

Child Custody in Divorce of Husband Abandonment: Judge's Subjectivity Based on the Benefit of the Child Determination No. 310/Pdt.G/2023/MS. Bna

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Abstract

Divorce due to husband neglect is a family problem that has a significant impact on the protection of children's rights, especially in the determination of custody (hadhanah). This condition requires legal considerations that put the best interests of children as the top priority. This research focuses on the Decision of the Banda Aceh Syar'iyah Court Number 310/Pdt.G/2023/MS. Bna to examine the extent of the judge's consideration in determining child custody in the case of husband neglect. The purpose of this study is to analyze the basis of the judges' deliberations and assess them from the perspective of Islamic law. This study uses a qualitative method with a normative juridical approach. Data was obtained through a literature study that included analysis of court decisions, laws and regulations, and relevant fiqh literature. The data was analyzed descriptive-analytically to identify the suitability between judges' considerations, positive legal norms, and Islamic legal principles in determining child custody. The results of the study showed that the panel of judges determined the right of hadhanah to the mother with the consideration that the husband was proven to have committed neglect, did not provide maintenance, and did not meet the moral feasibility in raising children. This consideration is in line with the provisions of Article 105 of the Compilation of Islamic Law and the principle of the welfare of children in Islamic law. Thus, the ruling reflects the harmonization between positive law and Islamic law in ensuring the best protection for children after divorce. Therefore, this study recommends that courts consistently prioritize the principle of the best interests of the child and strengthen benefit-based considerations in every custody decision in family neglect cases.

Keywords: Best Interests of the Child; Child Custody; Husband Abandonment; Judicial Consideration.

Abstrak

Perceraian akibat penelantaran suami merupakan persoalan keluarga yang berdampak signifikan terhadap perlindungan hak anak, khususnya dalam penentuan hak asuh (hadhanah). Kondisi ini menuntut adanya pertimbangan hukum yang menempatkan kepentingan terbaik bagi anak sebagai prioritas utama. Penelitian ini berfokus pada Putusan Mahkamah Syar'iyah Banda Aceh Nomor 310/Pdt.G/2023/MS.Bna untuk mengkaji sejauh mana pertimbangan hakim dalam menetapkan hak asuh anak dalam



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kasus penelantaran suami. Tujuan penelitian ini adalah menganalisis dasar pertimbangan majelis hakim serta menilainya dalam perspektif hukum Islam. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis normatif. Data diperoleh melalui studi kepustakaan yang mencakup analisis putusan pengadilan, peraturan perundang-undangan, serta literatur fiqh yang relevan. Data tersebut dianalisis secara deskriptif-analitis untuk mengidentifikasi kesesuaian antara pertimbangan hakim, norma hukum positif, dan prinsip-prinsip hukum Islam dalam penentuan hak asuh anak. Hasil penelitian menunjukkan bahwa majelis hakim menetapkan hak hadhanah kepada ibu dengan pertimbangan bahwa suami terbukti melakukan penelantaran, tidak memberikan nafkah, serta tidak memenuhi kelayakan moral dalam mengasuh anak. Pertimbangan ini selaras dengan ketentuan Pasal 105 Kompilasi Hukum Islam serta prinsip kemaslahatan anak dalam hukum Islam. Dengan demikian, putusan tersebut mencerminkan harmonisasi antara hukum positif dan hukum Islam dalam menjamin perlindungan terbaik bagi anak pasca perceraian. Oleh karena itu, penelitian ini merekomendasikan agar pengadilan secara konsisten mengutamakan prinsip kepentingan terbaik bagi anak serta memperkuat pertimbangan berbasis kemaslahatan dalam setiap putusan hak asuh pada kasus penelantaran keluarga.

Kata Kunci: Kepentingan Terbaik Anak; Hak Asuh Anak; Pengabaian Suami; Pertimbangan Yudisial.

INTRODUCTION

Marriage is a sacred bond that has a noble position in Islam and positive law.¹ The main purpose of marriage is to form a family that is *sakinah*, *mawaddah*, and *rahmah* as the foundation of social life.² This is emphasized in Islamic teachings which view marriage as a noble contract between a man and a woman. The Qur'an places marriage as a means of peace of mind and affection. Marriage is not only a biological relationship, but a moral and spiritual agreement that binds the rights and obligations of husband and wife.³

Marriage is also within a positive legal framework that regulates the rights and obligations of the parties. This is important to ensure order and legal protection in the family. Law Number 1 of 1974 affirms that marriage gives birth to legal responsibility between husband and wife.⁴ The husband is obliged to provide maintenance and protection, while the wife is obliged to manage the household and educate the children. Therefore, violations of this obligation have the potential to cause conflicts and legal disputes.⁵

Children are a mandate from Allah SWT whose presence brings blessings to both parents. In Islamic law and positive law, children have the right to maintenance,

¹ Mesta Wahyu Nita, *Marriage Law in Indonesia* (Lampung: Laduny Alifmata, 2021).

² A M Ismatulloh, "The Concept of *Sakinah*, *Mawaddah* and *Rahmah* in the Qur'an (Perspective on the Interpretation of the Book of the Qur'an and Its Interpretation)," *Mazahib: Journal of Islamic Legal Thought* 14, no. 1 (2025): 53–64, <https://doi.org/10.21093/mj.v14i1.335>.

³ Khairuddin, "Marriage in Islam and Its Relevance to Contemporary Family Law Regulation," *Insight: Indonesian Journal of Social, Humanity, and Education* 1, no. 2 (2025): 72–82, <https://doi.org/doi:%252010.70742/insight.v1i2.363>.

⁴ Faishal, Faisar Ananda, and Irwansyah, "Rights and Obligations in Marriage Law in the Islamic World," *Communnity Development Journal* 6, no. 1 (2025): 280–87.

⁵ Anita Niffilayani, "The Obligation to Provide for the Family Perspective of Islamic Law and Indonesian Positive Law," *Sharia: Journal of Islamic Family Law* 2, no. 1 (2025): 1–13.

education, and welfare.⁶ Article 330 of the Civil Code and Law No. 4 of 1979 affirm the responsibility of parents to their children. For example, parents are obliged to ensure that their children grow up healthy, moral, and educated. The interests of the child must be the main consideration in any legal decision related to the family.⁷

Divorce is a legal event that is allowed in Islam, even though it is hated by Allah SWT. Divorce not only ends the marital relationship, but also has legal consequences, especially related to child custody.⁸ In the Compilation of Islamic Law Article 105, the arrangement of custody is based on the age and benefit of the child. Children who have not been *mumayyiz* are in the care of their mother.⁹ Child custody arrangements aim to safeguard the best interests of children after divorce.¹⁰

One of the causes of divorce that has a serious impact is neglect or *abandonment* by the husband. *Abandonment* is an act of deliberate neglect of responsibility, both to spouse and children. Husbands leave their wives and children without support, protection, and clarity of existence. This condition not only violates religious obligations, but also causes suffering for children. Therefore, *abandonment* is an important factor that must be considered by judges in determining child custody to ensure their welfare.¹¹

Previous studies on post-divorce child custody generally emphasized the normative provisions of the Compilation of Islamic Law. Research by Fatimawali et al. (2023) entitled "A Review of Islamic Law on Post-Divorce Child Custody" confirms that Article 105 of the KHI gives priority to custody of the mother for children who are not *mumayyiz* on the basis of the benefit of the child.¹² Meanwhile, Dwi Dasa Suryantoro (2024) with the title "Post-Divorce Child Custody according to a Compilation of Islamic Law: Juridical and Conceptual Analysis" emphasizes the importance of the requirements of good faith and the eligibility of caregivers in the implementation of *hadhanah*.¹³ However, these studies have not specifically examined child custody in the context of divorce due to husband *abandonment*. Thus, there is still a gap in studies that link the husband's neglect to legal considerations in religious court decisions.

Based on the explanation above, this study aims to find out and analyze the judge's considerations in determining child custody in divorce cases due to the *abandonment* of

⁶ Ida Novita and Pathur Rahman, "Children's Rights in the Perspective of the Qur'an," *Qolamuna: Journal of Islamic Studies* 9, no. 1 (2023): 64–81.

⁷ Fransiska Novita Eleanora et al., *Textbook of Child and Women's Protection Law*, 1 ed. (Malang: Madza Media, 2021).

⁸ Erni and Tajul Arifin, "Divorce in the Perspective of Hadith Narrated by Abu Dawud and Article 39 Paragraph (2) of Law No. 1 of 1974," *Decentralization: Journal of Law, Public Policy, and Government* 2, no. 3 (2025): 94–108, <https://doi.org/10.62383/desentralisasi.v2i3.814>.

⁹ Dudung Maulana, "An Analysis of Article 105 of the Compilation of Islamic Law on *Hadhanah*," *Posita: Journal of Islamic Family Law* 1, no. 1 (2023): 1–9, <https://doi.org/10.52029/pjhki.v1i01.133>.

¹⁰ Ananda Sabina Zahira, "Optimizing the Principle of Children's Best Interests in the Determination of Post-Divorce Custody: Perspectives on Islamic Law and Positive Law in Indonesia," *Federalism: Journal of Legal and Communication Studies* 2, no. 3 (2025): 163–74, <https://doi.org/10.62383/federalisme.v2i3.1021>.

¹¹ Agustin Hanapi and Bina Risma, "Wife's Neglect as a Cause of Divorce (Case Study at the Tapaktuan Syar'iyah Court)," *Samarah: Journal of Family Law and Islamic Law* 2, no. 2 (2018): 403–416., <https://doi.org/10.22373/sjhk.v2i2.4744>.

¹² Fatimawali Fatimawali, Nurfauziah Mansyur, and Firdiansyah Alhabsyi, "A Review of Islamic Law on Post-Divorce Child Custody," *Proceedings of Islamic Studies and Integration of Knowledge in the Era of Society 5.0 (KIHES 5.0)*, 2023, 37–41.

¹³ Dwi Dasa Suryantoro, "Post-Divorce Child Custody According to a Compilation of Islamic Law: A Juridical and Conceptual Analysis," *Legal Studies Journal* 4, no. 1 (2024): 1–11, <https://doi.org/10.33650/ljsj.v4i1.9444>.

the husband in the Decision of the Banda Aceh Syar'iyah Court Number 310/Pdt.G/2023/MS. Bna. Furthermore, this study reviews these considerations from the perspective of Islamic law to assess their suitability with the principles of *hadhanah* and the benefit of children. Thus, this research is expected to make an academic and practical contribution to the development of Islamic family law, especially related to the protection of children's rights after divorce.

RESEARCH METHODS

This research uses a qualitative method with a type of normative juridical research that focuses on the analysis of legal norms and judges' considerations in court decisions. The approaches used include the statute approach and the case approach. The legislative approach is used to examine relevant legal provisions, such as the Compilation of Islamic Law and regulations related to child custody, while the case approach is focused on the analysis of the Banda Aceh Syar'iyah Court Decision Number 310/Pdt.G/2023/MS. Bna as the main object of the research. Through these two approaches, the research aims to examine the suitability of judges' considerations with positive legal norms and Islamic legal principles.¹⁴

The data source in this study consists of secondary data which includes primary legal materials and secondary legal materials. Primary legal materials include laws and regulations, court decisions, and official documents related to child custody. Meanwhile, secondary legal materials include books, scientific journals, and fiqh literature that are relevant to research issues. Data collection is carried out through a literature study technique with a documentation method, namely inventorying, classifying, and examining various legal and literature sources that are related to the focus of the research.

Data analysis was carried out qualitatively using descriptive-analytical methods. The stages of analysis include data reduction, data presentation, and conclusion drawn. The data that has been collected is systematically interpreted to reveal the pattern of judges' considerations in decisions, then analyzed with reference to positive legal provisions and Islamic legal principles, especially related to the welfare of children. Through this process, the research produced a comprehensive understanding of the basis for judges' considerations in determining child custody in divorce cases due to husband neglect.

RESULTS AND DISCUSSION

The Concept of *Hadhanah* in Islamic Law

Child custody in Arabic is *hadhanah* derived from the word *hidhan* which means hull. As in the sentence '*hadhanan atthairu baidhahu*' the bird squeezes the egg under its wings, so too does a mother cradle her child in her arms or rather this *hadhanah* is interpreted as maintenance and education. *Hadhanah* can also be interpreted as the custody of children by educating and protecting them.¹⁵

In Islamic law, child custody is also called *hadhanah*. Etymologically, this *hadhanah* means beside or under the armpits. Meanwhile, terminologically, *hadhanah* means to take care of and educate someone who has not been *mumayyiz* or who has lost his intelligence, because they cannot meet their own needs.¹⁶

The scholars of Fiqh define *hadhanah* as taking care of young children, both men and women or those who are grown up but not yet *mumayyiz*, providing something that

¹⁴ Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020).

¹⁵ Sayyid Ahmad Musayyar, *Islam Talks About Sex, Romance, and Household* (Jakarta: Gelora Aksara Pratama, 2008).

¹⁶ Abdul Aziz Dahlan, *Encyclopedia of Islamic Law* (Jakarta: PT Ichtiar Van Hoeve, 1996).

makes them good, protecting them from something that hurts and damages them, educating them physically, spiritually and intellectually so that they are able to stand on their own to face life and bear their responsibilities.¹⁷

Taking care of children who are still young is obligatory by law, because neglecting them is exposing them to the danger of destruction. *Hadhanah* is a right for young children, as they may need supervision, care, the execution of affairs and the person who educates them. In this regard, especially mothers who are obliged to perform *hadhanah*. The Prophet (peace and blessings of Allaah be upon him) said: "You (the mother) have the right to her child."¹⁸

The full right in the above sense is the right as a mother who can take care of her child as well as possible, so that she can avoid the danger of destruction. According to Wahbah, Azzuhaily is of the opinion that *hadhanah* is the right of partnership between mother, father and child. If there is an argument, the first thing that comes first is the rights or interests of the child. However, scholars of the Hanafi and Maliki schools are of the opinion that *the hadhanah* is the right of the mother so that she can abort her right.

The basis of the law regarding *hadhanah* is the word of Allah in Surah Al-Baqarah verse 233 which reads:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّمَ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ
رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا
مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ
فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ
بِالْمَعْرُوفِ وَأَتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴿٢٣٣﴾

Meaning: "Mothers should breastfeed their children for two whole years, that is, for those who want to perfect breastfeeding. and the obligation of the father to feed and clothe the mothers in the manner of ma'ruf. a person is not burdened but according to the level of his ability. Let not a mother suffer tribulation because of her child and a father because of her child, and the heir is obliged to do so. Then there is no sin for you if you make the payment according to the proper amount. fear Allah and know that Allah is All-Seeing of what you do. (Q.S. al-Baqarah: 233).¹⁹

The *Fuqaha'* argue that the purpose of the above verse is to oblige the father to provide for the wife who is talaq in breastfeeding due to the existence of children. So the maintenance is obligatory on the father, while the child is still young and has not reached the age of *taqlif*.²⁰

Surah Al-Tahrim verse 6 also explains:

¹⁷ Rusdaya Basri, *Fiqh Munakahat 2* (Parepare: IAIN Parepare Nusantara Press, 2020).

¹⁸ Tihami and Sohari Sahrani, *Fiqh Munakahat: A Study of Complete Fiqh Nikah* (Jakarta: RajaGrafindo Persada, 2010).

¹⁹ "QS. Al-Baqarah: 233," p.t.

²⁰ Muhammad Ali Ash-Shabuni, *Tafsir of Legal Verse*, vol. 2 (Semarang: Ash-Syifa', 1993).

يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ ﴿٦١﴾

It means: "O you who have believed, protect yourselves and your families from the fire of Hell whose fuel is men and stones; His guardians are the angels who are harsh, harsh, and do not disobey Allah in what He commands them and always do what He commands. (Q.S. at-Tahrim: 6).²¹

The purpose of maintaining a family in the above verse is to nurture and educate them so that they become Muslims who are obedient to Allah. This verse commands all believers to strive to nurture and educate their families. This verse is addressed to men and women as fathers and mothers, therefore both parents are responsible for their children and their respective spouses as parents are responsible for their own behavior.

If the divorce occurs while they have children, then the mother has more rights than the father to take care of her child until the child reaches puberty and as long as she does not remarry another man. As the Hadith of the Prophet Muhammad PBUH:

عَنْ عَبْدِ اللَّهِ عَمْرٍو رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ امْرَأَةً قَالَتْ: يَا رَسُولَ اللَّهِ، إِنَّ ابْنِي هَذَا كَانَ بَطْنِي لَهُ وَعَاءٌ، وَتَدْيِي لَهُ سِقَاءٌ، وَحِجْرِي لَهُ حِوَاءٌ، وَإِنَّ أَبَاهُ طَلَّقَنِي، وَأَرَادَ أَنْ يَنْتَزِعَهُ مِنِّي، فَقَالَ لَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي. (رواه أحمد، وأبو داود)

It means: "From Abdullah Ibn Amar that a woman said: O Messenger of Allah, it is indeed my child that is my stomach that contains him, my breasts that give him drink and my lap that protects him. But his father who divorced me wanted to take it away from me. So the Prophet PBUH said to him: You have more right to him as long as you are not married." (HR. Ahmad and Abu Dawud).²²

If the child has reached puberty, then the child is told to choose between his father or mother as the custodian. As the Hadith of the Prophet Muhammad PBUH:

وَعَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ أَنَّ امْرَأَةً قَالَتْ: يَا رَسُولَ اللَّهِ، إِنَّ زَوْجِي يُرِيدُ أَنْ يَذْهَبَ بِابْنِي وَقَدْ سَقَانِي مِنْ بئرِ أَبِي عَنبَةَ وَقَدْ نَفَعَنِي فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اسْتِهِمَا عَلَيْهِ فَقَالَ زَوْجُهَا مَنْ يُحَاقُّنِي فِي وَلَدِي فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ هَذَا أَبُوكَ وَهَذِهِ أُمُّكَ فَخُذْ بِيَدِ ابْنِهِمَا شِمْتَ فَأَخَذَ بِيَدِ أُمِّهِ فَأَنْطَلَقَتْ بِهِ. (رواه أبو داود)

It is narrated from Abu Hurairah (may Allah be pleased with him) that a woman said: O Messenger of Allah, my husband wants to go with my son, even though he is useful to me and takes water from the well of Abu 'Inabah for me. The Prophet (peace and blessings of Allaah be upon him) said: "O son, this is your father and this is your mother, hold the hand of

²¹ "QS. At-Tahrim: 6," t.t.

²² "HR. Abu Dawud," t.t.

whom you will." Then he took his mother's hand and he carried her away."
(HR. Abu Dawud).²³

In the Compilation of Islamic Law, the definition of childcare is stated as child care, which means the activity of nurturing, nurturing, and educating children until they are adults or until they are able to stand on their own. KHI regulates in detail the power of parents over children in Articles 98 and 105. The article implies that the obligation of both parents is to deliver their children, by educating them, equipping them with knowledge to provide them in adulthood. Article 14 of Law No. 23 of 2002 on Child Protection, which states: "Every child has the right to be cared for by his or her own parents, unless there are valid reasons and/or legal rules showing that the separation is in the best interests of the child and is a last resort". In his explanation, it is explained that, "The separation referred to in this provision does not eliminate the relationship between the child and his parents". So, even though there is a legal provision that states one parent as the holder of "child custody", there is still no reason to prohibit other parents from meeting their child.²⁴

In terms of childcare or child care (*hadanah*), the Compilation of Islamic Law (KHI) regulates in detail the role of parents in raising their children, both before and after they divorce. That in the Child Protection Law (UUPA), it gives full freedom to children to choose with whom they should be cared for, whether with their father or mother after divorce. That in terms of child custody due to divorce between KHI and the Child Protection Law, there are differences and similarities.

In the Child Protection Act, a child is defined as someone who is not yet 18 years old, regardless of whether the person in question is married or not. Therefore, even if a child is married, he or she is still entitled to protection, whether physically, mentally, socially, or educationally. This is important considering that marriage at a young age can have a negative impact on their future life development, such as disrupted access to education, increased reproductive health risks, and limited opportunities to develop optimally in their social environment.²⁵

Basis of Divorce Lawsuit Due to Neglect of Decision No. 310/Pdt.G/2023/MS. Bna

Decision Number 310/Pdt.G/2023/MS. Bna is a contested divorce case. This case was filed by FMS binti S, a 36-year-old woman, Muslim, S-1 education, working as a housewife and domiciled in the city of Banda Aceh. The lawsuit was filed through a legal representative from the YBHA Peutuah Mandiri Advocate Office. The defendant is Ade HSF bin BS, a 37-year-old male, Islamic, with a high school education, working as a self-employed / security guard in Nagan Raya. During the trial process, the Plaintiff was present, while the Defendant was never present even though he had been duly summoned.

The Plaintiff explained that he had legally married the Defendant on May 2, 2014 and was blessed with a son named ABD. AF BIN ADE HSF who has been in his care since birth. Since the beginning of the marriage, the parties have not lived together due to work placement and economic conditions. The Defendant was considered not to carry out household obligations, including neglecting alimony and childcare responsibilities, so that all living needs were borne by the Plaintiff.

²³ "HR. Abu Dawud."

²⁴ Maulana, "An Analysis of Article 105 of the Compilation of Islamic Law on Hadhanah."

²⁵ Mikhael Dipa Putra Panjaitan, "Child Custody as a Result of Divorced Parents in a Positive Legal Perspective (A Comparative Study between the Compilation of Islamic Law and Law Number 23 of 2002 concerning Child Protection)" (Bhayangkara University, 2021).

In addition to the issue of alimony, the Plaintiff postulated that there were constant quarrels caused by excessive jealousy, wiretapping, alleged infidelity of the Defendant, and acts of physical violence that he had experienced. The Plaintiff said that since June 2022, he no longer lived with the Defendant and no peace efforts had been successful. This condition shows that the marital relationship has broken down and cannot be maintained, so the Plaintiff is seeking a divorce based on Article 116 letter f of the KHI.

In his demand, the Plaintiff asked the panel of judges to grant the lawsuit in full, impose a talak satu ba'in sughra between the Plaintiff and the Defendant, and stipulate that the custody of the child is under his care. The Plaintiff also demanded that the Defendant be required to provide child support of Rp1,500,000 per month with an annual increase of 10 percent, excluding education and health costs, to adult children, and to charge the Defendant for all costs of the case.

In its ruling, the panel of judges granted the Plaintiff's lawsuit, declared that talak satu ba'in sughra fell between the parties, and established full custody of the child on the Plaintiff because the child was still not mumayyiz. The panel sentenced the Defendant to pay child support of Rp1,000,000 every month, increased by 10 percent per year until adulthood or independence, outside of education and health, and charged the Plaintiff a case fee of Rp540,000 in accordance with the provisions of procedural law.²⁶

The Principle of Best Interests of the Child in the Determination of Custody in Cases of Husband Neglect

The Panel of Judges of the Banda Aceh Syar'iyah Court in this decision began the consideration by ensuring that the Plaintiff's lawsuit was complete and eligible for examination. Although the Defendant was never present at the trial, the judge explained that divorce is not automatically granted just because of the absence of one party. The plaintiff is still required to prove the reasons for the divorce, both with written evidence and witness statements. This provision is important because the breakdown of a marriage and the determination of the fate of children are not a light decision.

Based on the documents submitted by the Plaintiff and the testimony of two witnesses, the judge found the facts that since the beginning of the marriage, the relationship between husband and wife has not been going well. The Plaintiff and the Defendant do not live together, the Defendant does not provide for the household maintenance, there are frequent quarrels, and the Defendant is even suspected of having a relationship with another woman. In addition, the Plaintiff has experienced acts of physical violence. All these circumstances indicate that the domestic bond is no longer healthy and there is no real attempt by the Defendant to change or improve the situation.

The Panel of Judges stated that the purpose of marriage according to the Marriage Law and the Compilation of Islamic Law is to form a peaceful, affectionate family, and bring good to the husband, wife, and children. When reality shows otherwise, the household becomes a source of pressure, quarrels, and suffering, then divorce becomes a natural step. The judge considered that maintaining a relationship like this was no longer beneficial, and could even add psychological damage to the injured party. Therefore, the reason for the divorce is seen as fulfilling the provisions of the law and the Plaintiff has the right to divorce.²⁷

After completing the consideration of the divorce, the panel moved on to the issue of child custody. The children of the parties are still under five years old so they are included in the category of not being able to determine their needs and choose their own

²⁶ "Decision Number 310/Pdt.G/2023/MS. Bna," 2023.

²⁷ "Decision Number 310/Pdt.G/2023/MS. Bna."

caregivers. In Islamic law as outlined in Article 105 of the KHI, children who are not *mumayyiz* are automatically under the care of their mother if their parents divorce. The judge applied this rule because no reason was found that could cancel the Plaintiff's right as a mother to take care of her child.

The judge also took note of the fact that since birth the child had lived with the Plaintiff, had his daily needs met, and received the mother's affection. Meanwhile, the Defendant does not play a role in parenting, nor does it even provide maintenance. Taking into account this condition, the judge considered that it is safer and better for the child to stay with his mother, especially considering the age of the child who still needs the emotional touch and direct attention of a mother.

The judge's consideration is further strengthened by the views of the scholars who are used as a reference, namely from the book *Kifayah al-Akhyar*, which mentions the conditions of people who have the right to take care of children: intellectual, Muslim, trustworthy, simple, do not have bad behavior, live in one place, and do not remarry. The plaintiff meets all of those conditions. There is no evidence that he misbehaves or is incapable of educating the child. On the contrary, he is the one who is fully responsible for all this time.²⁸

Although custody fell to the Plaintiff, the judge affirmed that the relationship between the child and father should not be severed. The judge stated that the Defendant still had the right to meet, visit, and establish a relationship with the child. This is important so that the child still knows his father figure and does not lose the emotional support that the father may be able to provide in the future. This ruling shows that parenting does not intend to get rid of the father figure, but rather to ensure the welfare of children in the midst of household instability.

The Panel of Judges then switched to the obligation of child support. Because the Defendant was not present and did not provide a response regarding his financial ability, the panel took a role in determining the amount of alimony based on general conditions. By looking at the Defendant's work as a security guard with a salary of around IDR 4,800,000, the judge set the maintenance obligation at IDR 1,000,000 per month. This amount is considered to be in accordance with the basic needs of the child and the father's ability. Alimony is valid until the child is an adult or independent. This stipulation is based on the Marriage Law and the Compilation of Islamic Law which strictly states that the father still bears the responsibility for the child's living expenses even though he has been divorced.²⁹

In the entire deliberative process, the judge emphasized that the decision of this case was centered on the best interests of the child. The assembly does not only assess who asks for custody, but rather who has been really present and able to educate children. Mothers are seen as the most prepared, closest, and most likely to ensure the growth and development of children in a fractured household situation. The judge also reminded that the Defendant's attitude of leaving the family showed his unpreparedness to shoulder the responsibility of parenting, so that leaving the child in his hands could threaten the welfare of the child.

Thus, this custody decision is a combination of the rule of law, facts revealed at the trial, the value of the benefit, and the benefit of the child. The Panel of Judges not only looks at the normative side of positive law, but also explores the value of substantive justice through the teachings of *fiqh*. This decision also emphasizes that custody is a

²⁸ "Decision Number 310/Pdt.G/2023/MS. Bna."

²⁹ "Decision Number 310/Pdt.G/2023/MS. Bna."

matter of children's interests, not solely the rights of parents. In conditions where the father is proven to have abandoned his obligations and did not provide for his family, the mother was considered the most suitable to take control of maintenance.

Review of Islamic Law on Child Custody Decision Case No. 310/Pdt.G/2023/MS. Bna

In Decision Number 310/Pdt.G/2023/MS. Bna, the issue of child custody arises at the same time as divorce triggered by the act of neglect of the husband or *abandonment*. The Banda Aceh Syar'iyah Court decided that the right to care children is handed over to the mother. When viewed from the perspective of Islamic law, the decision is in line with the basic principles of sharia which place the safety and benefit of children and strongly rebuke family neglect behavior.

In Islamic law, hadhanah is a trust, not an absolute right of parents. It contains an obligation to meet the needs of the child's inner life, protect his emotional development, and direct the child to grow as a pious person.³⁰ This principle is in line with the words of Allah SWT in QS. At-Tahrim verse 6:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا قُوا أَنفُسَكُمْ وَأَهْلِيكُمْ نَارًا

It means: "Protect yourself and your family from the fire of hell." (QS. At-Tahrim: 6).³¹

This verse affirms the family as a moral responsibility that should not be abandoned.³² In this case, the Defendant clearly ignored the order that had been set, by abandoning his responsibility to the family. The defendant was not only absent from the child's daily life, but also failed to carry out his important role in maintaining and providing sustenance, thus causing a direct impact on the welfare and basic needs of the child.

The majority of scholars emphasized that for children who are not able to take care of themselves, the main care is with the mother.³³ This is based on the hadith of the Prophet PBUH:

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أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي

Meaning: "You (O mother) have more rights to your children as long as you are not married again." (HR. Abu Dawud).³⁴

³⁰ Maulana, "An Analysis of Article 105 of the Compilation of Islamic Law on Hadhanah."

³¹ "QS. At-Tahrim: 6."

³² Nisa Muflihah and Mahyuddin Barni, "Family Education in the Qur'an; Review of QS At-Tahrim Verses 6 and QS Luqman Verses 12-19," *Arini: Scientific Journal and Teacher Innovation Works* 2, no. 2 (2025): 401–15, <https://doi.org/10.71153/arini.v2i2.449>.

³³ Ubaidillah Ibn Mas'ud, "The Transfer of Custody of Children Who Have Not Been Mumayyiz to Fathers According to the Compilation of Islamic Law: (Study of Decision No. 1882/Pdt.G/2019/PA. Mdn)," *Constitution: Journal of Law, Public Administration, and Communication Sciences* 2, no. 3 (2025): 276–90, <https://doi.org/10.62383/konstitusi.v2i3.907>.

³⁴ "HR. Abu Dawud."

This provision is even stronger when it is associated with *the abandonment situation*, because mothers not only meet the ideal requirements of parenting, but also prove to be actively carrying out these responsibilities. Meanwhile, a father who abandons his family not only loses his moral rights, but also in sharia is declared negligent of Allah's mandate.

One of the most important things in Islamic law is that the role of the father does not disappear even if he is not present in the daily life of the household.³⁵ The Qur'an through QS. Al-Baqarah verse 233:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

Meaning: "And it is the duty of the father to feed and clothe his children in a proper manner." (QS. Al-Baqarah: 233).³⁶

This obligation is absolute and does not terminate solely due to divorce or separation of residence.³⁷ In this case, the Defendant actually abandoned this obligation, so the judge's decision that required him to continue to provide child support was a form of coercion against the teachings of Islam that he had actually ignored.

Family neglect has long been seen as a grave offense in Islam.³⁸ The Prophet Muhammad PBUH said:

كَفَى بِالْمَرْءِ إِثْمًا أَنْ يُضَيِّعَ مَنْ يَعُولُ

Meaning: "It is enough for a person to sin when he abandons his dependent." (HR. Abu Dawud).³⁹

This hadith treats *abandonment* not only as a social wrong, but as a great sin with sharia consequences. From this perspective, the judge's decision to give custody to a party who does not abandon the child is a form of *sharia protection*. With this, the husband who ignores the mandate is not worthy of receiving a heavier mandate, namely direct care of the child.

The panel of judges in this decision rightly referred to the fiqh rules in the book *Kifayah al-Akhyar* regarding the eligibility requirements for hadhanah. One of the important requirements is trust. When a person lets a family live without protection, support, and even attention, he automatically collapses those eligibility requirements. On the contrary, the position of the mother becomes stronger, not only because she is a woman, but because she carries out the duties of hadhanah with a sense of responsibility.⁴⁰ Other rules:

³⁵ Desi Widiya Puzi Astuti and Bashori Bashori, "The Fatherless Phenomenon in the Perspective of the Qur'an (The Study of the Relationship of Father and Child in the Story of the Qur'an)," *Fathir: Journal of Islamic Studies* 2, no. 1 (2025): 70–81, <https://doi.org/10.71153/fathir.v2i1.180>.

³⁶ "QS. Al-Baqarah: 233."

³⁷ Ingrid Fransisca Matina Candra and Zil Aidi, "Implications for the Enactment of the Constitutional Court Decision Number 69/PUU-XIII-2015 on Marriage Agreements in Indonesia," *UNES Law Review* 6, no. 3 (2024): 8849–59, <https://doi.org/10.31933/unesrev.v6i3>.

³⁸ Sri Mulyani, "Parental Neglect in the Perspective of Islamic Law," *Ameena Journal* 2, no. 2 (2024): 176–82.

³⁹ "HR. Abu Dawud."

⁴⁰ Achmad Muhajir, "Hadhanah in Islam (The Right to Childcare in the Home Education Sector)," *SAP: Educational Articles Arrangement* 2, no. 2 (2017): 165–73, <https://doi.org/10.30998/sap.v2i2.2089>.

تَقَدَّمَ مَصْلَحَةُ الصَّغِيرِ عَلَى حَقِّ الْآبَوَيْنِ

Meaning: "The welfare of the child takes precedence over the rights of the parents,"

This rule further emphasizes that the act of neglecting the father automatically shifts the right of hadhanah into the hands of the mother.⁴¹

The act of *abandonment* is also closely related to the concept of *maqashid al-shari'ah* or the purpose of Islamic law. One of its goals is the protection of offspring (*hifzh al-nasl*). In a healthy marriage, this protection is provided by both parents. However, when the father refuses to carry out this role, the sharia requires that the protection must be transferred to another party who is able to carry it out, in this case the biological mother. In addition to safeguarding offspring, giving custody to mothers in situations of neglect is also the implementation of *hifzh al-nafs* (safeguarding the soul) and *hifzh al-'aql* (maintaining mental development), because children who are raised in a sense of security tend to grow up healthier.

If custody is given to a father who leaves the household, it is contrary to the purpose of sharia and has the potential to plunge the child into a state of emotional instability, economic hardship, or loss of affection that should be a basic right of the child. Therefore, the judge's decision in this decision not only follows the reading of the articles in the KHI or state rules, but also implements the principles of fiqh:

الضَّرُّ يُزَالُ

Meaning: "Harm must be eliminated"

This rule means that preventing children from living in unmanaged situations due to *abandonment* is part of the implementation of this principle.⁴²

Based on the above explanation, it can be concluded that the granting of custody to the mother in this case is completely in line with the teachings of Islam. Husbands who leave the family automatically lose their moral and fiqhiyah rights to lead the upbringing. Meanwhile, mothers who remain responsible have the right to legal legitimacy and sharia protection. The judge's decision is not only legally correct, but also in line with the guidance of the Qur'an, the Sunnah of the Prophet, the rules of classical fiqh, and the concept of *maqashid al-shari'ah*. The judge does not only decide the case, but at the same time returns the mandate of hadhanah to the most deserving party and protects children as the next generation from becoming victims of parental neglect.

CONCLUSION

Based on the results of the analysis of Decision Number 310/Pdt.G/2023/MS. Bna, it can be concluded that the Panel of Judges of the Banda Aceh Syar'iyah Court has determined the appropriate custody of the child based on valid evidence and the applicable positive legal provisions. The facts of the trial show that there is an act of abandonment by the husband which is characterized by neglect of maintenance and the non-implementation of household responsibilities, thus eliminating the basis for the continuity of the marriage. In this context, the determination of the right to hadhanah to

⁴¹ M Ridho Firdaus and Hendri Sayuti, "The Priority of Child Welfare (Maslahah) in Dispute Resolution Based on a Review of Fiqiyah Rules," *Campus Academic Publishing* 4, no. 1 (2026): 344–51, <https://doi.org/10.61722/jssr.v4i1.7864>.

⁴² Firdaus and Sayuti.

the mother is considered appropriate both juridically and factually, considering the condition of the child who has not been *mumayyiz* and the need for stable upbringing, while still guaranteeing the father's right to visit and fulfill the maintenance obligation until the child is independent.

From the perspective of Islamic law, this ruling is in line with the principle of child protection (*hifz al-nasl*) within the framework of *maqashid al-shari'ah*, which places the best interests of the child as the main consideration in determining custody. Neglect committed by the father shows an inability to carry out the mandate, so that normatively it reduces the eligibility as a caregiver. On the other hand, mothers who meet the moral and factual aspects are considered more qualified to carry out the function of *hadhanah*. This decision also reflects that custody is not solely an individual right of parents, but a responsibility that must be carried out to ensure the protection, development, and welfare of children.

Thus, it can be affirmed that the judge's consideration in this case has integrated the juridical, sociological, and normative aspects of Islam proportionately in determining the best interests of the child. Therefore, this study recommends the need to strengthen more comprehensive judicial guidelines in *hadhanah* cases, especially related to indicators of abandonment and the mechanism for monitoring the implementation of visitation rights and maintenance obligations, in order to ensure legal certainty and optimal protection for children after divorce.

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