

## Child Neglect After Divorce: Perspective of Child Protection Law and Compilation of Islamic Law

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### ABSTRACT

This study aims to analyze child neglect following parental divorce from the perspectives of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection (UUPA) and the Compilation of Islamic Law (KHI). This research employs a normative juridical approach. Through qualitative methods, the study finds a highly contrasting difference in perspectives between the UUPA and KHI regarding the issue of child neglect after parental divorce. The UUPA views such actions as a criminal offense, and the perpetrators are subject to legal sanctions. In contrast, the KHI considers child neglect after divorce as an internal civil matter between parents and children, and therefore does not recognize criminal sanctions. Meanwhile, the Religious Court, as a special judicial body that adjudicates divorce cases for Muslim citizens, applies the KHI as its legal basis. Based on these findings, it is concluded that the increase in child neglect parallels the rising number of divorces due to these differing perspectives in addressing the issue. As a result, there is no clear legal certainty serving as a specific reference for resolving cases of child neglect after divorce. In this regard, the author proposes several recommendations: (1) there should be a harmonization of perspectives between the UUPA and KHI concerning child neglect after divorce, recognizing that such acts may result in criminal sanctions; (2) the Supreme Court is encouraged to issue a regulation (PERMA) requiring judges in Religious Courts to include children's post-divorce rights in their legal considerations even if not explicitly requested, and to impose penalties on parents who fail to comply with such rulings; and (3) the government is advised to establish a special institution or supervisory service unit to monitor child support obligations.

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## 1. INTRODUCTION

The family is the first and primary environment in shaping a child's personality and development. Education within the family plays a major role in influencing a child's behavior (Juwita & Yunitasari, 2024). Generally, children who grow up in harmonious and well-functioning families tend to develop into individuals with strong moral character and intellectual abilities. Parents play a crucial role, as every behavior, habit, and form of guidance they demonstrate is imitated by their children (Wahid et al., 2019). Children who are raised with positive values in their daily lives are more likely to succeed both in worldly life and in the hereafter (Hidayat & Irham, 2022). Therefore, parents need to maintain unity and cooperation within the household in educating and raising their children. However, social reality shows that not all families can preserve the integrity of their marriage.

Family integrity is a key factor in achieving family resilience (Tenaga Kerja Wanita et al., 2023). Family resilience is defined as the family's ability to withstand or protect itself from various problems and life challenges, whether originating from within or outside the family, such as the environment, community, society, and the state (Harjo Prayitno & Sofwan, 2021). Married couples who are unable to adapt when facing household problems tend to give up more easily and choose divorce as a solution (Izzati et al., 2024). Poor communication between spouses further intensifies tension and misunderstandings (Rahmadani & Irham, 2025). Divorce reflects a breakdown in the commitment of husband and wife to support one another when problems have not yet been resolved (Hurlock, 1980). In this regard, Allah has established a system that ensures human welfare and happiness (Siregar et al., 2022), namely the regulation of divorce as a means of protection from harmful living conditions (Al-Uliyyan, 2005). Allah states in the Qur'an Surah Al-Baqarah verse 229: *"If you fear that they (husband and wife) cannot maintain the limits of Allah, then there is no blame upon either of them concerning what the wife gives to redeem herself."*

Based on data compiled by the Central Statistics Agency (BPS) over the last five years, divorce rates in Indonesia have not shown a consistent declining trend. In 2020, there were 391.7k cases; in 2021, 447.7k cases; in 2022, 516.3k cases; in 2023, 463.6k cases; and in 2024, 399.9k cases (Mahkamah Agung (Dirjen Badan Peradilan Agama), 2023). Generally, the causes of divorce in Indonesia include adultery, alcoholism, drug abuse, domestic violence, gambling, continuous conflict, spousal neglect, economic problems, apostasy, imprisonment, forced marriage, disability, infidelity, and polygamy.

The legal consequences of divorce not only affect the husband and wife but also the child, particularly regarding custody rights. In a divorce, custody of a minor child is legally granted to the mother, while the obligation to provide financial support remains the father's responsibility until the child reaches adulthood. Custody may be transferred to the father only if certain conditions exist in the mother that could endanger the child. In situations where custody is granted to the father, he is still required to provide ample opportunity for the mother to maintain communication with the child and to continue offering care and affection. Essentially, custody is intended to ensure that the fulfillment of the child's rights remains guaranteed even after the parents' divorce. Regardless of which parent is granted custody, the other parent is not relieved of their parental obligations.

Parental divorce poses a serious threat to children, as it is highly likely to trigger child neglect. The higher the divorce rate, the greater the potential for child neglect to occur (Sofia Mubarakah Sa'bana & Rusdiana Navlia, 2023). Child neglect refers to the failure to fulfill a child's basic needs necessary for health and safety (Muslihul Aqqad et al., 2024). This may include the lack of necessities and the loss of parental attention and affection, which can negatively affect a child's psychological development. Factors contributing to child neglect after divorce may include economic hardship, remarriage of one or both parents, labor migration abroad, and insufficient supervision and intervention by relevant institutions (Hadi et al., 2024). Dalih Effendy (Effendy, 2025) states that out of 1,000 divorce cases, there are 150% or approximately 1,500 underage children who are vulnerable to becoming victims of divorce. Only 12% of divorce cases include children's rights in judicial

considerations, and merely 1% of judges incorporate the provisions of the UUPA in their legal reasoning (Effendy, 2025).

Specifically, within the Religious Court system, which has the authority to adjudicate cases involving Muslim communities (Marpaung et al., 2024), the legal framework that serves as a reference for protecting children from neglect after parental divorce includes Article 156 letters (d) and (f) of the Compilation of Islamic Law (KHI), Supreme Court Circular Letter (SEMA) No. 3 of 2015, and SEMA No. 2 of 2019. These legal provisions primarily regulate civil matters, such as responsibility for child support after divorce, the amount of support to be provided, and legal remedies for unpaid child support. Meanwhile, positioning children as state assets renders all forms of child neglect a matter of state concern. The state imposes criminal sanctions on parties who commit acts that harm children, including neglect, as specifically regulated (*lex specialis*) under the UUPA.

Despite the existence of these legal instruments, the number of child neglect cases following parental divorce continues to increase in line with rising divorce rates. This indicates a gap between *das sein* (reality) and *das sollen* (legal ideals) in the fulfillment of children's rights, particularly after parental divorce. On the one hand, the state provides legal guarantees to protect every child and ensure a promising future free from neglect; on the other hand, in practice, these protections remain far from optimal. Through this study, the author aims to analyze and examine child neglect after parental divorce from the perspectives of the UUPA and the KHI.

## 2. METHOD

This study was conducted using a statutory approach, specifically examining the Child Protection Law (UUPA) and the Compilation of Islamic Law (KHI). This research adopts a normative juridical method and utilizes the following legal materials: (1) primary legal materials, namely the UUPA and the KHI; (2) secondary legal materials, including printed books and scholarly articles related to child neglect after parental divorce; and (3) tertiary legal materials, such as legal dictionaries, legal encyclopedias, and statistical data on divorce rates in Indonesia obtained from the official website of the Supreme Court of the Republic of Indonesia. All three types of legal materials were analyzed qualitatively to explore and interpret the meaning of the data obtained from the study of social and humanitarian issues (Rofiqoh & Zulhawati, 2020), particularly the problem of child neglect following parental divorce.

## 3. FINDINGS AND DISCUSSION

### Regulation of Child Neglect under the Child Protection Law (UUPA)

The Child Protection Law (UUPA) is a legal framework established by the government to protect Indonesian children from actions that may endanger or harm them. Child protection encompasses all activities aimed at ensuring that every child can grow and develop healthily, actively participate in their social environment, and be safeguarded from threats of discrimination, violence, and neglect (Kementrian sekretariat Negara, 2014). Before proceeding with further discussion, it is important to clarify the definition of a child protected under the UUPA. A child is defined as an individual from the time of conception until before reaching the age of eighteen years.

The UUPA guarantees a child's right to be cared for by their parents, except where there are lawful reasons and/or legal provisions that justify separation in the best interests of the child as a last resort. This guarantee is stipulated in Article 14, paragraph (1) of the UUPA. Two key elements are contained in this provision: the principle of the best interests of the child and the element of separation. The principle of the best interests of the child refers to efforts aimed at fulfilling the child's fundamental needs, including: (1) proper care; (2) optimal physical, emotional, and intellectual development; and (3) the freedom to determine one's future in the process of growing into adulthood (Eekelaar, 2017). The element of separation refers to circumstances in which a child can no longer be jointly cared for by both parents due to reasons such as parental divorce, parental labor migration

abroad, parental imprisonment, and other similar situations. As this study focuses on child neglect following parental divorce, the cause of separation is specifically limited to divorce.

Furthermore, paragraph (2) of this article states that in the event of separation (due to parental divorce), the UUPA guarantees the fulfillment of several rights of the child: (1) the right to continue meeting and maintaining direct contact with the father and/or mother, as children greatly require parental attention, warmth, love, and affection to grow into individuals of good character; (2) the right to receive care, upbringing, education, and protection from both parents to achieve their aspirations, as children who live without parental guidance, support, and motivation are at risk of losing direction in life; and (3) the right to receive financial support from both parents.

Although child neglect following parental divorce is not explicitly stated in the UUPA, based on the element of separation in Article 14 paragraph (2), parents who fail to fulfill the rights of the child stipulated therein may be categorized as committing child neglect after divorce. Such neglect constitutes a violation of the principle of the best interests of the child as adopted in the UUPA, particularly concerning proper care and optimal physical, emotional, and intellectual development. The assertion that children are the most physically and psychologically affected parties is not an exaggeration, as after parental divorce, children are highly vulnerable to experiencing financial hardship, loss of familial warmth and attention, and feelings of neglect or lack of recognition.

The state strictly prohibits all forms of child neglect in any context, as stipulated in Article 76B of the UUPA, which prohibits any person from placing, allowing, or involving a child in situations of mistreatment and neglect. Substantively, this provision carries a broad meaning, extending child neglect beyond the context of post-divorce circumstances to include any actions failing to meet a child's physical, mental, spiritual, and social needs. Moreover, the prohibition applies not only to parents but also to other close family members and any individuals or parties outside the family environment. Violations of Article 76B are classified as criminal offenses, carrying sanctions of up to 5 years' imprisonment and/or a fine of 100 million rupiah.

### **Regulation of Child Neglect under the Compilation of Islamic Law (KHI)**

Islam firmly obligates both fathers and mothers to fulfill their responsibilities toward their children jointly. Allah states in the Qur'an Surah Al-Baqarah verse 233: *"Mothers shall breastfeed their children for two complete years, for those who wish to complete the period of nursing. The father is responsible for properly providing their food and clothing."*

This verse commands mothers to breastfeed their children for the first two years of life. If the mother is unable to do so due to certain circumstances, breastfeeding may be substituted with a wet nurse (breast milk donor) (Kementerian Agama Republik Indonesia, 2019) or special infant formula. All costs related to the provision of donor milk or formula, as well as appropriate clothing, remain the father's responsibility. Children's rights are also explicitly mentioned in a hadith of the Prophet, which states: *"A child's right upon their parents is to be taught writing, swimming, archery, and to be provided with lawful sustenance"* (Narrated by al-Bayhaqi).

This hadith guarantees a child's right to proper education and training as provisions for both worldly life and the hereafter. Thus, the Qur'an and Hadith comprehensively regulate parental responsibilities and the fulfillment of children's basic rights to ensure their optimal growth and development.

Provisions concerning punishment for parents who neglect their children are not explicitly found in the Qur'an or Hadith. By analogy, child neglect may be classified as an act of injustice (*zulm*). The punishment for injustice is mentioned by Allah in several verses, including Qur'an Surah Ash-Shura verse 42, Surah Ibrahim verse 42, Surah Hud verse 18, and Surah Ghafir verse 52, in the form of severe punishment in the hereafter. Nevertheless, child neglect is a pressing societal issue that must be addressed promptly to prevent the prolonged suffering of children. Therefore, positive law must be enforced as a form of protection for children before the divine punishment promised by Allah comes to pass.

The Compilation of Islamic Law (KHI) is a guideline specifically applied within the Religious Court system and integrates various sources of Islamic law, including the Qur'an, Hadith, *ijma'*, *qiyas*, and scholarly fatwas, into a single official legal document. The formulation of the KHI was motivated by inconsistencies in the decisions of Religious Court judges in similar cases, which created confusion among justice seekers. These inconsistencies arose from differing scholarly opinions used as legal bases in resolving various issues within the Muslim community. As a legal instrument, the KHI was not enacted through the legislative process as ordinary statutes are, but rather through a Joint Decree of the Supreme Court and the Minister of Religious Affairs No. 07/KMA/1985 and No. 25 of 1985, and was later implemented through Presidential Instruction (Inpres) No. 1 of 1991. Nevertheless, the KHI functions in practice as a legal reference equivalent to statutory law.

Regulations concerning parental responsibility toward children during marriage are contained in Article 80 paragraph (4) letters (b) and (c) of the KHI, which affirm the father's obligation to bear the costs of care, medical treatment, and education of the child, and Article 98 paragraph (1), which defines the age limit of a child under parental responsibility as 21 years (provided there is no physical or mental disability) or until marriage. The KHI emphasizes that divorce does not eliminate parental responsibility toward children. Provisions governing parental obligations after divorce are found in Articles 105, 149, letter (d), and 156 of the KHI. The key points include: first, a child who has not yet reached the age of discernment (*mumayyiz*), meaning under the age of twelve, is entitled to custody (*hadhanah*) by the mother (Article 105 letter (a)), as the mother is considered most capable of providing appropriate care (Sari et al., 2023); second, the father remains responsible for all maintenance and education expenses even when the child is under the mother's custody (Article 105 letter (c)); and third, after divorce, the husband remains obligated to provide financial support for his children according to his ability (Article 149 letter (d)).

Substantively, the KHI contains guidelines regarding parental duties and responsibilities toward children both during marriage and after divorce. Child neglect following divorce is regarded as an internal civil matter between parents and children, with solutions emphasizing moral and religious responsibility, particularly on the father as the primary provider. The KHI does not regulate criminal sanctions for such neglect, nor does it specify legal remedies to ensure children's rights after divorce. This legal vacuum arises partly because, historically, the KHI is not a legislative product but originates from executive and judicial decrees. Consequently, the KHI lacks the imperative (*dwingend recht*) character typical of statutory law, which normally imposes sanctions for legal violations. This absence of enforceable sanctions has contributed to the increasing number of divorced parents who neglect their children.

#### 4. CONCLUSION

Based on the findings, it can be concluded that the increase in child neglect cases corresponds with the rising rate of divorce. This condition arises from the differing perspectives of the Child Protection Law (UUPA) and the Compilation of Islamic Law (KHI) in addressing child neglect following parental divorce. The UUPA views post-divorce child neglect as an act that entails criminal consequences. In contrast, the KHI regards child neglect after divorce as part of the civil relationship between parents and children. The KHI emphasizes the moral and religious responsibilities of both parents, particularly the father as the primary provider, and therefore does not recognize the imposition of criminal sanctions.

This divergence in legal perspectives results in a lack of legal certainty, as there is no unified legal framework that can serve as a definitive reference for resolving cases of child neglect following divorce.

The author offers several recommendations: 1) there should be harmonization between the UUPA and the KHI regarding child neglect after divorce, recognizing that such acts should entail criminal sanctions; 2) the Supreme Court should issue a regulation (PERMA) requiring Religious Court judges to include children's post-divorce rights in their legal considerations, even when such

claims are not explicitly requested, and to impose sanctions on parents who fail to comply with court rulings; 3) the government should establish a special institution or supervisory service unit to monitor and enforce child support obligations.

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