer psychological benefits, even though there is a risk of conflict or disruption. In such situations, decision-makers must carefully consider and minimize potential harm with wise and adaptive solutions.⁵²

The principle of “blocking harm takes precedence over acquiring benefit” within the child’s best interests demonstrates a commitment to preventing potential long-term losses that could disrupt a child’s development. In cases of divorce or family conflict, this principle teaches that decisions should prioritize aspects that minimize the risks of emotional, social, and psychological disruptions for the child.⁵³

In situations where there is uncertainty about the future impact of a decision, this principle requires wisdom in choosing the most conservative course of action to protect the child’s best interests. It reflects a proactive approach to avoiding potential losses that might arise over time. However, applying the principle “blocking harm takes precedence over acquiring benefit” should also be done with adequate contextual understanding. Some situations might involve complex deliberations between benefits and risks. In such cases, thorough assessment, collaboration with experts, and weighing all relevant factors become essential in making the best decision for the child.⁵⁴

In divorce, this principle underscores the importance of prioritizing the child’s well-being above personal preferences, even if some choices may favor one party.⁵⁵ It guides decision-makers to emphasize stability, safety, and the child’s emotional health when navigating the complexities of divorce. Simultaneously, applying the “blocking harm takes precedence over acquiring benefit” principle underscores the necessity of comprehending the enduring repercussions of decisions made.⁵⁶

⁵⁰ Nufus, ‘Perbedaan Putusan Hak Asuh Anak Pasca Perceraian pada Mahkamah Agung dalam Perspektif HAM, Gender, dan Masalah Mursalah’.

⁵¹ Anwar and Wijaya, ‘Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum’.

⁵² Jayusman and Huda, ‘Perspektif Masalah terhadap Pertimbangan Hakim pada Putusan Perkara Nomor’.

⁵³ Lestari, ‘Analisis Tentang Peranan Pemerintah Dan Orang Tua Terhadap Perlindungan Anak Ditinjau Dari Peraturan Perundang-Undangan’.

⁵⁴ Samidi, Karnadi, and Nurfadilah, ‘The Role of Maqasid Al-Shariah and Masalahah in Ethical Decision Making’.

⁵⁵ Kalter, ‘School-Based Support Groups for Children of Divorcee’.

⁵⁶ Ghazali, *Al-Mustasfa Fi ‘Ilmi al-Usul*, 310.

It assesses how these choices influence the child's emotional, social, and psychological development. Nonetheless, the integration of this principle also acknowledges that shielding from harm does not universally entail avoiding all change or challenge. Occasionally, initially, arduous actions can yield lasting advantages for the child. Thus, this principle fosters discernment in evaluating the long-term consequences of encountered changes or hardships.⁵⁷

Court Decision Number 225/Pdt.G/2023/Pa.Bkls.

In Court Decision Number 225/Pdt.G/2023/PA.Bkls., the Bengkalis Religious Court (PA.Bkls.) ruled on a first-instance religious civil case regarding a talak divorce between the applicant and the respondent. The applicant, born on October 20, 1991, follows the Islamic faith, has completed secondary education, and resides in Bengkalis Regency, Riau Province. Meanwhile, the respondent, born on May 9, 1998, also follows the Islamic faith, has completed secondary education, and resides in Bengkalis Regency, Riau Province. This decision was made with the principle of justice based on the One Almighty God.

In the Statement of the Case, on May 16, 2023, the applicant filed a lawsuit with the following grounds: On January 7, 2015, the applicant and the respondent were married, and this marriage was recorded in Marriage Certificate Extract Number 96/96/I/2015 dated January 8, 2015, by the Marriage Registrar of the Mandau Sub-District Office of Religious Affairs, Bengkalis Regency. After the marriage, they lived together for more than 2 years in a rented house and later moved to a shared house with the same address as the applicant.

Within the context of the marital bond, the applicant and the respondent were actively involved in a marital relationship following the roles of husband and wife (*ba'da dukhul*). From their marriage, two children were born: the first child was born on November 26, 2015, and is currently about 7 years old, while the second child was born on December 14, 2018, and is currently about 4 years old. It was issued on June 8, 2023. In this case, the applicant seeks to obtain custody of their children, the first and second child, who are currently being cared for by the respondent. The primary reason is the children's need for affection from the respondent as their biological mother. The applicant has petitioned the Bengkalis Religious Court to arrange custody rights and related administration matters.

Furthermore, on March 27, 2023, the marital relationship between the applicant and the respondent, which was initially harmonious and peaceful, began to deteriorate continuously due to ongoing disputes and repeated arguments. The root of these disputes lies in the respondent engaging in an unfaithful relationship with another man. Although these disputes continued and became increasingly frequent for the same reasons, the applicant tried to remain patient for their marital continuity. The climax of this disharmony occurred on March 27, 2023, when the respondent left the

⁵⁷ Samidi, Karnadi, and Nurfadilah, 'The Role of Maqasid Al-Shariah and Maslahah in Ethical Decision Making'.

shared home, resulting in their separation of residence. Since then, effective communication between the applicant and the respondent has been severed, and they are no longer fulfilling their obligations as husband and wife.

In another aspect of the case, considering the abovementioned marital circumstances, the applicant no longer harbors hope for restoring a harmonious life with the respondent. Therefore, the applicant requested permission to perform *talāq* (divorce) against the respondent under the requirements stipulated by prevailing laws and regulations. The applicant is also willing to bear all expenses arising from the legal proceedings.

Subsequently, the applicant filed both primary and subsidiary claims. The primary claim includes a request to grant the applicant permission to pronounce *talak raj'ī* against the respondent in front of the Bengkalis Religious Court, to determine custody of the children in favor of the respondent, and to impose legal costs. The subsidiary claim seeks a fair judgment if the Panel of Judges has a differing view.

In the scheduled trial session, the applicant was present while the respondent did not attend the trial and was not represented by any party, despite being duly and adequately summoned based on Summons Letter Number 225/Pdt.G/2023/PA.Bkls. There was no valid reason explaining the respondent's absence. The judge advised the applicant to consider not proceeding with the divorce, but the applicant remained firm in their intention. Mediation was not possible as the respondent was absent even after proper summons. Therefore, the examination continued in a closed session by reading out the applicant's request letter, the purpose of which was upheld by the applicant.

The applicant presented various evidence to strengthen their argument, including documents and witnesses. The documents included a photocopy of the Marriage Certificate Extract from the Mandau Religious Affairs Office with Number 96/96/I/2015 dated January 8, 2015, which was valid and accurate, affixed with sufficient stamps and postmarked, and marked with the letter "P" by the Chairman of the Panel. There were two witnesses. Witness 1, the applicant's aunt, provided testimony regarding the marriage between the applicant and the respondent and the initial state of their marital life up to their separation. This witness also observed their arguments and stated that the cause was the respondent's involvement in an affair with another man. Witness 2, the applicant's brother-in-law, provided similar testimony about the marriage and dissolution of the marriage between the applicant and the respondent and the exact cause of the arguments. Subsequently, examinations and mediations were conducted, but they yielded no results, and the applicant concluded their arguments to proceed with the lawsuit. The judge must proceed with the decision, beginning with legal considerations.

The Legal Considerations explains that the purpose and objectives of the applicant's request have been outlined. The respondent did not attend the trial despite being duly and properly summoned.

There is no valid reason for their absence. Therefore, based on Article 149 paragraph (1) of the Bengkalis Religious Court Rules (R.Bg), the respondent who does not appear when duly summoned should be considered absent, and the applicant's request will be examined in absentia. In their considerations, the judge made efforts to achieve an amicable resolution by advising and providing insights to the applicant about the negative impacts of divorce under Article 82 of Law Number 7 of 1989 on Religious Courts as amended by Law Number 3 of 2006 and further amended by Law Number 50 of 2009, and Article 115 of the Compilation of Islamic Law (KHI). However, these efforts failed to reconcile the applicant with the respondent because the respondent did not attend the trial. Therefore, mediation could not be carried out as stipulated by the Supreme Court of the Republic of Indonesia Regulation Number 1 of 2016 on Mediation Procedures in Courts.

The judge also commented on the case. Mediation attempts were unsuccessful, so the main issue was examined in a public closed session, based on Article 80 paragraph (2) of Law Number 7 of 1989 as amended by Law Number 3 of 2006 and Law Number 50 of 2009. The main reason for the *talak* application was the change in the harmonious marital relationship to frequent disputes, arguments, and separation of residence, as outlined by the applicant in their request letter.

The judge also analyzed the evidence in this case. Even though the respondent did not attend the trial, the applicant was still required to prove the grounds for divorce with sufficient evidence. Based on Article 283 of the Bengkalis Religious Court Rules (R.Bg) in conjunction with Article 1865 of the Civil Code, the applicant must prove the grounds for their request since they are claiming a right or event. The applicant has presented evidence P.1 in the form of a valid Photocopy of the Marriage Certificate Extract, based on Article 301 paragraphs (1) and (2) of the R.Bg, as well as Article 285 of the R.Bg in conjunction with Article 5 of Law Number 10 of 2020 on Stamp Duty and Article 1870 of the Civil Code. This evidence has total probative value under Article 7, paragraph (1) of the Compilation of Islamic Law (KHI), as it demonstrates that a valid marriage with the respondent still binds the applicant.

Furthermore, the witnesses presented by the Applicant, namely Witness 1 and Witness 2, fulfill the formal and material requirements as witnesses based on Article 171, 172, 175 of the Bengkalis Religious Court Rules (RBg), as well as Article 308 paragraph (1) and (2), and Article 309 of the RBg. Their testimonies are consistent and acceptable, as evidenced under Article 76 of Law Number 7 of 1989 on Religious Courts as amended by Law Number 3 of 2006 and further amended by Law Number 50 of 2009, and Article 22 paragraph (2) of Government Regulation Number 9 of 1975 on the Implementation of Law Number 1 of 1974 concerning Marriage. Therefore, the testimonies of these witnesses should be considered as evidence.

In the Legal Considerations, the judge also commented on the legal facts found based on the analysis of the evidence above. These facts include: (1) The Applicant and Respondent were legally

married on January 7, 2015. (2) The Applicant and Respondent have two children, namely Kanza Nur Aqilah binti Yudira Yonggi Marianda, born on November 26, 2015 (7 years old), and Atika Zahra Ratifa binti Yudira Yonggi Marianda, born on December 14, 2018 (4 years old). The marital relationship between the Applicant and Respondent has experienced disharmony and separation since March 2023. Efforts at reconciliation and family advice have not succeeded in resolving the marital issues. Currently, the Applicant's and Respondent's children are living with and being cared for by the Respondent, who is deemed capable of child care. It forms a crucial foundation for assessing and considering the judgment to be rendered by the judge.

The judge then elaborates on the Consideration of Petition of Divorce by taking into account several factors: (1) marriage is a spiritual and physical bond between husband and wife, aiming to establish a happy and lasting household following the principle of the Almighty God; (2) divorce must have a valid reason, and the reasons mentioned for divorce include continuous disputes and arguments between the spouses without hope of living harmoniously in the household, as regulated by the relevant laws; (3) a divorce petition can be granted if the judge understands the reasons for the disputes and arguments through hearings with close family members and individuals related to the husband and wife; (4) marital disputes are often difficult to fully prove through the testimony of others due to cultural norms and religious norms that encourage concealing family matters and the fact that disputes are often not visible to others; (5) based on the principle the Supreme Court applies, witness testimonies explaining the legal consequences of a situation have legal validity as evidence; (6) connecting the facts from written evidence, the testimonies of the first and second witnesses, the respondent's admission, and applicable legal principles, it can be concluded that the husband and wife have been separated since March 2023, despite efforts by close family members of the Applicant to achieve reconciliation. It is strong evidence that their disputes and disharmony are irreparable, and the marital relationship has broken down. (7) Based on the existing legal facts, the judge opines that the Applicant's and Respondent's marriage has experienced a breakdown (broken marriage). Maintaining a broken marriage, with continuous disputes and arguments and no hope of living harmoniously, can lead to more significant losses for both parties. In contrast, the principles of Islamic law teach that preventing harm is prioritized over attaining benefits (*dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*).⁵⁸ (8) Although divorce is an action that should be avoided, if the original purpose of the institution of marriage cannot be achieved, divorce can be the best option in such a situation. It is hoped that after the divorce, both parties can attain tranquility and peace, as stated in the words of Allah in Surah An-Nisa' 4:130, "*And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement*

⁵⁸ Ghazali, *Al-Mustasfa Fi 'Ilmi al-Usul*, 286.

between them – and settlement is best." (12) The judge reaffirms that based on Article 118 of the Compilation of Islamic Law (KHI) in Indonesia, as no prior divorce has occurred in the marriage between the Applicant and Respondent, the *talāq raj'ī* is granted by the Applicant to the Respondent. Based on these considerations, the judge concludes that the grounds presented by the Applicant for divorce are not contrary to the law and have fulfilled the requirements stipulated in Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage and Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) of the Compilation of Islamic Law (KHI). Therefore, the divorce request submitted by the Applicant can be granted.

The judge also considered the petitum regarding custody (*ḥaḍānah*) by taking into account several considerations, including (1) the definition of custody as the activity of caring for, nurturing, and educating a child until adulthood; (2) custody disputes are limited to the physical possession of the child, where the best interests of the child are the primary focus; (3) the principles of child custody in Islam and the importance of safeguarding the future of the child, following the guidance in the Qur'an: "*And let those (executors and guardians) fear (injustice) as if they (themselves) had left weak offspring behind and feared for them*" (QS. al-Nisa' 9); (4) the obligation of parents to care for and educate their children, including after divorce, with rights and responsibilities that still apply; (5) the provisions of Article 105 of the Compilation of Islamic Law (KHI) concerning child custody, considering the child's age; (6) the right of choice of a discerning child and its conditions; (7) the decision on child custody must be based on the child's best interests, with the primary consideration being the child's welfare; (8) guided by the Child Protection Law and religious court jurisprudence, where the primary consideration is the welfare and interests of the child; (9) the custody being awarded to the Respondent, who is considered capable of caring for the child in line with the child's best interests; (10) emphasis on the fact that this decision must not diminish the rights and responsibilities of the Respondent in caring for the child and a reminder that children are entrusted and must be well-cared for even after the parents' marriage has ended. Based on these considerations, the judge concludes that the Applicant's request for custody (*ḥaḍānah*) can be granted.

The judge then explains that based on the category of marriage, according to Article 89 paragraph (1) of Law Number 7 of 1989 on Religious Courts as amended by Law Number 3 of 2006 and Law Number 50 of 2009, the costs of this case will be borne by the Applicant. This explanation aligns with the applicable legal framework and Islamic legal principles relevant to this case.

After explaining the Legal Considerations, the judge explains the Verdict (*Amar Putusan*): (1) the respondent has been officially summoned and should have been present in the trial but did not attend; (2) the judge grants the request made by the Applicant considering that the Respondent did not attend the trial; (3) the judge grants permission to the applicant to pronounce one *talāq raj'ī* against the

respondent in the Bengkalis Religious Court; (4) the judge orders the applicant to bear the costs of the case amounting to Rp. 1,660,000.00,- (one million six hundred and sixty thousand rupiahs).

This verdict was announced on Thursday, June 8, 2023 AD, corresponding to the 19th of Zulqaidah, 1444 AH. It was pronounced in an open court session by the Single Judge, Rhezza Pahlawi, S.Sy., assisted by the Acting Court Clerk, Yushadeni, S.H.I., LL.M., and attended by the Applicant, although the Respondent was not present at the session.

Analysis of The Judge's Court Decision Based on The Principle of *Maṣlahah*

In Verdict Number 225/Pdt.G/2023/PA.Bkls, the court granted the request for divorce between the applicant and the respondent. In considering this decision, the court elaborated on the case's facts, including the marriage, marital discord, and the applicant's reasons for seeking divorce. The court also noted that reconciliation attempts were unsuccessful and considered the evidence presented. The court then decided based on legal considerations that involved Islamic law principles. In this context, the court weighed the fact that the marriage had broken down, and reconciliation was not attainable. Guided by Islamic law principles and jurisprudential considerations, the court subsequently granted the applicant's request for a divorce, specifically a *talāq raj'ī*.

In child custody (*ḥaḍānah*), the court considers the paramount importance of the child's best interests. The court emphasizes that children are a trust that must be cared for diligently, even if the parents' marriage has ended. The judge's consideration for the child's best interests is evident in the explanation regarding child custody (*ḥaḍānah*). The court acknowledges parents' crucial role in nurturing, educating, and raising children. The dissolution of a marriage does not imply that children should become victims.

To reinforce the legal considerations regarding child custody, the court draws on arguments from the Quranic verse in Surah Al-Nisa'/4:9, which underscores that the fear of Allah prompts parents to attend to the welfare of their vulnerable and weak children after their passing. This verse reminds parents of their responsibility to care about the well-being of their children. Thus, this principle becomes a pivotal foundation in protecting and fulfilling children's rights in legal decisions. The judge's decision-making is grounded in a deep understanding of these principles, in conjunction with the Compilation of Islamic Law (KHI) and jurisprudence that governs parental responsibilities in nurturing and educating children, even after divorce. The judge also considers the child's age, the mature child's right to choose, and the primary consideration of the child's welfare and best interests in determining custody. All of these aspects make the principle of child custody in Islam a solid footing for making legal decisions related to children in cases of divorce.

In the subsequent legal considerations, the court elucidates that parents' obligations to care for and educate their children remain intact with unwavering rights and responsibilities, even after divorce.

In the context of legal decisions outlined in the mentioned case, this principle is fundamental in ensuring the protection and well-being of the children. Despite the dissolution of the marital union, parents retain the moral and legal duty to nurture and educate their children with full responsibility. This principle underscores that regardless of the separation of the partners, the child's right to attention, affection, education, and protection must be prioritized. It aligns with the best interests of the child principle, which forms the primary foundation for judicial decision-making. In this regard, the judge must ensure that parents fulfill their obligations in nurturing and educating their children well, following religious values and applicable legal norms.

The considerations are also based on the Compilation of Islamic Law (KHI), which contains provisions regarding child custody, specifically Article 105. This provision states that in divorce, child custody should be considered based on the child's age. This consideration is highly significant because a child's age affects their needs, development, and well-being. This article reflects the understanding that children of different ages have distinct needs, both physically and emotionally. Therefore, the judge must consider this age factor when determining aspects such as custody, residence, and care of the child after divorce. For instance, younger children might require more intensive care and attention, while older children might have more independent desires and needs. By carefully considering the child's age, the judge can make more accurate decisions aligned with the principle of the Best Interests of the Child.

The legal considerations in this verdict also reaffirm the principle of "rejecting harm takes precedence over pursuing benefits" (*dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*). Although not directly mentioned in the considerations of the child custody (*ḥaḍānah*) petitum, it is elucidated in the considerations of the divorce petitum. The decision regarding child custody in divorce cases must always be based on the principle of the Best Interests of the Child, with a primary focus on the well-being and welfare of the child. In every decision, the judge must prioritize factors that will positively and optimally impact the children involved. This principle requires the judge to consider the interests of divorcing parents and contemplate the long-term implications of the decision on the children's development, security, and well-being. A holistic and in-depth assessment must be conducted, including an evaluation of the environment that will positively support the child's growth, access to education, healthcare facilities, and emotional support. By ensuring that the child's welfare is the primary focus, the court can ensure that the child's rights are respected and their protection is guaranteed in divorce.

In deciding child custody in divorce cases, the court must adhere to the Child Protection Law and religious jurisprudence. The principal consistently prioritized the welfare and best interests of the child. The judge can ensure that the decisions align with legal standards prioritizing children's rights

by referring to existing child protection regulations and precedents from previous religious court cases. It underscores the importance of avoiding decisions that could be detrimental to the child's long-term well-being and prioritizing the safety and development of the child as the ultimate goal. Thus, the court ensures that the principles of law and child protection are harmoniously integrated in the decision regarding post-divorce child custody.

Based on legal considerations, the judge has recognized that rejecting harm takes precedence and must be carefully applied in legal deliberations. The verdict should serve as an outstanding example of how the court earnestly considers and integrates the child's best interests in divorce rulings, referring to Islamic law principles and the principle of rejecting harm and pursuing benefits that advocate for justice and welfare for all parties involved.

Furthermore, in the Verdict No. 225/Pdt.G/2023/PA.Bkls, the child's best interests principle is deeply explained by analyzing the existing facts. The court acknowledges that the child's age, their rights, as well as their emotional and developmental needs are crucial factors in making decisions related to child custody.

In considering the child's best interests, the court adopts a holistic approach that looks beyond the present circumstances and considers the potential long-term impacts on the children. The judge explains that while divorce is a decision that should be avoided, in some cases, as faced in this verdict, ending a marriage can be the best solution to shield children from prolonged instability and conflict.

Within the context of the principle of seeking to avoid harm (*dar' al-mafāsīd*) takes precedence over pursuing benefits (*jalb al-maṣāliḥ*), the court provides considerations and emphasizes prioritizing the more significant avoidance of harm.⁵⁹ In the context of divorce, this principle is applied by prioritizing the well-being of the child, even though the sacrifice of separating parents is not ignored. The court strives to take steps that favor the child's welfare by awarding custody to the person deemed capable of providing a stable and supportive environment for their development. In other words, the ideal decision not only reflects respect for Islamic legal values and the principle of seeking to avoid harm but also offers a concrete example of how the court can act as a mediator to ensure that divorce decisions fully consider the interests and well-being of the child as the primary aspect in the process.

In making this decision, the judge carefully seeks to implement the Islamic legal principle "rejecting harm takes precedence over pursuing benefits" (*dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*) to consider the best interests of the child. The court understands that prioritizing the child's interests is fundamental, in line with religious teachings and legal protection. Therefore, the court's decision to grant the divorce petition should be followed by granting custody to the respondent based on this

⁵⁹ Ghazali, 310.

principle. Although divorce is a step that should be avoided, in this case, the court must see that continuing a broken and conflict-ridden household could be more detrimental to the children emotionally and psychologically. Thus, by adhering to the principle of “rejecting harm takes precedence over pursuing benefits,” the court should decide to minimize the negative impact on the children by allowing the divorce to take place.

However, despite the thorough and ideal legal considerations explained in the verdict, which should be based on clear legal arguments, citing Quranic verses, legal regulations, and jurisprudence, and strengthened by the principle of seeking to avoid harm, particularly in the context of the best interests of the child, these considerations are conspicuously absent in the operative part of it. In the operative part, there are only the primary claims, namely (1) the respondent has been officially summoned and should have appeared in the session but did not attend the session; (2) the judge grants the petitioner’s request considering the respondent’s absence; (3) the judge grants the petitioner permission to pronounce one *raj’i* divorce in the Bengkalis Religious Court; (4) the judge imposes the petitioner’s obligation to pay the case costs as specified. The subsidiary claims, especially regarding the welfare and best interests of the child, are not mentioned in the operative part, which contradicts the previous legal considerations.

Therefore, within the context of Judge’s Court Decision Number 225/Pdt.G/2023/PA.Bkls., an intriguing dynamic emerges in its trajectory. It represents two aspects of claims. Firstly, the primary claim seeking a divorce, and secondly, the subsidiary claim where the court is expected to adjudicate fairly. However, what is even more compelling is the involvement of two young children, aged 7 and 4, in this event. The elaborated and ideal Legal Considerations demonstrate a profound essence regarding the need to prioritize the child's best interests in the context of divorce. However, as the verdict transitions to the Operative Part, these children seem to lose adequate presence. The dissonance between the thorough exposition of the Legal Considerations and the evident neglect of the children’s interests in the Operative Part becomes a point of reflection. This phenomenon highlights the urgency to find better harmony between strong legal argumentation and a genuine focus on the most crucial aspect in this case—the best interests of the involved children. This balance is necessary to maintain the integrity and fairness of the verdict, in alignment with legal principles and deep consideration for the children's future as the next generation. Therefore, there is a call to sharpen the focus on its integrity and child rights protection, aiming to create a more inclusive court that considers all parties involved in this divorce case.

Several recommendations can be proposed to ensure optimal protection of the child's best interests in future divorce proceedings by integrating the perspective of the principle of *maṣlahah*. First, ensuring that every court decision involving children must consistently pay special attention to their

interests, rights, and well-being is crucial. It can be achieved by further integrating Islamic legal principles that emphasize child protection, as exemplified in the Quranic verse that reminds about the care for weak children (QS. al-Nisa' 4:9). Second, the principle of seeking to avoid harm (*dar' al-mafāsīd*) needs to be more explicitly integrated into legal argumentation. In divorce cases, judges should be able to identify and assess the potential negative impacts that may arise for the children due to the termination of parental relationships. By considering the principle of prioritizing harm avoidance, judges can make decisions that are most beneficial for the long-term interests of the children. Third, a more holistic approach to decision-making is required. It involves comprehensive evidence gathering, including testimonies and perspectives of older children, if possible. This approach can provide a more accurate view of how the decision might impact the children's lives and help judges inform the decisions. Fourth, coordination and collaboration between the court and child protection agencies are crucial. This collaboration can ensure that the interests of the children are placed at the heart of the decision-making process, considering recommendations from child psychologists, social workers, and pediatric healthcare professionals. Fifth, efforts to educate judges, lawyers, and parties involved in divorce cases should also be enhanced. A better understanding of the importance of the child's best interests, how to apply Islamic legal principles, and the principle of seeking to avoid harm within this context can lead to more holistic and dignified rulings. By implementing these recommendations, it is hoped that future divorce court decisions will better consider and protect the child's best interests, ultimately positively impacting their future.

Conclusions

In the context of protecting the best interests of the child in divorce judgments, the perspective of the principle of *maṣlahah* plays a crucial role in shaping legal arguments and decision-making. An analysis of Decision Number 225/Pdt.G/2023/PA.Bkls. reveals that while legal considerations have thoroughly expounded upon Islamic principles and the principle of *maṣlahah* that should serve as primary guidelines, obstacles exist in effectively integrating these aspects into concrete judgment directives. In the operative part, the focus on the well-being and protection of the children appears to be less represented. The absence of the children in the operative part raises concerns about the mismatch between legal considerations and implementation in the final decision. It is crucial for the court to bridge the gap between in-depth legal considerations and decision-making in the operative part that is more balanced and reflective of Islamic values and the principle of seeking to avoid harm. Ensuring that every court decision explicitly considers the child's best interests, involving their well-being and protection, is a vital step towards a judicial system more responsive to children's rights in divorce. By integrating Islamic principles, the principle of seeking to avoid harm, and child protection laws into divorce

decisions, the hope is that optimal protection for children as vulnerable subjects who require special attention can be realized. This step will ensure that children's future remains prioritized in line with religious teachings and existing legal norms.

However, this research has certain limitations that need to be acknowledged. Firstly, the study focuses on a single case, which may not capture the full spectrum of how *maṣlaḥah* is applied in various judicial contexts across different regions. Additionally, the research relies heavily on legal texts and court documents, with limited access to primary data such as interviews with judges or affected families. Future research could expand the scope by including a larger sample of cases and incorporating qualitative methods to gain deeper insights from those directly involved in the judicial process. Furthermore, comparative studies between different jurisdictions could provide a broader perspective on how Islamic principles and child protection laws are harmonized in diverse legal systems. By addressing these limitations, future studies can build on the findings of this research and contribute to the ongoing development of a judicial system that effectively safeguards the best interests of children in divorce cases.

References

- Abubakar, Ismail Hashim. 'The Thoughts and Views of Ja'far Mahmud Adam on Marriage, Family Institution and Women Issues'. *Al-Manhaj: Journal of Indonesian Islamic Family Law* 5, no. 1 (30 June 2023): 1–29. <https://doi.org/10.19105/al-manhaj.v5i1.7915>.
- Anwar, Mashuril, and M. Ridho Wijaya. 'Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum: Studi Putusan Pengadilan Tinggi Tanjung Karang'. *Undang: Jurnal Hukum* 2, no. 2 (2019): 265–92. <https://doi.org/10.22437/ujh.2.2.265-292>.
- Bone, Amra. 'Islamic Marriage and Divorce in the United Kingdom: The Case for a New Paradigm'. *Journal of Muslim Minority Affairs* 40, no. 1 (2 January 2020): 163–78. <https://doi.org/10.1080/13602004.2020.1737412>.
- 'Divorce, Psychological Issues'. In *The SAGE Encyclopedia of Trans Studies*. 2455 Teller Road, Thousand Oaks California 91320: SAGE Publications, Inc., 2021. <https://doi.org/10.4135/9781544393858.n69>.
- Dunstan, Debra A., Catherine J. Talbot, and Andrea Del Pozo De Bolger. 'Supporting Children's Well-Being: Outcomes of a Rural Child-Focused Education Program for Separating or Divorced Parents: Supporting Children's Well-Being'. *Australian Journal of Rural Health* 25, no. 2 (April 2017): 132–33. <https://doi.org/10.1111/ajr.12250>.
- Ghazali, Abu Hamid. *Al-Mankhul Min Ta'liqat al-Usul*. Damsyiq: Dar al-Fikr, 1980.
- — —. *Al-Mustasfa Fi 'Ilmi al-Usul*. Beirut: Dar al-Kutub al-'Ilmiyyah, 1983.
- Hadi, Nur, and Al-Muzakir Al-Muzakir. 'The Wisdom of Syari'ah Al-Ahwal Al-Sakhsiyyah According To Ali Ahmad Al-Jurjawi'. *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 18, no. 2 (12 December 2018): 153–74. <https://doi.org/10.30631/alrisalah.v18i2.157>.
- Hashemi, Ladan, and Halleh Homayuni. 'Emotional Divorce: Child's Well-Being'. *Journal of Divorce & Remarriage* 58, no. 8 (17 November 2017): 631–44. <https://doi.org/10.1080/10502556.2016.1160483>.
- Jayusman, Jayusman, and Nurul Huda. 'Perspektif Maslahah terhadap Pertimbangan Hakim pada Putusan Perkara Nomor: 1376/Pdt.G/2019/PA.Tnk. tentang Penetapan Hak Hadanah kepada Ibu Kandung'. *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 14, no. 2 (2021): 249–76. <https://doi.org/10.24042/ijpmi.v14i2.10119>.

- Kalter, Neil. 'School-Based Support Groups for Children of Divorce'. *Special Services in the Schools* 8, no. 1 (29 December 1993): 39–66. https://doi.org/10.1300/J008v08n01_03.
- Khair, Umul. 'Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian'. *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (30 March 2020): 291–306. <https://doi.org/10.33760/jch.v5i2.231>.
- Lange, Aurelie M. C., Margreet M. Visser, Ron H. J. Scholte, and Catrin Finkenauer. 'Parental Conflicts and Posttraumatic Stress of Children in High-Conflict Divorce Families'. *Journal of Child & Adolescent Trauma* 15, no. 3 (September 2022): 615–25. <https://doi.org/10.1007/s40653-021-00410-9>.
- Lestari, Mei Lan. 'Analisis Tentang Peranan Pemerintah Dan Orang Tua Terhadap Perlindungan Anak Ditinjau Dari Peraturan Perundang-Undangan'. *Hukum Islam* 17, no. 1 (2017): 17–30. <https://doi.org/10.24014/hi.v17i1.5865>.
- Mansari, Mansari, Iman Jauhari, Azhari Yahya, and Muhammad Irvan Hidayana. 'Hak Asuh Anak Pasca Terjadinya Perceraian Orangtua dalam Putusan Hakim Mahkamah Sya'iyah Banda Aceh'. *Gender Equality: International Journal of Child and Gender Studies* 4, no. 2 (12 September 2018): 103–24. <https://doi.org/10.22373/equality.v4i2.4539>.
- Marifah, Siti, and Toha Muhaimin. 'Dampak Pernikahan Usia Dini di Wilayah Pedesaan A Systematic Review'. *Jurnal Ilmu Kesehatan Bhakti Husada: Health Sciences Journal* 10, no. 1 (4 July 2019): 18–27. <https://doi.org/10.34305/jikbh.v10i1.79>.
- Ma'unah, Hidayatul, Nanik Sutarni, and Purwadi Purwadi. 'Pertimbangan Hakim Dalam Memutuskan Perkara Perceraian Karena Adanya Perselisihan Dan Pertengkaran (Studi Putusan Nomor : 0708/Pdt.G/2019/Pa.Bi)'. *Jurnal Bedah Hukum* 4, no. 1 (8 May 2020): 1–14. <https://doi.org/10.36596/jbh.v4i1.341>.
- Mone, Harry Ferdinand. 'Dampak perceraian orang tua terhadap perkembangan psikososial dan prestasi belajar'. *Harmoni Sosial: Jurnal Pendidikan IPS* 6, no. 2 (14 September 2019): 155–63. <https://doi.org/10.21831/hsjpi.v6i2.20873>.
- Muslim, J. M., Nanda Humairatuzzahrah, and Suci Ratnawati. 'Habitual Residence on Children Victims of Divorce in Mixed Marriage: Masalah Mursalah Perspective,' 2022. <https://eudl.eu/doi/10.4108/eai.20-10-2021.2316346>.
- Nufus, Hayatun. 'Perbedaan Putusan Hak Asuh Anak Pasca Perceraian pada Mahkamah Agung dalam Perspektif HAM, Gender, dan Masalah Mursalah'. masterThesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2021. <https://repository.uinjkt.ac.id/dspace/handle/123456789/55720>.
- Nugraheni, Anjar S. C. Nugraheni-C., Diana Tantri C, and Zeni Luthfiyah. 'Komparasi Hak Asuh Dan Hak Nafkah Anak Dalam Putusan-Putusan Perceraian Di Pengadilan Negeri Dan Pengadilan Agama Kota Surakarta'. *Yustisia* 2, no. 3 (1 September 2013). <https://doi.org/10.20961/yustisia.v2i3.10158>.
- Pahlawi, Rhezza. 'Putusan PA Bengkulu Nomor 225/Pdt.G/2023/PA.Bkls', 2023. <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee05d0e799da7e9f3e313434383439.html>.
- Rahmawati, Fitri Ika. 'Perselingkuhan Sebagai Faktor Pertimbangan Hakim Dalam Putusan Perkara Perceraian No. 0047/Pdt.G/2018/PA.Kdr'. Undergraduate, IAIN Kediri, 2021. <http://etheses.iainkediri.ac.id/3816/>.
- Samidi, Sudarmawan, Mohammad Faby Rizky Karnadi, and Dety Nurfadilah. 'The Role of Maqasid Al-Shariah and Masalah in Ethical Decision Making: A Study of Professionals in Indonesia.' *International Journal of Business Studies* 1, no. 2 (25 September 2018): 85–92. <https://doi.org/10.32924/ijbs.v1i2.23>.
- Saraswati, Rika, and V. Hadiyono. 'Penghargaan Hak Berpendapat Anak di Pengadilan: Studi Kasus di Pengadilan Negeri Semarang'. *Sawwa: Jurnal Studi Gender* 13, no. 2 (11 October 2018): 237–60. <https://doi.org/10.21580/sa.v13i2.3016>.

- Sholihah, Hani. 'Perbandingan Hak-Hak Anak Menurut Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak Dan Hukum Islam'. *Al-Afkar, Journal For Islamic Studies*, 9 July 2018, 88–112. https://doi.org/10.31943/afkar_journal.v2i1.21.
- Sinaga, M. Harwansyah Putra, Latipa Hannum Harahap, and Yuni Fatharani. 'Gambaran Umum Permasalahan Anak Korban Perceraian'. *Jurnal Pendidikan Dan Konseling (JPDK)* 4, no. 6 (16 November 2022): 4398–4408. <https://doi.org/10.31004/jpdk.v4i6.8961>.
- Syafi'i, Imam. 'Konsep Kafaah Dan Keluarga Sakinah (Studi Analisis Tentang Korelasi Hak Kafa'ah Terhadap Pembentukan Keluarga Sakinah)'. *Asy-Syari'ah: Jurnal Hukum Islam* 6, no. 1 (15 February 2020): 31–48. <https://doi.org/10.55210/assyariah.v6i1.266>.
- Tomlyak, T. S. 'The Best Interests of the Child: Adoption under Martial Law.' *Al'manah prava*, no. 13 (1 October 2022): 425–425. <https://doi.org/10.33663/2524-017X-2022-13-68>.

