

**AN ANALYSIS OF THE IMPLEMENTATION OF CIVIL
PROCEDURAL LAW IN THE EXAMINATION OF
CHILD CUSTODY DISPUTES
(A STUDY OF DECISION NO. 2525/Pdt.G/2025/PA.JT)**



Arranged By:

Khairiyah Rofiatulhaq

NIM.: 19421119

THESIS

Submitted to Ahwal Syakhshiyah Department International Program

Faculty of Islamic Studies Universitas Islam Indonesia

To fulfill one of term of obtaining Law Degree

YOGYAKARTA

2026

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2026**

STATEMENT LETTER

STATEMENT LETTER

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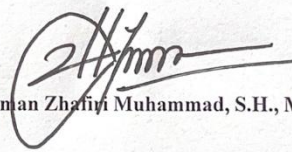
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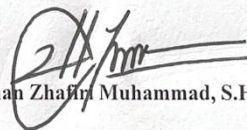
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ACKNOWLEDGMENT

This thesis is dedicated to my late mother and late father, who loved me and whom I loved dearly with all my heart, body, and soul. Who throughout my life guided me to become a person of integrity and benefit to others.

PEDOMAN TRANSLITERASI ARAB LATIN

KEPUTUSAN BERSAMA

MENTERI AGAMA DAN MENTERI PENDIDIKAN DAN KEBUDAYAAN

REPUBLIK INDONESIA

Nomor: 158 Tahun 1987

Nomor: 0543b//U/1987

Transliterasi dimaksudkan sebagai pengalih-hurufan dari abjad yang satu ke abjad yang lain. Transliterasi Arab-Latin di sini ialah penyalinan huruf-huruf Arab dengan huruf-huruf Latin beserta perangkatnya.

A. Konsonan

Fonem konsonan bahasa Arab yang dalam sistem tulisan Arab dilambangkan dengan huruf. Dalam transliterasi ini sebagian dilambangkan dengan huruf dan sebagian dilambangkan dengan tanda, dan sebagian lagi dilambangkan dengan huruf dan tanda sekaligus.

Berikut ini daftar huruf Arab yang dimaksud dan transliterasinya dengan huruf latin:

Tabel 0.1: Tabel Transliterasi Konsonan

Huruf Arab	Nama	Huruf Latin	Nama

أ	Alif	Tidak dilambangkan	Tidak dilambangkan
ب	Ba	B	Be
ت	Ta	T	Te
ث	Ṣa	ṣ	es (dengan titik di atas)
ج	Jim	J	Je
ح	Ḥa	ḥ	ha (dengan titik di bawah)
خ	Kha	Kh	ka dan ha
د	Dal	d	De
ذ	Ḍal	ḏ	Zet (dengan titik di atas)
ر	Ra	r	er
ز	Zai	z	zet
س	Sin	s	es

ش	Syin	sy	es dan ye
ص	Ṣad	ṣ	es (dengan titik di bawah)
ض	Ḍad	ḍ	de (dengan titik di bawah)
ط	Ṭa	ṭ	te (dengan titik di bawah)
ظ	Ẓa	ẓ	zet (dengan titik di bawah)
ع	`ain	`	koma terbalik (di atas)
غ	Gain	g	ge
ف	Fa	f	ef
ق	Qaf	q	ki
ك	Kaf	k	ka
ل	Lam	l	el
م	Mim	m	em

ن	Nun	n	en
و	Wau	w	we
هـ	Ha	h	ha
ء	Hamzah	‘	apostrof
ي	Ya	y	ye

B. Vokal

Vokal bahasa Arab, seperti vokal bahasa Indonesia, terdiri dari vokal tunggal atau *monoftong* dan vokal rangkap atau *diftong*.

1. Vokal Tunggal

Vokal tunggal bahasa Arab yang lambangnya berupa tanda atau harakat, transliterasinya sebagai berikut:

Tabel 0.2: Tabel Transliterasi Vokal Tunggal

Huruf Arab	Nama	Huruf Latin	Nama
َ	Fathah	a	a
ِ	Kasrah	i	i

ـَ	Dammah	u	u
----	--------	---	---

2. Vokal Rangkap

Vokal rangkap bahasa Arab yang lambangnya berupa gabungan antara harakat dan huruf, transliterasinya berupa gabungan huruf sebagai berikut:

Tabel 0.3: Tabel Transliterasi Vokal Rangkap

Huruf Arab	Nama	Huruf Latin	Nama
يَ...َ	Fathah dan ya	ai	a dan u
وَ...َ	Fathah dan wau	au	a dan u

Contoh:

- كَتَبَ kataba
- فَعَلَ fa`ala
- سَأَلَ suila
- كَيْفَ kaifa
- حَوْلَ haula

C. Maddah

Maddah atau vokal panjang yang lambangnya berupa harakat dan huruf, transliterasinya berupa huruf dan tanda sebagai berikut:

Tabel 0.4: Tabel Transliterasi *Maddah*

Huruf Arab	Nama	Huruf Latin	Nama
ا...ى...	Fathah dan alif atau ya	ā	a dan garis di atas
ى...	Kasrah dan ya	ī	i dan garis di atas
و...	Dammah dan wau	ū	u dan garis di atas

Contoh:

- قَالَ qāla
- رَمَى ramā
- قِيلَ qīla
- يَقُولُ yaqūlu

D. Ta' Marbutah

Transliterasi untuk ta' marbutah ada dua, yaitu:

1. Ta' marbutah hidup

Ta' marbutah hidup atau yang mendapat harakat fathah, kasrah, dan dammah, transliterasinya adalah "t".

2. Ta' marbutah mati

Ta' marbutah mati atau yang mendapat harakat sukun, transliterasinya adalah "h".

3. Kalau pada kata terakhir dengan ta' marbutah diikuti oleh kata yang menggunakan kata sandang *al* serta bacaan kedua kata itu terpisah, maka ta' marbutah itu ditransliterasikan dengan "h".

Contoh:

- رَوْضَةُ الْأَطْفَالِ raudah al-atfāl/raudahtul atfāl
- الْمَدِينَةُ الْمُنَوَّرَةُ al-madīnah al-munawwarah/al-madīnatul
munawwarah
- طَلْحَةُ talhah

E. Syaddah (Tasydid)

Syaddah atau tasydid yang dalam tulisan Arab dilambangkan dengan sebuah tanda, tanda syaddah atau tanda tasydid, ditransliterasikan dengan huruf, yaitu huruf yang sama dengan huruf yang diberi tanda syaddah itu.

Contoh:

- نَزَّلَ nazzala

- الْبِرُّ al-birr

F. Kata Sandang

Kata sandang dalam sistem tulisan Arab dilambangkan dengan huruf, yaitu ال, namun dalam transliterasi ini kata sandang itu dibedakan atas:

1. Kata sandang yang diikuti huruf syamsiyah

Kata sandang yang diikuti oleh huruf syamsiyah ditransliterasikan sesuai dengan bunyinya, yaitu huruf “l” diganti dengan huruf yang langsung mengikuti kata sandang itu.

2. Kata sandang yang diikuti huruf qamariyah

Kata sandang yang diikuti oleh huruf qamariyah ditransliterasikan dengan sesuai dengan aturan yang digariskan di depan dan sesuai dengan bunyinya.

Baik diikuti oleh huruf syamsiyah maupun qamariyah, kata sandang ditulis terpisah dari kata yang mengikuti dan dihubungkan dengan tanpa sempang.

Contoh:

- الرَّجُلُ ar-rajulu

- الْقَلَمُ al-qalamu

- الشَّمْسُ asy-syamsu

- الْجَلَالُ al-jalālu

G. Hamzah

Hamzah ditransliterasikan sebagai apostrof. Namun hal itu hanya berlaku bagi hamzah yang terletak di tengah dan di akhir kata. Sementara hamzah yang terletak di awal kata dilambangkan, karena dalam tulisan Arab berupa alif.

Contoh:

- تَأْخُذُ ta'khuẓu
- شَيْءٌ syai'un
- النَّوْءُ an-nau'u
- إِنَّ inna

H. Penulisan Kata

Pada dasarnya setiap kata, baik fail, isim maupun huruf ditulis terpisah. Hanya kata-kata tertentu yang penulisannya dengan huruf Arab sudah lazim dirangkaikan dengan kata lain karena ada huruf atau harkat yang dihilangkan, maka penulisan kata tersebut dirangkaikan juga dengan kata lain yang mengikutinya.

Contoh:

- وَ إِنَّ اللَّهَ فَهُوَ خَيْرُ الرَّازِقِينَ Wa innallāha lahuwa khair ar-rāziqīn/

Wa innallāha lahuwa khairurrāziqīn

- بِسْمِ اللَّهِ مَجْرَاهَا وَ مُرْسَاهَا Bismillāhi majrehā wa mursāhā

I. Huruf Kapital

Meskipun dalam sistem tulisan Arab huruf kapital tidak dikenal, dalam transliterasi ini huruf tersebut digunakan juga. Penggunaan huruf kapital seperti apa yang berlaku dalam EYD, di antaranya: huruf kapital digunakan untuk menuliskan huruf awal nama diri dan permulaan kalimat. Bilamana nama diri itu didahului oleh kata sandang, maka yang ditulis dengan huruf kapital tetap huruf awal nama diri tersebut, bukan huruf awal kata sandangnya.

Contoh:

- الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ Alhamdu lillāhi rabbi al-`ālamīn/

Alhamdu lillāhi rabbil `ālamīn

- الرَّحْمَنُ الرَّحِيمُ Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

Penggunaan huruf awal kapital untuk Allah hanya berlaku bila dalam tulisan Arabnya memang lengkap demikian dan kalau penulisan itu disatukan dengan kata lain sehingga ada huruf atau harakat yang dihilangkan, huruf kapital tidak dipergunakan.

Contoh:

- اللَّهُ غَفُورٌ رَحِيمٌ Allaāhu gafūrun rahīm
- لِلَّهِ الْأُمُورُ جَمِيعًا Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

J. Tajwid

Bagi mereka yang menginginkan kefasihan dalam bacaan, pedoman transliterasi ini merupakan bagian yang tak terpisahkan dengan Ilmu Tajwid. Karena itu peresmian pedoman transliterasi ini perlu disertai dengan pedoman tajwid.

ABSTRAK

ANALISIS PENERAPAN HUKUM ACARA PERDATA DALAM PEMERIKSAAN SENGKETA HAK ASUH ANAK (STUDI PUTUSAN NO. 2525/Pdt.G/2025/PA.JT)

KHAIRIYAH ROFIATULHAQ
NIM: 19421119

Sengketa hak asuh anak pasca perceraian menuntut pemeriksaan perkara yang tidak hanya memenuhi standar prosedural, tetapi juga berorientasi pada perlindungan kepentingan terbaik bagi anak. Penelitian ini bertujuan menjawab dua pertanyaan: pertama, bagaimana penerapan hukum acara perdata dalam tahapan pemeriksaan dan pembuktian pada Putusan Nomor 2525/Pdt.G/2025/PA.JT; dan kedua, apakah pertimbangan hukum hakim dalam putusan tersebut telah selaras dengan prinsip kepentingan terbaik bagi anak. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan kasus, perundang-undangan, dan konseptual. Hasil penelitian menunjukkan bahwa penerapan hukum acara perdata telah memenuhi standar prosedural secara formal, mencakup mediasi, tahap jawab-menjawab, pembuktian yang tertib, dan penggunaan *e-court* sesuai PERMA Nomor 7 Tahun 2022. Namun terdapat keterbatasan substantif berupa tidak didengarnya Anak Pertama yang telah *mumayyiz* dan berkebutuhan khusus secara langsung tanpa mekanisme alternatif yang memadai. Pertimbangan hakim telah berorientasi pada kepentingan terbaik bagi anak melalui rujukan pada UU Perlindungan Anak dan KHI, namun belum optimal karena keinginan anak hanya diperoleh dari keterangan ibu dan hakim tidak menggunakan kewenangan *ex officio* untuk menetapkan nafkah anak. Penelitian ini memperlihatkan bahwa penerapan kepatuhan prosedural dalam peradilan hak asuh anak perlu diintegrasikan dengan pertimbangan substantif yang lebih responsif terhadap kepentingan dan kebutuhan khusus anak.

Kata Kunci: hak asuh anak, hadhanah, hukum acara perdata, kepentingan terbaik bagi anak

ABSTRACT

AN ANALYSIS OF THE IMPLEMENTATION OF CIVIL PROCEDURAL LAW IN THE EXAMINATION OF CHILD CUSTODY DISPUTES (A STUDY OF DECISION NO. 2525/Pdt.G/2025/PA.JT)

KHAIRIYAH ROFIATULHAQ

NIM: 19421119

The dispute over child custody following a divorce requires a case review that not only meets procedural standards but also focuses on protection of the child's best interests. The objective of this study is to address two research questions: Firstly, how is the application of civil procedure implemented during the examination and evidentiary stages in Judgment No. 2525/Pdt.G/2025/PA.JT; and secondly, whether the judge's legal reasoning in that judgment aligns with the principle of the child's best interests. This study employs a normative legal research method utilizing a case-based, statutory, and conceptual approach. The findings demonstrate that the application of civil procedure has formally met procedural standards, encompassing mediation, the exchange of pleadings, orderly evidence presentation, and the use of e-court in accordance with PERMA No. 7 of 2022. However, there is a substantive limitation in that the First Child—who is *mumayyiz* and has special needs—was not heard directly, and without an adequate alternative mechanism. The judge's decision was oriented towards the best interests of the child through reference to the Child Protection Law and the Indonesian Compilation of Islamic Law (KHI). However, it was suboptimal in that the child's wishes are only obtained from the testimony of the mother, and the judge does not have the authority to determine child support *ex officio*. This study demonstrates that the application of procedural compliance in child custody proceedings needs to be integrated with substantive considerations that are more responsive to the child's best interests and special needs.

Keywords: child custody, *hadhanah*, law procedure, the child's best interests

June 09, 2026

TRANSLATOR STATEMENT

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PREFACE

Alhamdulillahillāhi rabbil 'ālamīn, all the praise and gratitude of the author is extended to the presence of Allah SWT for the abundance of His grace, taufik, guidance, and help, so that the author can complete the thesis entitled **“AN ANALYSIS OF THE IMPLEMENTATION OF CIVIL PROCEDURAL LAW IN THE EXAMINANTION OF CHILD CUSTODY DISPUTES (A STUDY OF DECISION NO. 2525/Pdt.G/2025/PA.JT)”**. Prayers and greetings are always poured out to the Prophet Muhammad PBUH, his family, friends, and all his people who are istiqamah to follow his teachings until the end of time.

This thesis was written as one of the requirements to obtain a Bachelor of Law degree in the Family Law Study Program (Ahwal Syakhshiyah), Faculty of Islamic Religious Sciences, Islamic University of Indonesia. In the process of compiling, the author realized that this thesis would not be completed without the help, prayer, direction, and support of various parties. Therefore, with all humility the author expresses his gratitude to:

1. Prof. Fathul Wahid, S.T., M.Sc., Ph.D., as the Rector of the Islamic University of Indonesia.
2. Dr. Drs. Asmuni, M.A., as the Dean of the Faculty of Islamic Religious Sciences, Islamic University of Indonesia.

3. Dr. Anton Priyo Nugroho, S.E., M.M., as the Head of the Department of Islamic Studies, Faculty of Islamic Religious Sciences, Islamic University of Indonesia.
4. Muhammad Najib Asyrof, S.Pd.I., Lc., M.Ag., as the Head of the Family Law Study Program (Ahwal Syakhshiyah) Faculty of Islamic Religious Sciences, Islamic University of Indonesia.
5. Hasman Zhafiri Muhammad, S.H., M.H., as the thesis supervisor who has provided direction, guidance, input, and patience during the process of preparing this thesis.
6. All lecturers of the Family Law Study Program (Ahwal Syakhshiyah) Faculty of Islamic Religious Sciences, Islamic University of Indonesia who have provided very valuable knowledge, experience, and learning during the lecture period.
7. All education staff of the Faculty of Islamic Religious Sciences, Islamic University of Indonesia who have assisted the author in the administrative process and academic needs during the preparation of this thesis.
8. Three parents, nine siblings, and three dear nephews who always provide prayers, affection, support, and strength for the author in completing his studies.
9. Friends of *Jogja for Real* and Vania Huwaida who have provided support, encouragement, assistance, and become a place to share during the process of preparing this thesis.

The author realizes that this thesis is still far from perfect. Therefore, the author is open to constructive criticism and suggestions for the improvement of this scientific work. Hopefully this thesis can provide benefits for the development of science, especially in the field of Islamic family law, and can be a reference material for parties in need.

Yogyakarta, 10 Mei 2026

A handwritten signature in black ink, featuring stylized Arabic calligraphy and a horizontal line across the middle.

Khairiyah Rofiatulhaq

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CHAPTER I

INTRODUCTION

A. Background

Divorce is an event that has a wide impact, in particular for children who are trapped in complex family dynamics. In many cases, divorce raises legal discussions about child custody. Divorce is not only the end of the relationship between two people, but also concerns the separation of an established household, where children are often included as the most vulnerable and suffering parties. After separation, children are often the subject of legal disputes between their parents over custody, support, and education. In many cases, the interests and needs of children are often ignored or sidelined in conflicting parent disputes.¹

Child custody is an integral part of the divorce and separation process of a spouse who has children. It includes a wide range of obligations, rights, and responsibilities towards children that need to be regulated and protected in legal and social contexts. A deep understanding of child custody is essential to ensure the well-being and best interests of children amid changing family dynamics².

¹ Ester Stevany Putri dkk., "Pemenuhan Hak Anak Dalam Konteks Perceraian: Analisis Yuridis Terhadap Penetapan Hak Asuh Anak Melalui Litigasi," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* (2024): 7.

² Sari, Rita. *Hak Asuh Anak Pascaperceraian*. (Penerbit Literasi Nusantara Abadi, 2024)

Any human being, including a developing foetus, who is less than eighteen years old is considered a kid. A kid born of a valid marriage is deemed to be of legal age. In order for children to live, grow, and participate fully in society in a way that respects their inherent worth as human beings, it is essential that their rights be safeguarded. The family, community, state, and government all have a responsibility to ensure the safety and well-being of children and to satisfy their rights.³

Children born out of a marriage always feel the effects of a divorce. This is how the ramifications of a divorce are governed under Indonesia's positive legal norm. Importantly, the KHI states in Article 105 that: "In the event of divorce:" (a) A mother has the right to support her children until they are either not yet mumayyiz or 12 years old; (b) Once a child reaches the age of 12, he or she has the choice of whether to be supported by their father or mother; and (c) the financial burden of maintenance is placed on the father.⁴

From perspective of Islamic scholars, hadhanah (child custody) is basically a protection mechanism. As far as Sayyid Sabiq, the maintenance of young children, both boys and girls or children who have intellectual limitations. This refers to the attitude of paying attention to children who are not able to distinguish between good and bad, cannot be independent, do not know how to take care of themselves, and do not have the

³ *Ibid.*, 37.

⁴ Ester Stevany Putri dkk., *Pemenuhan ...*, 18.

understanding to protect themselves from things that have the potential to hurt or harm. Similarly, as far as Wahbah Zuhaili, education for children who have the right to hadanah refers to efforts to educate and protect individuals who are unable to take care of their own needs from potentially harmful things. This is due to his inability to make choices, such as young children and people with mental disorders.⁵

Conceptually, previous scholars such as Sayyid Sabiq and Wahbbah Zuhaili defined hadhanah as not only physical maintenance, but also protection with those who are unable to protect themselves, including those who have mental limitations. Thus, the condition of the child is an aspect that needs to be considered in depth. However, in practice, this condition is not always optimally reflected.

Child custody battles after a divorce include more than just figuring out who gets hadhanah, but also to how the case review process is carried out so that the judgment handed down truly safeguards the child's optimal welfare. The conventionally, Article 28B paragraph (2) of the 1945 Constitution affirms that every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination. In line with that, the Child Protection Law places the best interests of the child as a basic principle, ensures that a child will remain in the care of his or her parents unless doing so would be detrimental to the kid's well-being,

⁵ Sari, Rita. *Hak...*, 6.

and acknowledges the child's right to voice his or her opinions to the extent appropriate to his or her age and maturity.

Within the framework of Islamic family law, the determination of hadhanah does refer to Article 105 and Article 156 of the KHI. However, the ideal of examining child custody cases is not enough to be understood as a normative application of these provisions alone. Law No. 48 of 2009 concerning Judicial Power stresses that judges have a responsibility to investigate, adhere to, and comprehend society's innate sense of fairness and legal principles. Therefore, the examination of child custody cases should ideally be carried out substantively, namely by optimizing relevant evidentiary instruments to obtain a complete picture of the child's condition, including through local examinations if deemed necessary or useful in the evidentiary process.

This reality has not been fully reflected in Decision Number 2525/Pdt.G/2025/PA. JT this is why this investigation is being conducted. Although the formal stages of procedural law have been carried out, the first child who is over twelve years old is not heard directly at the trial, while serious evidence regarding the physical and psychological condition of the child is more assessed through indirect evidence. On the other hand, in case Number 986/Pdt.G/2024/PA. As a comparative material, the examination process shows a more substantive approach and is not solely normative rigid because the judge uses evidentiary instruments that help obtain a concrete picture of the circumstances related to the child. Thus, the problem in this

investigation lies not only in the final result of the determination of custody, but in the existence or absence of a gap between the ideality of the examination of child custody cases that are oriented towards considered here are the child's best interests as well as the practicalities of the assessment.

From this, it is clear that deciding who should have legal custody of a kid is only one aspect in child custody issues, but also about how the case investigation process is carried out to ensure the protection of the best interests for children. In this regard, it is important to conduct further studies on the case examination process in child custody disputes. On this basis, this investigation was carried out with the title **“AN ANALYSIS OF THE IMPLEMENTATION OF CIVIL PROCEDURAL LAW IN THE EXAMINATION OF CHILD CUSTODY DISPUTES (A STUDY OF DECISION NO. 2525/Pdt.G/2025/PA.JT)”**.

B. Research Questions

The following research questions are developed for this investigation In light of the previously given background:

1. How is the implementation of civil procedure law in the examination and proof stages of child custody disputes in Decision Number 2525/Pdt.G/2025/PA. JT?

2. Is the implementation of civil procedural law in Decision Number 2525/Pdt.G/2025/PA. JT has been in line with the principle of the best interests of the child in the judge's legal consideration?

C. Research Objectives

This investigation aims to achieve the following:

1. Analyzing the implementation of civil procedural law in the examination and proof stages of child custody disputes in Decision Number 2525/Pdt.G/2025/PA. JT.
2. Determine whether the implementation of civil procedural law in Decision Number 2525/Pdt.G/2025/PA. JT has been in line with the principle of the best interests of the child in the judge's legal consideration.

D. Benefits of Research

Below, will describe the two main categories of advantages that this investigation has: theoretical and practical:

1. Theoretical Benefit

Theoretically, this investigation is expected to contribute to the development of civil procedural law, especially regarding the law of proof within the Religious Court. More specifically, this investigation aims to enrich academic discourse regarding *ex officio* authority of judges in aligning formal procedural requirements with

substantive principles of the best interests of children. In addition, this investigation serves as a resource for research to come related to the procedural handling of child custody cases involving children with certain medical or psychological conditions.

2. Practical Benefit

Practically, it is anticipated that this work will significantly advance the field to the implementation of justice in child custody disputes. For judicial institutions, especially judges in the Religious Courts, the results of this research provide support for a constructive evaluation to encourage a more active and sensitive approach in the evidentiary process, so that procedural formalities do not become an obstacle in efforts to find the material truth about the child's condition. Furthermore, for legal practitioners, this investigation emphasizes the urgency of submitting comprehensive evidence—such as expert testimony and medical records—to effectively represent the interests of children with special health or psychological needs. Ultimately, this investigation provides empirical input for policymakers to formulate more detailed guidelines on child examination methods, so that the protection of children's rights in the civil justice system can be further strengthened.

E. Discussion Systematics

This investigation is systematically arranged into five chapters to present a coherent and structured study.

Chapter I is an introduction that provides context for the study by explaining the urgency of studying procedural law in child custody disputes, formulating research questions, setting research objectives, and describing the theoretical and practical advantages of the study, the study's methodology, and the study's general systematics.

Chapter II presents a literature review and analytical framework by examining previous studies that pertain to the subject under investigation and describing the key concepts and frameworks that are used as the basis for the analysis, including the concept of child custody or *hadhanah* in Islamic law, the principles of civil procedure law within the Religious Court, along with the idea of looking out for kids' best interests.

Chapter III explains the research method by describing the types and approaches of research, areas of focus, sources (both primary and secondary), methods (for gathering and analysing legal documents), and outcomes (from the studies conducted).

Chapter IV is the core of the research which presents an analysis and discussion of the process of examining child custody cases based on case studies. This chapter examines the stages of case examination by focusing on the examination and proving process regarding the child's condition, as well as assessing its conformity with the principles of civil procedure law

and determine whether the judge's decision follows the best interests of the kid premise.

Chapter V is a conclusion that presents conclusions as answers to research questions. In light of the findings of analysis and discussion, accompanied by recommendations pertaining to the development of civil procedural law in child custody cases and suggestions for future studies in order to better safeguard the rights of children across the legal system.

CHAPTER II

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

A. Literature Review

Studies on child custody (*hadhanah*) following divorce have generally developed along two major strands. First, research focuses on judicial considerations and the operative part of judgments in determining the party entitled to custody. Second, studies that emphasize the protection of children's rights through the principle of the *best interests of the child*, both at the stage of determining custody and at the stage of enforcing judgments. To a certain extent, there has also been research that begins to address procedural aspects—such as litigation stages, evidentiary processes, and innovations in e-litigation—yet the majority of these studies continue to position judicial proceedings merely as background context rather than as the primary object of analysis. This framework is significant because the present research is premised on the assumption that a court's decision should not be the only factor considered when deciding whether or not to safeguard a child's best interests, but also on how judicial proceedings are conducted from the filing of the claim until the judgment is rendered.

First, the study entitled “*Child Custody Disputes Following Divorce (A Case Study of the Kebumen Religious Court and the Semarang High Religious Court)*” (2023) by Nurfauzi Muhammad, positions court judgments as the central determinant of custody outcomes, while examining

causes of divorce, judicial considerations, and mechanisms for fulfilling custody rights following divorce.⁶ Its strength lies in the use of archival case data and comparative analysis between first-instance and appellate courts, thereby enriching the understanding that custody determinations may change and judicial reasoning may vary across judicial levels. Its relevance to the present research lies in demonstrating the layered complexity of child custody cases. Nevertheless, the primary focus of this investigation remains on factors, judicial reasoning, and outcomes, rather than on a detailed examination of the procedural correctness of judicial proceedings.

Second, The study entitled “*Tracing Hadhanah: An In-Depth Examination of Child Custody Cases in Religious Courts*” (2023) by M. Khairul Arwani et al. analyses the use of thorough judicial scrutiny in cases involving child custody battles, including child participation, the role of expert and witness testimony, and the factors that encourage judges to conduct local inspections (*descente*).⁷ The study concludes that child custody adjudication requires a holistic and child-sensitive approach within the Religious Court system. Its relevance to the present research lies in the shared concern with judicial examination and the need for more substantial fact-finding in custody disputes. However, the study places particular emphasis on in-depth examination and *descente*, whereas the present

⁶ Nurfauzi Muhammad, “SENGKETA HAK ASUH ANAK PASCA TERJADINYA PERCERAIAN (STUDI KASUS PENGADILAN AGAMA KEBUMEN DAN PENGADILAN TINGGI AGAMA SEMARANG)” (Universitas Islam Indonesia, 2023).

⁷ M Khairul Arwani, Doni Dermawan, and Sarah Afifah, “Menelusuri Hadhanah: Pemeriksaan Mendalam Atas Kasus Hak Asuh Anak Di Pengadilan Agama,” *Journal of Good Governance, Diplomacy, Perlembagaan Adat and Social Networks* 1 (2023): 63–70.

research analyzes the broader structure of judicial examination and evidentiary stages within a specific judgment.

Third, The study entitled “*Ex Officio Rights in Protecting the Rights of Wife and Children After Divorce Talak in the Religious Court of Kisaran*” (2024) by Muhammad Zidni Fahmi Siregar focuses on judicial consideration in using *ex officio* powers in divorce cases.⁸ The study finds that *ex officio* authority is understood as the judge’s power by virtue of office to determine matters not explicitly requested in the petitum, provided that it does not violate the prohibition of *ultra petita*. This investigation is relevant because it supports the theoretical foundation that judicial authority may function as an instrument of protection for vulnerable parties, including children. Nevertheless, its primary focus is on post-divorce financial rights and judicial authority in *cerai talak* cases, rather than on the procedural the current investigation into custody battles involving childre.

Fourth, The study entitled “*Application of the KHI to Hadhanah Disputes from the Perspective of Family Law Psychology*” (2024) by Alkhusna Haryanti examines the application of the KHI in child custody disputes from the perspective of family legal psychology.⁹ The study concludes that the application of KHI in the examined case was not yet optimal, since the judge considered the child’s psychological condition

⁸ Muhammad Siregar, “HAK EX OFFICIO HAKIM DALAM MELINDUNGI HAK-HAK DAN ANAK PASCA CERA TALAK DI AGAMA KISARAN(Studi Putusan Nomor 1239/Pdt.G/2021/PA.Kis)” (Universitas islam Negeri Sultan Syarif Kasim Riau, 2024).

⁹ Alkhusna Haryanti, “PENERAPAN KOMPIILASI HUKUM ISLAM (KHI) TERHADAP HADHANAH PSIKOLOGI HUKUM KELUARGA(STUDI KASUS PUTUSAN NOMOR 744/Pdt.G/2023/PA.Mlg)” (INSTITUT AGAMA ISLAM NEGERI (IAIN) KEDIRI, 2024).

without support from expert psychological testimony, the verdict failed to adequately account for the desires of a youngster who had attained the discerning age. This investigation is highly relevant to the present research because both are concerned with the child's psychological condition, the child's voice, and the absence of expert involvement. However, the previous study places family legal psychology at the center of its analysis, while the present research employs such considerations as supporting elements within a broader analysis of judicial examination and evidentiary process.

Fifth, The study entitled "*Settlement of Child Custody in Divorce Cases (A Case Study of Judgment No. 1670/Pdt.G/2022/PA.BL)*" (2025) by Mokhamad Asrori and Nurbaedah is a judgment-based study that examines cases in which custody was awarded to the father (defendant) despite the child's young age.¹⁰ This investigation is notable because it does not merely address judicial considerations but also refers to the sequence of procedural stages, including documentary evidence, witness testimony, mediation, and hearings. This makes it one of the closest references to the focus of the present research, as it provides a concrete illustration of how a case progresses through procedural stages. Nevertheless, the primary orientation of the study remains centered on judicial reasoning and the justification for custody determination, meaning that judicial proceedings are not positioned as the main object of systematic procedural analysis.

¹⁰ Nurbaedah Asrori M., "Penyelesaian Hak Asuh Anak dalam Kasus di Pengadilan Agama Blitar pada Putusan Nomor 1670/PDT.G/2022/PA.BL." *Jurnal Ilmu Hukum* 14 no.1, (2025)

Sixth, The study entitled “*Jurisprudential Analysis of Child Custody Disputes Following Divorce (A Study of Judgments at the Medan Religious Court)*” (2025) by Anggi Egi Anggraini, Sukiati, and Mhd. Yadi Harahap treats court judgments as objects for identifying patterns in the application of law.¹¹ It raises a critical issue regarding the persistence of formalistic approaches in custody determinations and the rigid application of certain norms, resulting in limited child participation and weak post-judgment oversight. Its relevance to the present research lies in strengthening the argument that the protection of the child’s best interests often remains confined to normative formulations, thereby highlighting the importance of assessing how judicial mechanisms operate in practice. However, due to its jurisprudential approach—which synthesizes and compares multiple judgments the study focuses primarily on patterns of reasoning and outcomes rather than reconstructing the procedural stages of a single case in a comprehensive manner.

Seventh, The study entitled “*The Role of Judges in Determining Child Custody Following Divorce from the Perspective of Islamic Family Law and Positive Law*” (2025) by Muhammad Abdul Haris Nurrohman and Syamsuddin, emphasizes judges as key actors in balancing Islamic legal norms and positive law in child custody cases. This type of study is important in strengthening the theoretical foundation that, in family law

¹¹ Anggi Egi Anggraini dan M. Yadi Harahap, “Analisis Yurisprudensi Sengketa Hak Asuh Anak Pasca Perceraian Studi Putusan Nomor 2568/PDT.G/2020/PA Medan,” *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3 no.3, (2025): 2490-2501

cases, for the sake of protecting children's best interests, judges do more than just follow the letter of the law; they also use legal reasoning.¹² As it pertains to the present research, this investigation supports arguments concerning judicial discretion and the importance of fair procedures. Its limitation lies in its primary focus on the role and reasoning of judges, rather than on the structural analysis of judicial proceedings, such as procedural stages, evidentiary processes, hearing agendas, summons, and submissions.

Eighth, The study entitled “*Disparities in Judicial Decisions on Child Custody in Divorce Cases from the Perspective of Child Protection Law*” (2025) by Izzat Hafizh Yusuf examines variations in judicial decisions across different levels of the judiciary, including appellate review, in order to explain inconsistencies in custody rulings.¹³ The significance of this investigation lies in demonstrating that child custody disputes are not always resolved uniformly, thereby underscoring the need for more responsive and consistent child protection standards. For the present research, this investigation serves as strong support for identifying the urgency and research gap in existing literature, as many studies emphasize outcomes and operative rulings while rarely examining how judicial proceedings and courtroom dynamics shape those outcomes. Its limitation,

¹² M. Abdul Haris Nurrohman and Syamsuddin, “Peran Hakim dalam Penetapan Hak Asuh Anak Pasca Perceraian dalam Perspektif Hukum Keluarga Islam dan Hukum Positif,” *Jurnal Tana Mana* 6 no. 2 (2025): 364--374

¹³ Izzat Hafizh Yusuf, “Disparitas Putusan Hakim terhadap Hak Asuh Anak dalam Kasus Perceraian Perspektif Undang-Undang Perlindungan Anak,” *Skripsi Sarjana*, Jakarta: UIN Jakarta, 2025.

however, is that it does not aim to analyze procedural stages step by step, but rather to assess variations in judicial reasoning and decisions.

Ninth, The study entitled “*Child Custody In light of the Principle of the Best Interests of the Child (A Study of Judicial Decisions at the Soreang Religious Court, Bandung Regency)*” (2025) by Miftah Farid focuses on two main aspects: judicial legal reasoning from the perspective of Islamic law and the manner in which judges interpret and follow the child's best interest guiding principle.¹⁴ This investigation is rich in analysis, as it shows that judges refer to child protection norms, the KHI, and the child's basic needs, while also considering the specific circumstances of each case, such as psychological impacts and domestic violence. However, the participation and voice of the child are often absent. Its relevance to the present research lies in providing a strong foundation for the principle of the best interests of the child as an evaluative framework for judicial proceedings. Nonetheless, the study remains grounded in judgment analysis and judicial interpretation, rather than examining the procedural conduct of each stage of litigation In light of the case record.

Tenth, The study entitled “*Disparity in the Use of Ex Officio Authority of Judges for Child Support in Judges' Decisions at the Solok Religious Court*” (2025) by Irsyad Rahmadi, Darmini Roza, and Fitra Mulyawan examines differences in the use of *ex officio* authority in

¹⁴ Miftah Farid, “Hak Asuh Anak Berdasarkan Asas Kepentingan Terbaik bagi Anak (Studi Putusan Hakim di Pengadilan Agama Soreang Kabupaten Bandung)”, *Tesis Magister*, Yogya: Universitas Islam Indonesia, 2025.

determining child support.¹⁵ It finds that in one case the judge refrained from using his or her *ex officio* authority due to the lack of substantial evidence presented in court, whereas in another case such authority was used because the child was clearly under the care of the respondent and the applicant's income could be identified. Its importance for the present study lies in showing that *ex officio* authority is closely connected to the sufficiency of facts established during trial. Even so, the study focuses on child support rather than child custody, making it relevant mainly as a supporting reference for the discussion of judicial authority and the importance of evidentiary adequacy.

Eleventh, The study entitled "*Implementation of Litigation and E-Litigation in the Resolution of Child Custody Disputes at the Sukadana Religious Court*" (2025) by Lasifatul Launyah, focuses on comparing the resolution of child custody disputes through conventional litigation and e-litigation mechanisms.¹⁶ As per as the research, e-litigation is a cutting-edge IT-based innovation in the court system, referring to e-court and e-litigation regulations, with the aim of improving efficiency and access to legal services. Its findings associate the effectiveness of dispute resolution processes with variables such as time efficiency, accessibility, infrastructure readiness, and the parties' level of understanding. The relevance of this

¹⁵ Irsyad Rahmadi, Darmini Roza, and Fitra Mulyawan, "Disparitas Penggunaan Kewenangan Ex Officio Hakim Terhadap Pemberian Nafkah Anak Dalam Putusan Hakim Pada Pengadilan Agama Solok," *Ekasakti Legal Science Journal*, 2025, doi:10.60034/cxm31b16.

¹⁶ Lasifatul, Launyah. "Implementasi Litigasi dan E-Litigasi dalam Penyelesaian Sengketa Hak Asuh Anak di Pengadilan Agama Sukadana,". Metro: Institut Agama Islam Negeri (IAIN) Metro, *Tesis Magister*, 2025.

investigation to the present research lies in reinforcing the argument that judicial proceedings possess a practical dimension that affects procedural justice, particularly in family law cases. However, the study remains centered on evaluating the effectiveness of litigation and e-litigation mechanisms, rather than providing a comprehensive examination of procedural stages within a single case from the filing of the claim to the issuance of the judgment.

Twelfth, The study entitled “*Civil Evidence of Family Law: Divorce Cases and Child Custody Disputes*” (2025) by Yuni Priskila Ginting et al. addresses evidentiary issues in family civil law, especially when matters of child custody and divorce are at issue.¹⁷ The study shows the court considered the best interests of the child, economic capability, and the child’s psychological and physical condition in deciding the case. This investigation is particularly relevant because it strengthens the evidentiary dimension of the present research, especially regarding how courts assess the condition of the child. However, the examined case was decided by a General Court rather than a Religious Court, and therefore the procedural context differs from the present study, which specifically analyzes evidentiary proceedings within the Religious Court system.

Thirteenth, The study entitled “*Juridical Analysis of Legal Protection of Post-Divorce Child Custody in the Perspective of Family Law*

¹⁷ Yuni Priskilia Ginting et al., “Pembuktian Perdata Hukum Kekeluargaan: Kasus Perceraian Dan Perebutan Hak Asuh Anak (Putusan Nomor 63/Pdt.G/2020/PN.Jkt.Ut),” 2025.

in Indonesia” (2025) by Rita Alfiana and Fara Diba Riani examines legal protection of child custody after divorce by emphasizing the principle of the best interests of the child.¹⁸ The study finds that although KHI courts continue to take into account aspects including the well-being of the kid, the parents' conduct, financial capacity, and legal history, even though they often give preference to the mother for children who are not yet mumayyiz. It further argues for legal harmonization and a multidisciplinary approach involving legal, psychological, and social perspectives. The relevance of this investigation lies in its strong normative foundation for assessing child protection and best interests. Nevertheless, it remains broad in scope and does not specifically analyze the procedural conduct of hearings and the evidentiary structure of a single custody case, which is the main concern of the present research.

Fourteenth, The study entitled “*Divorce and the Fate of Children: An Evaluation of the Effectiveness of Judicial Oversight in the Enforcement of Child Custody Judgments in Indonesia*” (2025) by Syifa Ramadani and Ahyar Wiraguna, shifts attention from the adjudication stage to the post-judgment phase, particularly the supervision of custody enforcement¹⁹. This investigation is significant because it emphasizes that child protection does

¹⁸ Rita Alfiana, Fara Diba Riani, and Info Artikel, “Analisis Yuridis Perlindungan Hukum Hak Asuh Anak Pasca Perceraian Dalam Perspektif Hukum Keluarga Di Indonesia (Studi Kasus Perceraian Irish Bella Dengan Ammar Zoni),” *Arus Journal Sosial Dan Humaniora* 5, no. 2 (2025), <http://jurnal.ardenjaya.com/index.php/ajsh><https://jurnal.ardenjaya.com/index.php/ajsh>.

¹⁹ S Ramadhani and SA Wiraguna, “Perceraian dan Nasib Anak: Evaluasi terhadap Efektivitas Pengawasan Pelaksanaan Putusan Hak Asuh oleh Pengadilan di Indonesia,” *Jurnal Riset Multidisiplin Edukasi* 2 no. 10, (2025): 988-1000.

not end with custody determination, but extends to the realization and supervision of judgments. For the present research, it provides contextual background illustrating that judicial processes—from examination to judgment—must be structured in a manner that avoids producing decisions that are sound only in form but weak in implementation. However, this investigation operates within the domain of enforcement and post-judgment mechanisms, making it more suitable as supporting context rather than as a primary foundation for analyzing first-instance judicial proceedings.

Finally, The study entitled “*Implementation of Article 156 letter (c) KHI in the Transfer of Child Custody: A Practical Study of Divorce Cases in the Bangkalan Religious Court*” (2026) by Lydia Fanggi and Ida Wahyuliana discusses the application of Article 156(c) of the KHI in transferring child custody, together with the function of counsel throughout the presentation of evidence.²⁰ The study concludes that Article 156(c) KHI is flexible and child-oriented, but its application requires objective standards of assessment and strong evidence. This investigation is one of the closest to the present research because both emphasize the relationship between evidentiary strength, factual findings in court, and the realization of the best interests of the child. However, the previous study specifically focuses on custody transfer under Article 156(c) KHI, while the present research is

²⁰ Lydia Fanggi and Ida Wahyuliana, “IMPLEMENTASI PASAL 156 HURUF (C) KOMPILASI HUKUM DALAM PENGALIHAN HAK ASUH ANAK: STUDI KASUS PERCERAIAN DI PERADILAN AGAMA,” *Journal Media Akademik* 4, no. 1 (2026): 3031–5220, doi:10.62281.

broadly in examining the entire judicial examination and evidentiary process within one specific child custody judgment.

B. Theoretical Framework

The function of the theory framework in legal research is as a conceptual and systematic basis for understanding, analyzing, and interpreting the legal issues being studied. The theoretical framework provides a theoretical foundation that allows investigators to explain the relationship between existing legal phenomena and relevant legal theories.²¹ Therefore, in the theoretical framework of this investigation it is arranged into four parts, namely:

1. The Basic Concept of Civil Procedure Law in Child Custody Dispute Resolution

a. Definition of Civil Procedure Law

The purpose of civil procedural law is to establish and enforce procedures for the administration of civil law, such as the use of judicial mediation to ascertain whether a party has complied with the law or not. Concretely, the civil procedure law regulates how to file a claim for rights, examine, decide, and

²¹ Q Arifuddin et al., *Legal Research Methodology*, cet. 1., (Jambi: PT. Sonpedia Publishing Indonesia, 2025), 120.

implement a decision.²² Thus, the civil procedure law is a legal instrument that ensures that the rights recognized by the material law can be effectively enforced through the judicial mechanism.

Yahya Harahap, the purpose of civil procedural law is to provide uniform standards for all phases of a civil case's judicial processes, including the commencement of the lawsuit, the trial, the presentation of evidence, and the final execution of the court's judgement.²³ This function makes civil procedure law the backbone of formal dispute resolution, including child custody disputes that require comprehensive examinations and are oriented towards the protection of children's interests.

b. Examination Stage of Civil Cases in Religious Court

The stages of examining civil cases in the Religious Court are based on Law No. 7 of 1989 concerning Religious Courts as amended by Law No. 3 of 2006 and Law No. 50 of 2009. Based on Article 54 of that law, Civil procedural laws that govern the General Court also govern the Religious Court, with the exception of laws that have been expressly codified.

²²Sudikno Mertokusumo, Indonesian Civil Procedure Law, 8th edition (Yogyakarta: Liberty, 2009), p. 2.

²³Yahya Harahap, Civil Procedure Law: Lawsuits, Trials, Confiscation, Proof, and Court Decisions (Jakarta: Sinar Grafika, 2017), p. 236.

Thus, the stages of examining the case include: filing a lawsuit or application; determination of the date of the hearing and summoning of the parties; peace and mediation efforts; answer-answer (answers, replicas, duplicates); proof; conclusion; and verdicts. The provisions regarding peace efforts refer to Article 130 of the HIR and Article 82 of the Religious Courts Law, while the mediation procedure is further regulated in the Perma 1 of 2016 concerning Mediation Procedures in Courts.²⁴

As per s Abdul Manan, these steps must be followed in that order when matters are heard by the Religious Court, because each stage has its own procedural function that protects the rights of the parties. When it comes to matters involving physical custody of a kid, compliance with this stage is not just a formality, but also a means to ensure that the judge obtains a complete and objective picture of the child's condition and the parents' abilities.²⁵

c. Principles in Civil Procedural Law

²⁴Abdul Manan, *The Application of Civil Procedure Law in the Religious Justice Environment* (Jakarta: Kencana, 2008), p. 147.

²⁵Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama* (Jakarta: Kencana, 2008), hlm. 174.

In Law No. 7 of 1989 concerning Religious Justice, there are eight general principles, the framework is based on a number of basic principles, such as Islamic personal values, individual autonomy, the duty to seek reconciliation, a straightforward, affordable, and efficient judicial process; publically accessible and transparent proceedings; compliance with legal provisions; equality before the law; and the court's proactive role in helping the parties involved.²⁶

Among these principles, the principle of compulsory reconciliation and simplicity, rapidity, and affordability have particular relevance in child custody disputes. The obligation to reconcile the parties, per the requirements laid down in Article 130 of the HIR and Article 82 of the Religious Courts Law, is an effort so that cases involving the interests of children can be resolved through deliberation so as not to add to the burden of conflict for children in the midst of the dynamics of their parents' divorce.²⁷

In addition, the principle of active assistance means that judges in family cases, especially those involving children, do not only play the role of passive referees, but must also actively

²⁶ Lubis Sulaikin, et al., *Civil Procedure Law of Religious Courts in Indonesia*. (Jakarta: Kencana, 2005), 61.

²⁷ Roihan A. Rasyid, *Procedural Law of Religious Justice* (Jakarta: Raja Grafindo Persada, 2006), p. 99.

explore relevant facts in the best interests of children. This makes the examination of hadhanah cases more inquisitorial than ordinary civil cases.

d. The Role and Authority of Judges in the Examination of Family Cases

The judge's role in civil case evaluation is mostly one of passivity, as the judge is not to make any decisions beyond those that are required by the parties (*ultra petita*). However, in cases involving the interests of the weak, including children, the principle has been modified. Sudikno Mertokusumo explained that in certain civil cases, judges can actively use their authority to seek material truth if the interests of parties who cannot defend themselves are at stake.²⁸

Yahya Harahap further explained that the freedom of judges in assessing evidence and establishing legal facts is a component of the separation of powers provided by the Judiciary Act of 2009, No. 48. According to the legislation, namely Article 5 paragraph (1), judges are obligated to investigate, adhere to, and understand the legal values and sense of justice that live in society. This provision provides a basis for judges to not only

²⁸Sudikno Mertokusumo, *Civil Procedure Law...*, pp. 75–80.

apply written norms mechanically, but also consider the social, psychological, and humanitarian context of each case they face.²⁹

The court has the discretion to pursue a more all-encompassing strategy in hadhanah matters, such as hearing expert testimony, conducting a local examination (*descente*), or digging up information from the child in a safe and non-traumatic manner, if the circumstances of the case allow. This kind of approach is in line with the spirit of child protection contained in the Child Protection Act and the Convention on the Rights of the Child.³⁰

In addition, cases involving families heard by the Religious Cour, the judge also exercises *ex officio* authority, which is the authority that the judge has based on his position to take certain legal actions even though it is not explicitly requested by the parties. The judge's *ex officio* authority is a manifestation of the judge's responsibility as a supervisor and protector of the legal interests of parties who are unable to fully defend their own rights, including children.

Normatively, the use of *ex officio* authority in hadhanah cases is reflected in the SEMA No. 4 of 2016, This lays down the

²⁹Yahya Harahap, Civil Procedure Law..., p. 252.

³⁰Abdul Manan, Application of Civil Procedure Law..., p. 158.

rules by which the *ex officio* Religious Court may decide how much a father should pay in child support while his kid is living with his mother as related to Article 156 letter (f) of the KHI.³¹ Thus, *the ex officio* authority of judges is an important instrument in realizing substantive child protection, not only in the decision to determine custody, but also in other aspects that ensure the welfare of children after divorce.³²

2. The Concept of Child Custody and the Principle of the Best Interests of the Child

a. Definition of Child Custody (Hadhanah) in Islamic Law and Positive Law

Hadhanah refers to the Islamic approach of raising children. The root of the term "hadhanah" is "hadhana-yahdhunu-hadhnan," meaning "to nurture" or "to embrace.. This meaning reflects the close relationship between the caregiver and

³¹SEMA No. 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Chamber of the Supreme Court in 2016 as a Guideline for the Implementation of Duties for the Court.

³²Irsyad Rahmadi, Darmini Roza, and Fitra Mulyawan, "Disparity in the Use of Ex Officio Authority of Judges for Child Support in Judges' Decisions at the Solok Religious Court," *Ekasakti Legal Science Journal* (2025), doi:10.60034/cxm31b16.

the child in care, in the form of fulfilling the child's physical and emotional needs as a whole.³³

As far as Wahbah al-Zuhaili, *hadhanah* is an effort to educate and protect individuals who are unable to take care of their own needs from potentially harmful things. This is due to its inability to make choices independently, such as in young children and people with mental disorders.³⁴ In line with that, Sayyid Sabiq defines *hadhanah* as the care of young children—both boys and girls—who lack the capacity to differentiate between right and wrong, are not able to be independent, and do not have the understanding to protect themselves from harmful things.³⁵

In Indonesian law, child custody is also called *custody*. Based on Article 1 number (11) of Law No. 23 of 2002 concerning Child Protection as amended by Law No. 35 of 2014, parental authority encompasses the capacity of parents to guide, instruct, support, cultivate, safeguard, and advance their children in all aspects of their lives, including their religious beliefs, skills, hobbies, and abilities. Thus, child custody is the authority

³³M. Natsir Asnawi, *Hukum Hak Asuh Anak* (Jakarta: Kencana, 2022), hlm. 15.

³⁴Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Juz X (Damascus: Dar al-Fikr, 1989), p. 7302.

³⁵Sayyid Sabiq, *Fiqh Sunnah*, Volume III (Beirut: Dar al-Fikr, 1983), p. 286.

of parents to nurture, maintain, and encourage children's maturation and progress toward their full potential in order to safeguard their welfar.³⁶

b. Normative Basis of Custody Arrangement

The provisions regarding child custody in the event of divorce have been regulated in more detail in Article 105 of the KHI, in particular: (a) a mother has the right to support her kid until he or she reaches the age of 12, if the child is not yet considered mumayyiz;(b) a mumayyiz kid has the right to choose between his or her parents as the custodian of his or her maintenance; and (c) His dad is picking up the tab for the upkeep.³⁷

In addition, Article 156 letter (d) of the KHI provides that, to the extent that he is able to do so, the father is responsible for paying his share of hadhanah and child maintenance until the kid reaches adulthood and is able to support himself up to the age of twenty-one.³⁸ This provision confirms that even if custody is assigned to the mother or father, financial responsibility for the child's needs remains the father's obligation, so that the

³⁶Rita Sari, *Post-Divorce Child Custody* (Malang: Nusantara Abadi Literacy Publisher, 2024), pp. 5–6.

³⁷KHI, Article 105.

³⁸*Ibid.*, Article 156 letter (d).

protection of the child does not depend solely on who holds custody.

In the broader realm of positive law, Article 41 letter (a) of Law No. 1 of 1974 Parents still have the responsibility to provide for and educate their children, regardless of whether the marriage has broken down due to divorce, as long as it is in the best interests of the children. Divorce does not absolve parents of their shared obligation for their children's upkeep, as this rule makes clear.

c. Criteria for Determination of Custody

The first and foremost aspect of *hadhanah* is the establishment of requirements for *hadhanah* bearers. To guarantee the upkeep and realisation of the child's fundamental rights, the *hadhanah* bearer must be someone who is believed to be capable of providing good and trustworthy care for the kid.³⁹

As far as Amir Syarifuddin, the conditions that must be met by *hadhanah holders* are: (1) adulthood; (2) common sense; (3) speaking in caring for children; (4) Muslims; (5) fair; and (6) the caregiver is not married again.⁴⁰ M. Natsir Asnawi added that

³⁹Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2011), hlm. 328.

⁴⁰ Ibid., p. 328

the ability and integrity of caregivers in providing guidance that is appropriate to the age and needs of children, as well as the suitability of parenting with the values and religious beliefs adhered to, is an important aspect in ensuring optimal welfare, development, and education.⁴¹

In judicial practice, the assessment of these criteria is not carried out in a rigid and formalistic manner. In light of the evidence presented at trial, the judge has the discretion to take into account the specific circumstances of each party, such as their health, financial situation, living situation, and the strength of the emotional bond between parents and children.⁴²

d. The Principle of the Best Interest of the Child

Jean Zermatten explained that the principle *of the best interests of the child* is a fundamental legal principle developed to limit the extent of adult authority over children—including parents, professionals, teachers, and doctors. This principle is in light of the recognition that adults are only in a position to make

⁴¹M. Natsir Asnawi, *Custody Law...*, pp. 39–45.

⁴²*Ibid.*, hlm. 46.

decisions on behalf of the child because the child does not yet have sufficient experience and judgment to do so on his own.⁴³

Milka Sormunen complements this understanding by emphasizing that the principle of the best interest for children is not just an abstract concept, but an operational principle that must be applied concretely in every decision-making process that concerns children. This principle requires each party responsible for the child to prioritize the child's condition, needs, and future over the interests of the adults involved.⁴⁴

The principle of the best interests of the child has a strong juridical foundation, both in international law and positive law in Indonesia. In the international arena, this principle is affirmed in Article 3 of the UNCRC which asserts that the welfare of the child must always take precedence above any other reason when making decisions involving children, regardless of whether such decisions are made by legislative bodies, administrative agencies, courts, or social welfare organisations.⁴⁵

⁴³Jean Zermatten, "The Best Interests of the Child: Literal Analysis, Function and Implementation," Working Report IF 2010 (Institut International des Droits de l'Enfant, 2010), hlm. 4.

⁴⁴Milka Sormunen (ed.), *The Best Interests of the Child – A Dialogue Between Theory and Practice* (Strasbourg: Council of Europe Publishing, 2016), hlm. 133.

⁴⁵United Nations, *Convention on the Rights of the Child*, Article 3 (1989), ratified by Indonesia through Presidential Decree Number 36 of 1990.

The convention was then ratified by Indonesia through Presidential Decree Number 36 of 1990. In national law, the principle of the best interests of children is reflected in Law No. 23 of 2002 concerning Child Protection as amended by Law No. 35 of 2014.⁴⁶ As a concrete form of its application within the framework of child custody, Article 14 paragraph (1) of the law ensures that children should remain in the care of both sets of parents unless there are compelling reasons and/or legal requirements that demonstrate that the kid would be best served by being separated, in which case the separation should be considered as a last option.⁴⁷

e. Parameters for Assessing the Best Interest of the Child

The principle of the best interests of the child is fundamentally a core legal principle; however, its application requires detailed parameters. These parameters are necessary to ensure that the assessment of the child's best interests can be conducted optimally, based on concrete aspects related to the child's safety, welfare, development, and relationship with his or her caregiving environment.

⁴⁶Law No. 23 of 2002 concerning Child Protection as amended by Law No. 35 of 2014.

⁴⁷Ibid., Article 14 paragraph (1).

In the Indonesian legal framework, these parameters are established in Law No. 23 of 2002 concerning Child Protection as amended by Law No. 35 of 2014 (hereinafter the Child Protection Law). To provide a stronger normative foundation, the United Nations Convention on the Rights of the Child (UNCRC)—ratified by Indonesia through Presidential Decree Number 36 of 1990—together with the UN Committee on the Rights of the Child's General Comment No. 14 (2013), serves as an international reinforcement for these parameters. Conceptually, these parameters can be systematically grouped into four clusters of children's rights, as proposed by Muhammad Joni and Zulchaina Z. Tanamas: survival rights, development rights, protection rights, and participation rights.⁴⁸

First, Survival Rights and the Preservation of the Family Environment. Article 7 and Article 14 of the Child Protection Law affirm the child's right to know, to be raised by, and not to be arbitrarily separated from his or her parents. This national provision is directly reinforced by Article 9 of the UNCRC.⁴⁹ And by the "preservation of the family environment and

⁴⁸Muhammad Joni dan Zulchaina Z. Tanamas, *Aspek Hukum Perlindungan Anak dalam Perspektif Konvensi Hak Anak* (Bandung: Citra Aditya Bakti, 1999), hlm. 4.

⁴⁹United Nations, *Convention on the Rights of the Child*, Article 9 (1989), ratified by Indonesia through Presidential Decree Number 36 of 1990.

maintaining relations" parameter set out in General Comment No. 14.⁵⁰ These international standards emphasize that a child should maintain regular contact with both parents after a divorce, and that separation should only occur as a measure of last resort, strictly where it serves the child's best interests.

Second, Development Rights (Health and Education). Articles 8 and 9 of the Child Protection Law guarantee the child's rights to adequate health services and education, in line with Articles 24 and 28 of the UNCRC.⁵¹ According to Maidin Gultom, health and education are fundamental prerequisites for optimizing a child's development, particularly in the aftermath of parental divorce.⁵² General Comment No. 14 further elaborates this through the "care, protection, and safety of the child" parameter, which requires judicial assessments to evaluate the prospective caregiver's capacity to guarantee continuous medical treatment and educational support.⁵³ This is particularly crucial

⁵⁰UN Committee on the Rights of the Child (CRC), General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013, paras. 58–70.

⁵¹United Nations, Convention on the Rights of the Child, Articles 24 and 28 (1989).

⁵²Maidin Gultom, *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia* (Bandung: PT Refika Aditama, 2008), hlm. 25.

⁵³General Comment No. 14, *Op. Cit.*, paras. 71–74.

in the post-divorce period, when the child's stability is highly vulnerable to disruption.

Third, Participation Rights and the Child's Views. Article 10 of the Child Protection Law affirms the child's right to express his or her views in accordance with age and level of intelligence, a right firmly supported by Article 12 of the UNCRC.⁵⁴ General Comment No. 14 further positions "the child's views" as a primary element in assessing the child's best interests,⁵⁵ requiring courts to provide a safe and non-traumatic space in which to hear children capable of forming their own views—including those who have reached the age of *mumayyiz*. This parameter shifts the paradigm from treating the child as a passive object of protection to recognizing the child as an active subject whose voice must be judicially weighed.

Fourth, Protection Rights and Situations of Vulnerability. Article 13 of the Child Protection Law protects children from harmful treatment, discrimination, and neglect, a protection echoed in Article 19 of the UNCRC.⁵⁶ Crucially, General Comment No. 14 explicitly introduces "situations of

⁵⁴United Nations, Convention on the Rights of the Child, Article 12 (1989).

⁵⁵General Comment No. 14, Op. Cit., paras. 53–54.

⁵⁶United Nations, Convention on the Rights of the Child, Article 19 (1989).

vulnerability" as a key parameter,⁵⁷ instructing courts to conduct a heightened and more sensitive assessment where a child presents specific vulnerabilities, such as a history of serious illness, trauma, or special needs. In such cases, the determination of *hadhanah* must be supported by adequate expert involvement and cannot rely solely on formal administrative evidence.

By integrating these national provisions with international UNCRC standards, the assessment of the best interests of the child in judicial practice, including *hadhanah* disputes can be conducted more objectively. These parameters thus serve as a comprehensive benchmark for judges in formulating decisions that genuinely reflect substantive justice for the child.

3. Judge's Considerations in Family Civil Cases

a. Judge's Basis of Consideration

The judge's basis of consideration is the basis used by judges in compiling the legal reasons for the decision. The judge's decision in a civil matter is primarily influenced by the facts presented at trial and how those facts are interpreted in light of applicable legal standards. However, the judge's consideration

⁵⁷General Comment No. 14, Op. Cit., paras. 75–76.

is not only based on laws and regulations, but can also pay attention to legal principles, doctrines, judicial guidelines, and the values of justice that live in society.⁵⁸

Article 5 (1) of Law No. 48 of 2009 concerning Judicial Power recites the judicial duty to investigate, adhere to, and comprehend societal norms of justice and legality. According to this clause, judges are responsible for both enforcing the letter of the law (*la bouche de la loi*) and creating a justice system that takes into account the needs of society. This is also in line with Article 54 of Law No. 7 of 1989 concerning Religious Courts which makes the general civil procedure law as the basis for proceedings in the Religious Court.⁵⁹

Judges must evaluate specific facts about the parents' and children's situations in *hadhanah* cases, and then connect those facts to legal standards and the idea of the child's best interests. This requires a solid foundation of thought. In implementing the requirements of Article 105 of the KHI, the judge must not be robotic but must instead thoroughly investigate the actual circumstances of each party.⁶⁰

⁵⁸Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, Pasal 5 ayat (1).

⁵⁹Law No. 7 of 1989 concerning Religious Courts, Article 54.

⁶⁰Yahya Harahap, *Civil Procedure Law*..., p. 497.

b. Ex Officio Authority of Judges in Family Cases

Ex officio comes from the Latin word meaning "based on position". In procedural law, *the judge's ex officio* authority refers to the authority attached to the judge's position to take certain legal actions in the interest of justice, without having to wait for a request from the parties. This authority does not contradict the principle of *ultra petita* as long as it is applied within the limits determined by law and for the protection of the weak.⁶¹

In family cases in the Religious Court, *the judge's ex officio* authority has a normative basis in SEMA No. 4 of 2016 which, as already stated by the provisions of Article 156 letter (f) of the KHI, establishes procedures by which an ex officio court may, in cases where the father is not living with him, decide on a child support obligation. The employment of this power demonstrates that the party with custody is not the only one whose decision ensures the safety of a kid in a hadhanah case, but also through ensuring the fulfillment of the child's living needs after the verdict is handed down.

⁶¹Muhammad Zidni Fahmi Siregar, "The Rights of Ex Officio Judges in Protecting the Rights of Wives and Children After Divorce in the Kisaran Religious Court," Thesis, UIN Sultan Syarif Kasim Riau, 2024.

The *authority of ex officio* is highly dependent on the sufficiency of the facts revealed at the trial. The judge will only exercise his *ex officio* authority if the facts at the trial show that there are conditions that require active protection from the judge. This finding emphasizes the importance of a comprehensive evidentiary process in hadhanah cases so that the judge has a strong basis to use the authority of his office for the protection of the interests of the child.⁶²

4. Evidence in Civil Cases

Proof is the most crucial stage in the examination of civil cases. R. Subekti defines proof as the process of convincing the judge of the truth of the evidence presented in a dispute, so that the judge can make a decision based on proven facts.⁶³ Sudikno Mertokusumo complements this understanding by emphasizing that proving means giving certainty to the judge about the existence of certain events so that the judge can make a verdict In light of the evidence.⁶⁴

In Indonesian civil procedure law, the evidentiary system adopted is a system of proof In light of the law in a negative manner

⁶² Rahmadi, Roza, and Mulyawan, "Disparity in the Use of Ex Officio Authority of Judges for Child Support in Judges' Decisions at the Solok Religious Court."

⁶³R. Subject, The Law of Proof..., p. 1.

⁶⁴Sudikno Mertokusumo, Civil Procedure Law..., p. 135.

(*negatief wettelijk bewijsstelsel*), which is a combination of the provisions of the law and the judge's conviction. Teguh Samudera explained that in this system, judges are bound by the evidence determined by law, Nonetheless, the judge has a lot of leeway to use his own ideas when deciding how strong the evidence is.⁶⁵

Article 164 of the HIR and Article 284 of the Criminal Code stipulate five valid pieces of evidence in the civil procedure law, namely: (1) written evidence (letter); (2) witness evidence; (3) suspicion; (4) acknowledgment; and (5) oaths.⁶⁶ In the practice of Religious Courts, the five pieces of evidence apply based on Article 54 of Law No. 7 of 1989 which makes the general civil procedure law as the basis for the proceedings.

Regarding the strength of proof, Article 163 of the HIR stipulates the principle that *whoever postulates having a right or mentions an event to strengthen his right or to deny the rights of others, must prove the existence of that right or the existence of that event*. Thus, the plaintiff is obliged to prove the postulates of the lawsuit, while the defendant is obliged to prove the postulates of its rebuttal.⁶⁷

11. ⁶⁵Teguh Samudera, *The Law of Proof in Civil Proceedings* (Bandung: Alumni, 1992), p.

⁶⁶R. Subekti, *The Law of Proof* (Jakarta: Pradnya Paramita, 2008), p. 1.

⁶⁷*Ibid.*, p. 152.

In assessing the strength of proof, Sudikno Mertokusumo distinguishes three aspects of assessment, namely: the authority of formal proof, which pertains to the evidence's procedural legitimacy; the authority of material proof, which pertains to the truth of the evidence's substance; and the authority of binding proof, which relates to the binding power of evidence against the parties and third parties.⁶⁸

In child custody disputes, the evidentiary process has different characteristics from ordinary civil cases. M. Khairul Arwani et al. emphasized that the examination of hadhanah cases requires a more comprehensive and *child-sensitive approach*, including the possibility of using expert testimony, local examinations, and more in-depth exploration of the real condition of children and their parenting environment.⁶⁹ The assessment of these facts cannot be done solely in light of the evidence of letters or witness statements of a general nature, but requires a more specific deepening of the child's condition, especially if the child has certain health conditions or special needs.

⁶⁸Sudikno Mertokusumo, *Hukum Acara Perdata...*, hlm. 166.

⁶⁹M. Khairul Arwani et al., "Tracing Hadhanah: An In-Depth Examination of Child Custody Cases in Religious Courts," *Journal of Good Governance, Diplomacy, Customary Institutions and Social Networks* 1 (2023), pp. 63–70.

In hadhanah disputes, judges have often considered the psychological aspects of the child, but these considerations have not always been supported by the testimony of psychologists. As a result, assessments of children's emotional well-being, the quality of children's relationships with parents, and special parenting needs are based more on general evidence submitted by the parties.⁷⁰ This situation illustrates the gap between the ideals of proof that are oriented towards the interests of children and the practice of proof that is still limited to the formal fulfillment of evidence.

The evidentiary process in family law must ensure that the verdict is based on accurate and objective facts, especially in child custody disputes that directly concern the welfare of the child.⁷¹ Therefore, the evidence in hadhanah disputes is not only *adversarial*—where the parties compete with each other to prove their evidence—but also *inquisitorial*, where the judge plays an active role in seeking material truth in order to realize justice that is in the best interests of the child.

⁷⁰Alkhusna Haryanti, "The Application of the KHI to Hadhanah Reviewed from the Psychology of Family Law (Case Study of Decision Number 744/Pdt.G/2023/PA. Mlg)," Thesis, IAIN Kediri, 2024, p. 55.

⁷¹Yuni Priskila Ginting et al., "Civil Proof of Family Law: Divorce Cases and Custody Disputes for Children (Decision Number 63/Pdt.G/2020/PN. Jkt.Ut)," Journal of Law and Justice 14, no. 1 (2025), p. 88.

CHAPTER III

RESEARCH METHOD

A. Type of Research and Approach

This study is categorized as a Normative Legal Research. Although the title employs the term 'Implementation,' this research does not fall under the scope of socio-legal research. The term 'implementation' is strictly limited to the dogmatic application of civil procedural norms by the panel of judges within the electronic courtroom proceedings, as systematically documented in the text of Decision Number 2525/Pdt.G/2025/PA.JT, not its empirical implementation in society.

This research employs three primary approaches—the case approach, the statutory approach, and the conceptual approach—to thoroughly investigate the proposed legal issues. The case approach is used to study the practical application of legal norms and principles through a critical analysis of the stages of examination and proof in the Religious Court Decision Number 2525/Pdt.G/2025/PA.JT. Furthermore, a statutory approach is applied to review the formal and material laws that govern child custody and the examination of cases in court, especially the KHI and the provisions of civil procedure law that apply within the Religious Court. Finally, a conceptual approach is integrated to understand the doctrines that have developed in legal science, specifically by using the internationally acknowledged framework for analysing judges' legal considerations—

namely the premise of the best interests of the child and the Islamic notion of *hadhanah*.

B. Data Sources

In normative law research, it is classified into three categories, in particular, primary, secondary, and tertiary sources of law.

Credible and first-hand legal documents are known as primary legal materials, legally binding, and is the main foundation of the analysis of this investigation. The primary legal material that is the core of the study is the Decision of the East Jakarta Religious Court Number 2525/Pdt.G/2025/PA. JT on child custody disputes. In addition, primary legal documents for this investigation also include the relevant laws and regulations, especially the KHI with an emphasis on Articles 105 and 156 concerning *hadhanah*, as well as the provisions of civil procedural law that regulate the stages of proof within the Indonesian Religious Court.

The secondary legal material is used to provide a comprehensive explanation, theoretical framework, and a deeper understanding of the primary legal material. Secondary legal materials in this investigation include legal literature, academic books, and scientific journals that discuss child custody (*hadhanah*), the principle of the best interests for children, and procedural justice. In particular, this investigation relies heavily on the works of prominent fiqh scholars such as Sayyid Sabiq and Wahbah al-Zuhaili, in addition to various relevant scientific journals and previous investigation to enrich the framework of analysis.

Finally, tertiary legal materials are used to provide definitive clarification, guidance, and explanation of the complex legal terminology discovered in the main and secondary sources of law. This research relies on tertiary legal sources, such as encyclopedias, general and authoritative dictionaries, and legal dictionaries, to provide a detailed definition of certain terminology within the context of Islamic civil justice and family law.

C. Source Selection

The selection of sources of legal material in this investigation is carried out *purposively* to ensure strict relevance to the legal problems that have been formulated. The primary legal material is Decision Number 2525/Pdt.G/2025/PA. JT, was chosen deliberately because the case clearly illustrates the complexity as well as potential procedural weaknesses in handling child custody disputes. This case is considered very relevant because it raises crucial issues, including the absence of direct testimony from children over the age of twelve and the assessment of the child's psychological condition without the support of adequate expert involvement. Furthermore, the selection of secondary legal materials—which include classical Islamic jurisprudence books and contemporary academic journals—is based on its credibility and authority as well as its direct conformity with the theoretical framework of *hadhanah* together with the idea of looking out for a child's best interest.

D. Data Collection Technic

This normative legal study use a literature review approach to gather legal information. This systematic process includes searching, reading, recording, and critical evaluation activities of the selected legal materials. In particular, the researcher carefully examined the file of Decision Number 2525/Pdt.G/2025/PA. JT to extract relevant legal facts, chronology of procedural action stages, and the basis for judges' legal considerations. In addition, related laws and regulations, such as the KHI, along with academic literature on civil procedural law and Islamic family law, are collected, studied, and cataloged comprehensively. This rigorous documentation is intended to ensure that there is a solid and coherent foundation for answering research questions regarding court procedural compliance.

E. Data Analysis Technique

Data is analysed utilising a qualitative-descriptive manner once all legal material has been thoroughly gathered. This analytical approach involves organizing, interpreting, and describing legal materials systematically in order to build clear and coherent conclusions without using mathematical or statistical formulas. The analysis in this investigation is heavily based on deductive reasoning, which begins with examining general legal norms, universal principles of child protection, and standard

provisions of civil procedure law, which are then applied to the concrete facts and procedural stages identified in the decision 2525/Pdt.G/2025/PA. JT. Using the theoretical notion of hadhanah and the principle of the child's best interest, one may critically examine the judge's court decisions, this analysis technique objectively determines whether the examination of the case is adequate in a substantive manner and sensitive to the special conditions inherent in the child.

CHAPTER IV

RESULT AND DISCUSSION

A. Result

1. General Description of the Case and Case Position

The case that became the object of this investigation was a childcare case (*hadhanah*) after which it was determined by the East Jakarta Religious Court at the first level with Number 2525/Pdt.G/2025/PA. JT. This case was filed by an ex-wife as the Plaintiff—hereinafter referred to as the Mother's Party—against her ex-husband as the Defendant—hereinafter referred to as the Father's Party—after the breakdown of the parties' marriage through a previous divorce decree.⁷²

The Plaintiff and the Defendant were previously a legal married couple. In light of the marriage that took place on April 22, 2008. The union brought two kids into the world for the happy couple, namely the First Child who was born on March 16, 2009 and the Second Child who was born on February 22, 2017. The marriage relationship of the parties then ended due to divorce on May 31, 2022. In light of the decision of

⁷²Putusan Pengadilan Agama Jakarta Timur Nomor 2525/Pdt.G/2025/PA.JT, hlm. 1.

the East Jakarta Religious Court, which was further evidenced by the divorce certificate issued on July 19, 2022.⁷³

In the divorce decision, it is not decided at once regarding child custody, so that after the divorce takes place, child custody is carried out based on an oral agreement between the parties. In practice, the First Child is in the care of the Father, while the Second Child is in the care of the Mother. Problems then arise when the Mother considers that the care provided by the Father to the First Child does not run properly and does not fully guarantee the interests of the child.⁷⁴

In its lawsuit registered on June 16, 2025, the Mother basically postulated: (1) The First Child has limitations in communication and a history of meningitis that requires ongoing medical treatment, but the Father does not provide proper care; (2) The Father places the First Child in a foundation of a youth boarding school/Islamic boarding school in Majalengka from November 8, 2024 to March 24, 2025 without the consent of the Mother as the biological mother and without the recommendation of a specialist doctor, thereby causing deep trauma to the child; (3) both children verbally express their desire to live with the Mother; and (4) The mother has a permanent job as a domestic assistant

⁷³Ibid., hlm. 2.

⁷⁴Ibid., hlm. 2–3.

with an adequate income so that she is considered more able to meet the needs of the child.⁷⁵

On the other hand, the father basically denied these postulates and stated that he was never given enough time and opportunity to be with the child, including when the child was on school holidays and undergoing treatment. The father emphasized that the child's treatment needed to be carried out completely, and most of the medical documents submitted actually proved the treatment efforts that had been made during the child's time with him.⁷⁶

The core of the problem in this case lies in the contradiction between the normative arrangements regarding *hadhanah* and the reality of post-divorce parenting that are not agreed upon by both parties, especially regarding the health conditions and special needs of the First Child. Therefore, this case requires judges not only to apply written norms mechanically, In addition, we need to look at hard data on kids' actual situations and how well each parent can look out for their kids' best interests.

2. Reconstruction of the Examination Stages in Decision No. 2525/Pdt.G/2025/PA.JT

⁷⁵Ibid., hlm. 3–5.

⁷⁶Ibid., hlm. 5–6.

To understand how civil procedure law is applied in this case, it is necessary to reconstruct the stages of examination from the filing of the lawsuit to the issuance of the verdict. This reconstruction is important because *hadhanah* disputes are not only determined by the verdict, but also by how the examination process is carried out procedurally. In light of the copy of the decision, the stages of the case investigation can be described as follows.

a. Registration and Summoning of the Parties

At the outset of this case, a lawsuit was filed by the Mother Party through the *e-court system* on June 16, 2025 at the East Jakarta Religious Court Clerk with Register Number 2525/Pdt.G/2025/PA. JT. The mother was represented by a team of legal representatives based on a special power of attorney dated May 16, 2025 which had been verified by the panel of judges. The father's side was officially and appropriately summoned through a recorded summons and appeared in person in *person* at the trial.⁷⁷

b. Reconciliation and Mediation

In the first hearing, the presiding judges made every effort to bring the disputing parties together in the hopes that

⁷⁷Ibid., hlm. 6.

they might mend their relationship, but to no avail. Furthermore, as already stated by Perma 1 of 2016 concerning Mediation Procedures in Court, the parties are directed to go through the mediation process with an appointed mediator based on an appointment letter dated July 3, 2025. In light of the mediator's report dated July 10, 2025, mediation was declared unsuccessful, so the examination of the subject matter could be continued.⁷⁸

c. Reading of the Claim and Court Calendar

After the mediation failed, the panel of judges read out the lawsuit letter which in principle remained unchanged. Because this case was registered through *e-court*, the panel of judges set a *court calendar* for the electronic answer-and-answer stage based on PERMA No. 7 of 2022 concerning Electronic Administration of Cases and Trials in Court, with a schedule: answers on July 24, 2025, replicas on July 31, 2025, duplicates on August 7, 2025, and proof of the Mother's Party on August 14, 2025.⁷⁹

d. Plea and Response Stage

⁷⁸ Ibid., hlm 6.

⁷⁹ Ibid., hlm. 6–7.

The Father's Party submitted an electronic answer on July 24, 2025, which basically refuted the Mother's postulates. The Mother then submits a replica, and the Parent submits a duplicate that still retains the content of the answer. With the completion of this stage of answer-and-answer, the principle of *audi et alteram partem* is fulfilled because each party is given a balanced opportunity to convey and defend its postulates.⁸⁰

e. Evidentiary stage

At the proof stage, the mother submitted evidence of letters marked P.1 to P.18 and two witnesses. The evidence includes identity documents, divorce decrees, birth certificates, medical papers related to the health condition of the First Child, electronic evidence in the form of *screenshots* of conversations, videos, and photos related to parenting conditions, and proof of the mother's income.⁸¹

The father submitted evidence of letters marked T.1 to T.30 and two witnesses. These evidences include identity documents, family cards, children's birth certificates, divorce certificates, certificates of children with special needs from KPAI, certificates from schools, electronic evidence in the form

⁸⁰Ibid., hlm. 7.

⁸¹Ibid., pp. 7–11.

of conversations, as well as a number of medical documents and referral letters from various hospitals that record the medical history of the First Child while with the Father.⁸²

f. Conclusion and Adjudication

After the evidentiary stage is completed, the parties state that they have sufficient evidence and submitted conclusions with each remaining on their stance. The case was decided in a panel of judges deliberations on Thursday, October 2, 2025, was handed down the same day in an online trial that the public may see. In its ruling, the panel of judges granted the Mother's lawsuit, specifying that the Mother, as the biological mother of the two children, is responsible for their care, with the obligation to provide the widest possible access to the Father to meet and pour out affection to his children.⁸³

B. Discussion

1. Analysis of the Application of Civil Procedural Law at the Examination and Evidentiary Stages

⁸²Ibid., hlm. 12–17.

⁸³Ibid., hlm. 17.

Case law study pertaining to civil procedural law needs to be carried out not only to assess whether the trial stage has been formally passed, but also to assess whether the process has been sufficiently adequate in unearthing the relevant facts for the settlement of *hadhanah* disputes. In child custody cases, procedural law does not solely function as a procedural framework, but also as a means to present decisions that are truly oriented to the best interests of the child.

a. Procedural Conformity of the Examination Stages

Formally, the examination of cases in this decision has followed the general structure of civil procedure law within the Religious Court. The case was filed through a lawsuit, the parties were legally and properly summoned, the panel of judges sought peace, mediation was pursued but was unsuccessful, then the case proceeded to the electronic answer-and-answer stage, proof by both parties, submission of conclusions, and reading of the verdict.⁸⁴

The use of *e-court* and *e-litigation* mechanisms in this case is also as already stated by PERMA No. 7 of 2022. Yahya Harahap emphasized that a valid and proper summons is an absolute requirement for the validity of a trial, because without the correct summons, all subsequent court actions become invalid.⁸⁵ In this

⁸⁴*Ibid.*, hlm. 17–18.

⁸⁵Yahya Harahap, *Civil Procedure Law: Lawsuits, Trials, Confiscation, Proof, and Court Decisions* (Jakarta: Sinar Grafika, 2017), p. 252.

case, the summons to the Mother was made electronically and to the Mother was made through a recorded summons, and both were present at the trial, so that these conditions were fulfilled.

The reconciliation and mediation efforts taken by the panel of judges also reflect the implementation of the principle of the obligation to reconcile per the requirements laid down in Article 130 of the HIR. Then in this case, the practice *of e-litigation*, electronic hearings can only be resumed after peaceful efforts and mediation have failed, and this actually supports the principle of simple, fast, and low-cost justice without eliminating the substance of the rights of the parties.⁸⁶

b. Assessment of the Evidentiary Weight

At the evidentiary stage, the panel of judges has placed the burden of proof on the Mother Party as already stated by Article 163 of the HIR jo. Article 1865 of the Civil Code. The judge's assessment of the strength of evidence shows a fairly orderly distinction between the various types of evidence. Evidence in the form of photocopies of authentic deeds—such as identity cards, divorce decrees, birth certificates, and divorce certificates—is considered to meet the formal and material requirements as an authentic deed, so

⁸⁶Lasifatul Launyah, "Implementasi Litigasi dan E-Litigasi dalam Penyelesaian Sengketa Hak Asuh Anak di Pengadilan Agama Sukadana," Skripsi, IAIN Metro, 2025, hlm. 45.

that it has perfect and binding evidentiary power as already stated by Article 165 of the Criminal Code. Article 1870 of the Civil Code.⁸⁷

Meanwhile, electronic evidence in the form of *screenshots* of conversations, videos, and photos from both parties is accepted as valid evidence under Article 5 paragraph (1) of the ITE Law, but the panel of judges positioned it only as preliminary evidence that must be linked to other evidence. This is in line with the principle stated by R. Subekti that evidence that does not stand alone needs to be strengthened with other evidence in order to achieve a complete evidentiary value.⁸⁸

Medical certificates and certificates from agencies related to the condition of the First Child—both from the Mother and the Father's side—were considered by the panel of judges to be perfect and binding evidence because they explained the real condition of the child and had relevance to the subject matter.⁸⁹ The statements of the two witnesses of each party were accepted as evidence that

⁸⁷Putusan Nomor 2525/Pdt.G/2025/PA.JT, hlm. 18–22.

⁸⁸R. Subekti, *Hukum Pembuktian* (Jakarta: Pradnya Paramita, 2008), hlm. 26.

⁸⁹Decision Number 2525/Pdt.G/2025/PA. JT, p. 19.

met the formal and material requirements as already stated by Article 145 paragraph (1) of the HIR and Articles 171-172 of the HIR.⁹⁰

Based on all of the evidence, the panel of judges formulated the following legal facts: (1) the legal relationship between the Mother and the Father is as a former husband and wife; (2) from the marriage two daughters were born; (3) the marriage has ended due to divorce on May 31, 2022; (4) after the divorce, the two children are cared for alternately and more with the mother; (5) there is a dispute between the parties regarding child custody; (6) The mother does not have any sharia or legal obstacles to raising the child; (7) The Mother has never prevented the Father from meeting the child; and (8) The mother has a fixed income as a domestic assistant.⁹¹

This pattern of evidence assessment shows that the panel of judges has applied the legal principles of civil evidence in a fairly orderly manner. Sudikno Mertokusumo explained that in assessing the strength of proof, the judge needs to pay attention to three aspects: the strength of formal proof, the strength of material proof, and the strength of binding proof.⁹² These three aspects seem to be considered by the panel of judges in this case, as can be seen from

⁹⁰Ibid., hlm. 20–21.

⁹¹Ibid., hlm. 22.

⁹²Sudikno Mertokusumo, Indonesian Civil Procedure Law, 8th edition (Yogyakarta: Liberty, 2009), p. 152.

the way the judge consistently distinguishes the quality of each piece of evidence.⁹³

c. Substantive limitation: the absence of Direct Testimony from the Child

Although procedurally the examination of this case has been adequate, there are substantive limitations that need to be critically analyzed. The limitation lies in the fact that the First Child is over twelve years of age—who normatively has reached the age *of mumayyiz*—but cannot be presented at the trial due to illness and special needs.⁹⁴

Humanly, the absence of the First Child at the trial has an understandable reason, because the forced presence of the child in conditions that have the potential to worsen his health will actually be contrary to the principle of child protection itself. However, from the perspective of *a child-centered approach*, when the child is unable to attend in person, it is ideal to have a safe and non-traumatic alternative mechanism to capture the child's voice and condition more accurately—for example, through the testimony of a child

⁹³Putusan Nomor 2525/Pdt.G/2025/PA.JT, hlm. 21–22.

⁹⁴Putusan Nomor 2525/Pdt.G/2025/PA.JT, hlm. 22–24.

psychologist, a local examination (*descente*), or an assessment mechanism conducted by a competent party.⁹⁵

In this copy of the ruling, there is no apparent use of such an alternative mechanism. The facts about the condition of the First Child are mostly built from medical certificates, electronic evidence, and witness statements, without any special investigation into the child's psychological condition and desires in a more direct and verified manner. Then, it was emphasized that in-depth examination in *hadhanah cases* should include the possibility of using local examinations, the involvement of experts, as well as a more thorough exploration of environmental conditions and the quality of care.⁹⁶

Furthermore, in *hadhanah cases* in various Religious Courts, where judges often consider the psychological aspects of children, but these considerations are not always supported by the testimony of psychologists. As a result, the assessment of the emotional well-

⁹⁵M. Natsir Asnawi, *Hukum Hak Asuh Anak* (Jakarta: Kencana, 2022), hlm. 39–45.

⁹⁶M. Khairul Arwani dkk., "Menelusuri Hadhanah: Pemeriksaan Mendalam atas Kasus Hak Asuh Anak di Pengadilan Agama," *Journal of Good Governance, Diplomacy, Perlembagaan Adat and Social Networks* 1 (2023), hlm. 63–70.

being of the child rests on the general evidence of the parties.⁹⁷

These conditions are similar to those seen in this case.

Thus, although the application of civil procedure law at the evidentiary stage in this case has been formally appropriate, the proof has not been fully optimal substantively in meeting the judge's information needs regarding the psychological condition and wishes of the First Child with special needs.

2. Analysis of the Conformity of the Judge's Legal Considerations with the Principle of the Best Interest of the Child

The principle of the *best interests of the child* requires that every decision concerning the child puts the welfare, development, and future of the child as the main consideration. Jean Zermatten emphasized that this principle aims to limit the extent of adult authority over children, and requires every decision-maker to prioritize the interests of the child over the interests of the parties to the dispute.⁹⁸

a. Normative Conformity of the Judge's Considerations

⁹⁷Alkhusna Haryanti, "The Application of the KHI to Hadhanah Reviewed from the Psychology of Family Law (Case Study of Decision Number 744/Pdt.G/2023/PA. Mlg)," Thesis, IAIN Kediri, 2024, p. 55.

⁹⁸Jean Zermatten, "The Best Interests of the Child: Literal Analysis, Function and Implementation," Working Report IF 2010 (Institut International des Droits de l'Enfant, 2010), hlm. 4.

The judge's consideration in this decision has basically shown a normative orientation towards the best interests of the child. The panel of judges explicitly based its decision on Article 41 letter (a) of Law No. 1 of 1974 concerning Marriage, Article 14 paragraphs (1) and (2) of Law No. 35 of 2014 concerning Child Protection, and Article 156 letter (c) of the KHI. Through these foundations, the judge emphasized that the determination *of hadhanah holders* must be directed to those who are able to ensure the physical and spiritual safety of children.

Based on Article 105 letter (a) and Article 156 letter (a) of the KHI, the maintenance of children who are not mumayyiz or have not yet reached the age of 12 years is the right of the mother.⁹⁹ The judge in this case also referred to the book *Kifayatul Akhyar* Volume II page 94 which emphasizes that child maintenance is a wife's right, as long as the ex-wife meets the specified conditions: common sense, independence, Muslim, self-care or honor, trust (honest), clear residence, and not a new husband.¹⁰⁰

The application of the principle of the best interests for children in the Religious Court environment does not only stop at the formal formula in the KHI, but must be directed to the benefit of

⁹⁹KHI, Article 105 letter (a).

¹⁰⁰Putusan Nomor 2525/Pdt.G/2025/PA.JT, hlm. 23.

children holistically.¹⁰¹ In this case, the judge has moved beyond the mere mechanical application of Article 105 of the Criminal Code, by taking into account the health condition of the First Child, the age of the Second Child who has not yet been *mumayyiz*, the capacity and mental condition of the Mother, as well as the facts regarding the ongoing parenting.

b. Analysis of the Second Child

The conformity of the judge's consideration with the principle of the best interest for the child seems stronger and more direct to the Second Child, who in the consideration of the verdict is stated to be still about eight years old and not *yet mumayyiz*.¹⁰² Wahbah al-Zuhaili emphasized that children who have not been *mumayyiz* in fiqh are in the priority of maternal care, because at that age children need maternal care and affection that cannot be completely replaced by anyone.¹⁰³

c. Analysis of the First Child

When analyzed in the case of the First Child—who is over twelve years of age and has special needs—the conformity of the

¹⁰¹Miftah Farid, "Child Custody In light of the Principle of the Best Interests for Children (Study of Judges' Decisions at the Soreang Religious Court, Bandung Regency)," Master's Thesis, UII Yogyakarta, 2025, p. 42.

¹⁰²Decision Number 2525/Pdt.G/2025/PA. JT, p. 23.

¹⁰³Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Juz X (Damaskus: Dar al-Fikr, 1989), hlm. 7302.

judge's consideration with the principle of the best interests of the child appears to be more complex. Normatively, for children who have reached *the age of mumayyiz*, KHI opens the space for the child's opinion to be heard in determining who he will live with. In this case, the mother postulated that the two children verbally stated that they wanted to live with the mother, and this was also considered by the panel of judges.¹⁰⁴

However, because the First Child could not be present at the trial, information about his wishes was obtained from the testimony of the Mother and the witnesses, not from the child himself. This causes the judge's consideration not to fully reflect the maximum appreciation of the child's right *to be heard*, as guaranteed by Article 10 of the Child Protection Law and Article 12 of the Convention on the Rights of the Child.

This limitation becomes even more crucial considering that the postulates regarding the condition of the First Child are very serious: communication limitations, history of meningitis, psychological disorders due to bullying, and post-placement trauma in Islamic boarding schools without the consent of the biological mother and without the recommendation of a specialist. These postulates are directly related to aspects of physical health,

¹⁰⁴Decision Number 2525/Pdt.G/2025/PA. JT, p. 24.

psychological condition, and children's sense of security—which are core elements of the principle of the best interests of the child.

In addition, it is emphasized that judges in child custody cases should not only be fixated on written norms, but must consider the moral, psychological, emotional, social, and future aspects of the child holistically.¹⁰⁵ If measured by these standards, the judge's consideration in this case, although it has led to the protection of children, is not fully optimal in empirically exploring the psychological condition and special needs of the First Child.

d. Positive Aspects: Ensuring the Child's Relationship with Both Parents

On the other hand, there is an aspect of the judge's consideration that actually shows a strong alignment with the principle of the best interest for the child, namely the judge's affirmation that the granting of *hadhanah* to the Mother Party should not break the relationship between the child and the Father as the biological father. The panel of judges expressly obliges the mother to provide the widest possible access to the Father to meet, communicate, and pour out affection for her children.¹⁰⁶

¹⁰⁵M. Abdul Haris Nurrohman and Syamsuddin, "The Role of Judges in the Determination of Post-Divorce Child Custody in the Perspective of Islamic Family Law and Positive Law," *Tana Mana Journal* 6, no. 2 (2025), pp. 364–374.

¹⁰⁶Putusan Nomor 2525/Pdt.G/2025/PA.JT, hlm. 24–25.

This is in line with the SEMA No. 1 of 2017 which mandates that in the determination of child custody (*hadhanah*), the obligation of *hadhanah* holders to provide access to parents who do not hold custody rights must be included.¹⁰⁷ This approach reflects the understanding that after divorce, children still have the right to establish a good relationship with their parents, and that the best interests of the child are not only about who holds the *hadhanah*, but also how the upbringing is carried out responsibly.

The panel of judges even emphasized that if the Mother does not provide access to the Father, this situation can be used as a reason to apply for revocation of child custody.¹⁰⁸ This affirmation shows that the judge understands *hadhanah* not as an absolute right, but as a mandate that can be reviewed if it is not carried out as already stated by the interests of the child.

e. Analysis of the Judge's Ex Officio authority in determining Child Support

In case No. 2525/Pdt.G/2025/PA. JT, the panel of judges is aware of the fact that in the divorce case of the parties in 2022, there are no demands regarding child support from the father. This

¹⁰⁷SEMA No. 1 of 2017 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2017 as a Guideline for the Implementation of Duties for the Court.

¹⁰⁸Decision Number 2525/Pdt.G/2025/PA. JT, p. 25.

condition raises juridical issues that should be criticized, considering that the first child of the parties is known to have special needs that require greater costs than children in general. The author argues that the judge should have used his *ex officio* right to actively punish the father in order to fulfill his child support obligations, even if this is not demanded by the parties.

The legal basis for the use of *the judge's ex officio* right can be found in Article 41 letter (c) of Law No. 1 of 1974 concerning Marriage which gives the court authority to require the ex-husband to provide living expenses,¹⁰⁹ as well as Article 156 letter (d) of the KHI which affirms that all hadhanah and child maintenance costs are the responsibility of the father as far as his ability.¹¹⁰ These two provisions show that the father's maintenance obligation is imperative and does not depend on the existence or absence of demands from the mother. Moreover, Article 45 of Law No. 1 of 1974 emphasizes that the obligation of parents to maintain and educate children is not lost due to divorce.¹¹¹

Although the use of *ex officio* rights has implications for the disregard of *the ultra petita* principle, it can be justified juridically

¹⁰⁹Article 41 letter (c) of Law No. 1 of 1974 concerning Marriage as amended by Law No. 16 of 2019 concerning Marriage.

¹¹⁰Article 156 letter (d) of Presidential Instruction Number 1 of 1991 concerning the KHI.

¹¹¹Pasal 45 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan sebagaimana telah diubah dengan Undang-Undang Nomor 16 Tahun 2019 tentang Perkawinan.

on the basis of the principle of the *best interest of the child*. Article 3 paragraph (1) of the 1989 Convention on the Rights of the Child which has been ratified by Indonesia through Presidential Decree Number 36 of 1990 states that the best interests of children must be the main consideration in every action concerning children. This principle was then adopted in Article 2 of Law No. 35 of 2014 concerning Child Protection as one of the main principles of the implementation of child protection in Indonesia.¹¹²

This proactive attitude of judges also has a strong normative foundation. Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power requires judges to explore and understand the legal values and sense of justice that lives in society. Article 229 of the KHI requires judges to pay attention to living legal values so that their verdicts are as already stated by the sense of justice. Article 10 paragraph (1) of the same law prohibits the court from rejecting a case on the pretext that the law does not exist or is not clear.¹¹³ These provisions collectively mandate that judges should not be

¹¹²Pasal 3 ayat (1) Konvensi Hak Anak Tahun 1989, sebagaimana diratifikasi Indonesia melalui Keputusan Presiden Nomor 36 Tahun 1990 tentang Pengesahan Convention on The Rights of The Child; Pasal 2 Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

¹¹³Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power; Article 229 of Presidential Instruction No. 1 of 1991 concerning the KHI; Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power.

normatively rigid, but must act actively for substantive justice for the weak, including children.

The urgency of using *ex officio rights* is getting stronger considering that the first child of the parties is a child with special needs. Article 51 of Law No. 35 of 2014 provides special protection for children with disabilities, which means that judicial institutions have a greater responsibility to ensure the fulfillment of the rights of these children.¹¹⁴ Leaving the child support claim vacant without the initiative of the panel of judges is a form of neglect of children's rights that should be protected by law. Therefore, the deviation of the *ultra petita* principle in this case is not a violation of procedural law, but rather a manifestation of the function of judges as enforcers of justice who are obliged to protect the best interests of children as mandated by applicable laws and regulations.

f. The Fulfillment of Children's Rights Post-Divorce

In Decision Number 2525/Pdt.G/2025/PA.JT, the panel of judges attempted to accommodate the fulfillment of the children's rights by granting custody to the Mother while simultaneously guaranteeing the Father's right to access. By explicitly obliging the Mother to provide the widest possible access for the Father to meet

¹¹⁴Article 51 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.

and care for the children, the decision formally fulfills the child's right to maintain personal relations and direct contact with both parents on a regular basis. This demonstrates a judicial effort to prevent parent alienation, in accordance with SEMA No. 1 of 2017.¹¹⁵

However, a critical analysis of the decision's operative part (*amar putusan*) reveals significant obstacles in its practical implementation, primarily stemming from substantive limitations during the examination process.

The first major obstacle is financial uncertainty regarding the child's specific medical and educational needs. The factual findings in court, derived from the Plaintiff's lawsuit, highlight that the First Child has a history of meningitis, communication limitations, and requires ongoing intensive medical treatment. However, an examination of the operative part of the decision shows that the panel of judges did not exercise their *ex officio* authority to stipulate a specific amount for child support (*nafkah anak*).¹¹⁶ Consequently, the decision lacks executory power regarding financial obligations. The fulfillment of the First Child's right to adequate healthcare and special education relies entirely on the Father's voluntary compliance. If the

¹¹⁵ SEMA No. 1 of 2017 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2017 as a Guideline for the Implementation of Duties for the Court.

¹¹⁶ Article 41 letter (c) of Law No. 1 of 1974 concerning Marriage; Article 156 letter (d) of the KHI.

Father defaults, there is no immediate legal instrument within this decision to force the execution of child support, thereby jeopardizing the child's best interests.

The second obstacle relates to the supervision of visitation rights juxtaposed with the child's psychological trauma. The case facts indicate that the First Child suffered deep trauma and psychological disturbances after the Father placed the child in an Islamic boarding school without the biological mother's consent and without a medical specialist's recommendation.¹¹⁷ While the court ordered the Mother to grant the Father unrestricted access under the threat of custody revocation, the decision fails to establish a supervised visitation mechanism. Implementing this unrestricted access without professional oversight (e.g., a child psychologist or social worker) poses a risk of re-traumatizing the First Child. The absence of specific technical guidelines in the verdict creates a sociological obstacle; the Mother might face a dilemma between protecting the child from potential psychological distress and complying with the rigid legal order to provide access.

¹¹⁷ Decision Number 2525/Pdt.G/2025/PA.JT

CHAPTER V

CONCLUSION AND SUGGESTION

A. Conclusion

In light of the results of the research and discussion that has been described in the previous chapter, there are three main conclusions that can be drawn as an answer to the formulation of the problem in this study, which are as follows:

1. The implementation of civil procedure law in the examination and evidentiary stages in Decision Number 2525/Pdt.G/2025/PA. JT has been procedurally appropriate. All stages of the examination have been carried out in a sequential and orderly manner, starting from the registration and summoning of the parties, peace efforts, mediation as already stated by Perma 1 of 2016, the answer-and-answer stage, proof, to the reading of the verdict. The *e-court* and *e-litigation mechanisms* have been implemented as already stated by Perma 7 of 2022. At the evidentiary stage, the burden of proof is charged to the Plaintiff as already stated by the provisions of Article 163 of the HIR and the assessment of the strength of the evidence is carried out in an orderly manner. However, there are substantive limitations in the form of not hearing the First Child directly even though he has exceeded the age *of mumayyiz* and his condition is the subject of dispute, without being accompanied by alternative

mechanisms such as the testimony of a child psychologist or a local examination (*descente*) to explore the child's condition and desires in a verified manner.

2. The Judge's legal consideration in Decision Number 2525/Pdt.G/2025/PA. JT has shown a normative orientation towards the best interests of children, although it is not yet fully optimal. The judge referred explicitly to the Law on Child Protection and the KHI, took into account the health condition of the First Child, and required the hadhanah holder to provide the widest possible access to the father in establishing a relationship with the child. However, the wishes of the First Child who are over twelve years old are obtained solely from the mother's testimony without a safe direct digging mechanism, so that the child's right to be heard as guaranteed by Article 10 of the Child Protection Law and Article 12 of the Convention on the Rights of the Child has not been optimally fulfilled. Thus, the application of the principle of the best interests for children in the judge's consideration is still limited to the formal normative aspect and has not fully touched the substantive dimension of child protection.
3. The panel of judges in this case, he did not use his *ex officio* right to determine the obligation of child support by the father, while it is known that in the divorce case of the parties in 2022 there was no determination of child support. Considering that the First Child has

special needs that requires greater costs, the non-use of *this ex officio authority* is a substantive gap in the realization of the best interests for the child. Normatively, the basis for the use of these rights is already available in Article 41 letter (c) of the Marriage Law and Article 156 letter (d) of the KHI, and the deviation of the *principle of ultra petita* in this context can be justified. In light of the obligation of judges to explore the values of justice as mandated by Article 5 paragraph (1) of the Law on Judicial Power and Article 229 of the KHI, especially Article 51 of the Child Protection Law which requires protection especially for children with disabilities.

B. Suggestion

In light of the above conclusions, there are several suggestions that can be submitted in this investigation as follows:

1. For the panel of judges of the Religious Court who handle hadhanah cases involving children with special needs is recommended that the examination be carried out in a more substantive and *child-sensitive* manner by optimizing alternative mechanisms such as the appointment of a child psychologist, the implementation of a local examination, or a structured assessment by a competent and neutral party, so that the condition and interests of the child can be fully and verified.

2. Judges should be more initiative-taking in using his *ex officio* authority in family matters, especially to determine child support if it has not been decided before and the facts of the trial clearly show the need for the child to fulfill alimony—especially for children with special needs. The deviation of *the ultra petita* principle in such a context is not contrary to procedural law, but is a manifestation of the function of judges as enforcers of substantive justice.
3. For The Supreme Court recommended that more detailed technical guidelines be drawn up regarding the procedure for examining hadhanah cases involving children with special needs, including standard protocols for safe and non-traumatic child voices, in order to strengthen the consistency and quality of protection of children's rights in all Religious Courts in Indonesia.
4. For the next researcher, this investigation opens up several opportunities for further study, including a comparative study on the practice of proof in hadhanah cases in various Religious Courts, a study on the effectiveness of the use of *ex officio* authority of judges in determining child support after divorce, and research on the implementation of the SEMA No. 1 of 2017 related to the guarantee of parental access in hadhanah decisions.

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APPENDIX



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PUTUSAN

Not-nor IPdt.G120251PAJT



DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

Pengadilan Agama Jakarta Timur yang memeriksa dan mengadili perkara perdata agama pada tingkat pertama dalam persidangan Majelis Hakim yang diselenggarakan secara elektronik melalui system aplikasi informasi Pengadilan telah menjatuhkan putusan perkara Pengasuhan Anak (Hadhanah) antara:

PENGUGAT, Tempat/Tgl Lahir Bojong Manik, 6-06-1990 NIK/KTP, Umur 35 Tahun, Agama Islam, pekerjaan Mengurus Rumah Tangga, Alamat , Kota Jakarta Timur, dalam hal ini memberikan kuasa kepada Mirza Zulkarnaen, S.H, M.H, Siti Fatonah N. Hidayah, S.H, M.H, Ali Syariati, S.H, M.H, Wandra Saputra, S.H, M.H, Hasan Daniel, S.H, C. Med, Riky Rizkian Harahap, S.H, M. Indra Daemawan, S.H, Muhammad Fauzi, S.H, Wahyu Syuhada, S.H, M.H, Arif Wicaksono, S.H, M.H dan Fakhri Wildan Yusuf, berdasarkan Surat kuasa nomor, tanggal 16 Mei 2025 yang terdaftar dalam register surat kuasa pada Pengadilan Agama Jakarta Timur nomor tanggal 16 Juni 2025, Selanjutnya disebut sebagai PENGUGAT;

Melawan

TERGUGAT, Tempat/Tgl Lahir Kuningan, 19-4-1968, NIK
Umur 57 Tahun, Agama Islam, Pekerjaan Karyawan Swasta, Alamat Kota Jakarta Timur, Selanjutnya disebut Sebagai TERGUGAT;

Pengadilan Agama tersebut;
Telah membaca dan mempelajari berkas perkara yang bersangkutan;

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terus

Telah mendengar keterangan kedua belah pihak;
Telah memeriksa alat-alat bukti di persidangan;

DUDUK PERKARA

Menimbang, bahwa Penggugat dengan surat gugatannya tertanggal 16 Juni 2025 yang terdaftar di Kepaniteraan Pengadilan Agama Jakarta Timur pada tanggal yang sama dengan register perkara nomor /Pdt.G/2025/PA.JT, mengemukakan hal-hal sebagai berikut:

1. Bahwa dahulu PENGUGAT dan TERGUGAT merupakan Pasangan Suami Istri yang sah berdasarkan pernikahan tanggal 22 April 2008 Sesuai dengan kutipan akta nikah no: di Kantor Urusan Agama Kecamatan Bojong Manik, Lebak, Banten.
2. Bahwa dahulu PENGUGAT dan TERGUGAT merupakan Pasangan Suami Istri yang telah sah bercerai dengan bukti Putusan perkara No Pdt.G/2022/PA.Jt berdasarkan putusan Pengadilan Agama Jakarta Timur tertanggal 31 Mei 2022,
3. Bahwa PENGUGAT telah resmi dari TERGUGAT dibuktikan dengan Akta cerai Nomor yang dikeluarkan Pengadilan Agama Jakarta Timur tertanggal 19 Juli 2022 (P.I.I)
4. Bahwa selama Pernikahan, PENGUGAT dan TERGUGAT dikaruniai 2 orang anak dibuktikan dengan Kartu Keluarga, yaitu: Bukti

4.1 Nama : ANAK 1

Tempat tgl lahir: Jakarta, 16-3-2009

Akta Kelahiran No: /KLU/JT 12009
(P.3.1)

4.2 Nama : ANAK 2

Tempat Tgl Lahir: Tangerang, 22-2-2017

Akta Kelahiran No: (P.3.2)

5. Bahwa dalam Putusan Cerai tidak diputuskan sekaligus mengenai hak asuh anak. Adapun pasca perceraian PENGUGAT dan TERGUGAT, ANAK Iberada di bawah asuhan TERGUGAT dan tinggal dengan TERGUGAT. Sedangkan ANAK 2 tinggal dengan

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Dislaimer
Kepaniteraan Mahkamah Agung Republik Indonesia bermata untuk selalu menyediakan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan terkait dengan akurasi dan ketepatan informasi yang kami sajikan, hal mana akan kami perbaiki dan walakewaktu.
Dalam hal Anda menemukan inakurasi informasi yang tercantum pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui:



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PENGGUGAT dan Terhadap hak asuh anak ini disepakati secara lisan oleh PENGGUGAT dan TERGUGAT.

6. Bahwa Pasal 45 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan sebagaimana diubah terakhir dengan Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan ("ULJ Perkawinan"), mengatur sebagai berikut:

- "Dua orang tua wajib memelihara dan mendidik anak-anak mereka sebaik-baiknya."
- "Kewajiban orang tua yang dimaksud dalam ayat (1) pasal ini berlaku sampai anak itu kawin atau dapat berdiri sendiri, kewajiban mana berlaku terus meskipun perkawinan antara kedua orang tua putus."

7. Bahwa selama ANAK 1 tinggal bersama dengan TERGUGAT, namun faktanya tidak di berikan penghidupan yang layak, oleh TERGUGAT baik terkait Pendidikan, Kesehatan dan keamanan.

Hal-hal tersebut yang antara lain .

7.1 Bahwa ANAK 1 memiliki keterbatasan dalam berkomunikasi dengan orang-orang sekitarnya, tetapi Oleh TERGUGAT tidak disekolahkan pada sekolah khusus untuk anak-anak yang memiliki keterbatasan sosial dan hal ini menyebabkan ANAK 1 sering dibully oleh teman-teman sekolahnya atas keterbatasannya dan hal ini menyebabkan ANAK 1 secara psikis terganggu, sehingga menyebabkan kesulitan dalam belajar maupun komunikasi baik dengan orang-orang dilingkungan sekolahnya.

7.2 Bahwa ANAK 1 faktanya memiliki riwayat sakit Meningitis, dimana saat kelelahan baik fisik maupun psikis maka ANAK 1 akan tidak sadarkan diri dalam jangka waktu lebih dari 2 (dua) jam, dan atas sakitnya ini Oleh TERGUGAT tidak diberikan perawatan yang semestinya atau dilakukan pengamatan secara intensif sehingga sakitnya tidak terus menerus kambuh.

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Dislaimer
 Republik Indonesia Mahkamah Agung Republik Indonesia bermaksud untuk selalu memastikan informasi paling baru dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan terkait dengan akurasi dan ketepatan informasi yang kami sajikan, hal mana akan kami perbaiki dan waktu berikutnya.
 Dalam hal Anda menemukan inkurasi informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Republik Indonesia Mahkamah Agung RI melalui :



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- 7.3 Bahwa ANAK oleh TERGUGAT pada tanggal 8 november 2024 hingga tanggal 24 maret 2025 ditempatkan pada yayasan PONDOK REMAJA 12 PUTRA PONDOK PESANTREN ALIMUDIN DUKUH CAU Di Majalengka-Jawa Barat tempat orang-orang yang memiliki gangguan kejiwaan akut tanpa persetujuan dari PENGGUGAT selaku ibu kandung, serta tanpa adanya surat rekomendasi dari dokter spesialis dan hal tersebut menyebabkan trauma yang sangat mendalam pada diri ARI TA ULYA DZINN.
8. Bahwa berdasarkan keterangan ANAK Isecara lisan kepada PENGGUGAT, memiliki trauma kepada TERGUGAT dan tidak mau tinggal bersama TERGUGAT, dan bahkan dengan spontan, menyatakan sangat ingin tinggal dengan PENGGUGAT. (P.5.1)
9. Bahwa berdasarkan keterangan ANAK 2 secara lisan kepada PENGGUGAT, memiliki trauma kepada TERGUGAT dan tidak mau tinggal bersama TERGUGAT, dan bahkan dengan spontan, menyatakan sangat ingin tinggal dengan PENGGUGAT. (P.5.2)
10. Bahwa TERGUGAT merupakan pekerja serabutan (kuli bangunan) yang tidak menentu pendapatannya, sehingga secara ekonomi dalam memenuhi kebutuhan sehari-hari anak maupun dirinya kesulitan dan hal ini berbanding terbalik dengan PENGGUGAT yang memiliki pekerjaan tetap sebagai Asisten Rumah tangga Pada Apartemen Kondominium Kintamani, sehingga dari segi ekonomi PENGGUGAT lebih mampu mencukupi kebutuhan ekonomi anak.
11. Bahwa anak bernama ANAK Isaat ini masih di bawah umur yaitu 16 tahun, sebagaimana Pasal 1 Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak "mendefinisikan istilah "anak" sebagai seorang yang belum berusia 18 tahun dan belum menikah. ANAK 2 masih berusia 8 tahun. Dengan demikian PENGGUGAT benar mengajukan Permohonan Hak Asuh Anak ini untuk mengupayakan hak asuh ada pada diri PENGGUGAT terhadap anak bernama ANAK Idan ANAK 2. Bahwa berdasarkan Yurisprudensi No. tanggal 07 Desember 2007 menjelaskan

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dengan kaidah hukum "pertimbangan utama dalam masalah hadhonah (pemeliharaan anak) adalah kemaslahatan dan kepentingan si anak, bukan semata-mata yang secara normatif paling berhak. Sekalipun si anak belum berumur 12 tahun (mumayyiz)".

12. Bahwa berdasarkan Kompilasi Hukum Islam Pasal 105 menyatakan "Pemeliharaan anak yang belum mumayyiz atau belum

Ditujukan:
Kepaniteraan Mahkamah Agung Republik Indonesia berusaha untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan ketepatan informasi yang kami sajikan, hal mana akan terus kami perbaiki dari waktu ke waktu. Dalam hal Anda menemukan ketidakakuratan informasi yang tercantum pada Situs ini atau informasi yang seharusnya ada, namun belum terdapat, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui :



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berumur 12 tahun adalah hak ibunya" sehingga sudah sepatutnya PENGUGAT berhak mendapatkan hak atas pengasuhan yang ditetapkan oleh hukum.

13. Bahwa PENGUGAT mampu baik secara mental atau psikis dan mampu menafkahi ANAK 1 Binti Komarudin dan ANAK 2 dengan baik untuk mendukung tumbuh kembangnya secara jasmani maupun rohani.

14. Bahwa dengan melihat fakta TERGUGAT tidak dapat memelihara, mendidik, dan mengasuh ANAK Isebagaimana yang diwajibkan oleh ketentuan perundang-undangan yang berlaku serta demi memperoleh kepastian hukum terhadap hak asuh anak atas nama ANAK 1 dan ANAK 2 ,oleh karena itu PENGUGAT memerlukan adanya penetapan hak asuh anak dari Pengadilan Agama Jakarta Timur.

Bahwa Berdasarkan dalil-dalil dan uraian-uraian tersebut di atas, mohon kiranya agar Majelis Hakim Pemeriksa Perkara a quo pada Pengadilan Agama Jakarta Timur berkenan memutuskan sebagai berikut:

PRIMAIR :

1. Mengabulkan Gugatan Penggugat seluruhnya;
2. Menetapkan hak asuh (HADHONAH) atas anak yang bernama ANAK 1 dan ANAK 2 kepada Penggugat selaku ibu kandungnya;
3. Membebaskan biaya perkara menurut hukum yang berlaku.

SUBSIDAIR :

Atau Apabila Majelis Hakim berpendapat lain, mohon putusan yang seadiladilnya (Ex Aeque Et Bono).

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Bahwa pada hari dan tanggal sidang yang telah ditetapkan, Peggugat telah dipanggil secara e-court, Peggugat hadir didampingi para Kuasa hukumnya, para kuasa hukum tersebut telah menyerahkan asli surat kuasa dan telah melengkapi data pendukung surat kuasa berupa fotokopi kartu tanda pengenal sebagai advokat dan berita acara pengambilan sumpah sebagai Advokat profesional telah dicocokkan dengan aslinya serta melihat keabsahan surat kuasa khusus Penggugat sebagai subjek hukum dalam perkara ini;

Dislaimer

Kepaniteraan Mahkamah Agung Republik Indonesia bermitra untuk ada & memantapkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan kelengkapan informasi yang disampaikan, hal mana akan kami perbaiki dari waktu ke waktu.

Dalam hal Anda menemukan inkonsistensi informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui :



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Bahwa Tergugat telah dipanggil secara resmi dan patut dengan panggilan tercatat, melalui PT. Pos Indonesia, Tergugat telah menghadap secara inperson dipersidangan;

Bahwa majelis Hakim telah berusaha semaksimal mungkin untuk mendamaikan Peggugat dengan Tergugat, agar rukun kembali dalam rumah tangganya, namun tidak berhasil, bahkan telah diupayakan perdamaian diantara para pihak melalui mediasi sebagaimana diatur dalam Peraturan Mahkamah Agung RI. Nomor 1 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan dengan menunjuk Hj. Yustimar B, S.H, Mediator profesional terdaftar pada Pengadilan Agama Jakarta Timur, sesuai dengan surat penunjukan tanggal 3 Juli 2025, laporan dari mediator tanggal 10 Juli 2025, mediasi tidak berhasil.

Bahwa selanjutnya Ketua Majelis membacakan surat gugatan Peggugat yang pada pokoknya tetap dipertahankan Peggugat dengan tidak ada mengalami perubahan dan tambahan;

Bahwa berhubung perkara ini didaftar secara e-court, maka majelis hakim akan menetapkan court calender dalam proses jawab menjawab sesuai dengan PERMA nomor 7 tahun 2022 tentang Perubahan atas Peraturan Mahkamah Agung nomor 1 tahun 2019 tentang administrasi perkara dan persidangan dipengadilan secara elektronik, yakni jawaban dilaksanakan hari Kamis tanggal 24 Juli 2025, replik hari Kamis tanggal 31 Juli 2025, duplik hari Kamis tanggal 7 Agustus 2025, dan pembuktian terhadap Peggugat hari Kamis tanggal 14 Agustus 2025;

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Diketahui:
Kepaniteraan Mahkamah Agung Republik Indonesia berusaha untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan ketepatan informasi yang kami sajikan, hal mana akan terus kami perbaiki dari waktu ke waktu. Dalam hal Anda menemukan informasi yang terdapat pada Situs ini atau informasi yang selanjutnya ada, namun belum terdapat, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui :



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Bahwa terhadap gugatan Penggugat tersebut, Tergugat telah mengajukan jawaban secara elektronik yang diupload hari tanggal 24 Juli 2025, yang selengkapny sebagai berikut:

saya ingin menjawab perihal Gugatan yang diajukan oleh istri saya, bahwa saya tidak pernah diberi waktu dan kesempatan bawa anak walaupun anak tersebut sedang libur sekola. Lalu saya diberi kesempatan bawa anak pada saat kondisi anak sedang sakit, sudah berjalan 3 tahun sejak saat itu, namun anak dibawa Kembali oleh Penggugat pada saat harus menjalani berobat, Saya ingin anak saya tuntas berobat padahal anak perlu pengobatan berjalan. Atau, Apabila Majelis Hakim berpendapat lain, mohon putusan yang seadil-adilnya (ex aequo et bono);

Bahwa terhadap jawaban yang telah diajukan Tergugat, Penggugat telah mengajukan repliknya secara elektronik yang diupload tanggal 31 Agustus 2024 yang selengkapny sebagaimana terdapat dalam berita acara persidangan;

Bahwa, terhadap replik yang disampaikan Penggugat, Tergugat telah menyampaikan duplinya secara elektronik yang diupload tanggal 7 Agustus 2025 yang selengkapny sebagaimana terdapat dalam berita acara persidangan;

Bahwa untuk menguatkan dalil-dalil gugatannya, Penggugat mengajukan alat bukti surat dan saksi-saksi sebagai berikut :

A. Bukti Surat.

1. Fotokopi Kartu Tanda Penduduk atas nama Siti Kusnia NIK4 yang dikeluarkan oleh Pemerintah Kota Jakarta Timur, Provinsi DKI Jakarta. Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.1)
2. Fotokopi Salinan Putusan Nomor Pdt.G/ 2022/PA.JT tertanggal 31 Mei 2022 yang dikeluarkan oleh Pengadilan Agama Jakarta Timur, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.2);
3. Fotokopi AKta Cerai Nomor tertanggal 19 Juli 2022 yang dikeluarkan oleh Pengadilan Agama Jakarta Timur, Bukti surat tersebut telah

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sebagai dan benar

Ditujukan
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dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.3);

4. Fotokopi AKta Kelahiran Nomor tanggal 16 Maret 2009 an. ANAK 1 tertanggal yang dikeluarkan tertanggal 3 Juni 2025 Oleh Pejabat Pencatatan Sipil Provinsi DKI Jakarta, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (24);
5. Fotokopi AKta Kelahiran Nomor tanggal 22 Februari 2017 an. ANAK 2 yang dikeluarkan 1 Agustus 2017 Oleh Kepala Suku Dinas Kependudukan dan Pencatatan Sipil Jakarta Timur, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.5);
6. Fotokopi Surat Rujukan FKTP an. ANAK 1 yang dikeluarkan oleh Puskesmas Cipayung tanggal 24 Juli 2024 Puskesmas Cipayung, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.6);
7. Fotokopi Surat Ringkasan Pulang Nomor Rekam Medis 0016-43-49 RSPON Mahar Mardjono an. ANAK 1 yang dikeluarkan oleh Kemenkes RSPON Mahar Mardjono tanggal 7 Oktober 2024, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P. 7);
8. Fotokopi Surat Hasil Lab No.24104922 RSPON Mahar Mardjono an. ANAK 1 yang dikeluarkan oleh Kemenkes RSPON Mahar Mardjono tanggal 5 Oktober 2024, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode
9. Fotokopi Surat Hasil Lab No.24104923 RSPON Mahar Mardjono an. ANAK 1 yang dikeluarkan oleh Kemenkes RSPON Mahar Mardjono tanggal 5 Oktober 2024, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode

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10. Fotokopi Screenshoot Chat Penggugat dan Tergugat, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.IO);
11. Fotokopi Screenshoot Chat Penggugat dengan Ustad Yayasan Pondok Pesantren 12 Putra, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode

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(P. 11);

12. Video keadaan tempat tinggal dan kamar tidur an. ANAK 1 di Yayasan Pondok Pesantren 12 Putra , Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode

(P. 12);

13. Video keadaan tempat tinggal dan kamar tidur an. ANAK 1 di Yayasan Pondok Pesantren 12 Putra , Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode

(P. 13);

14. Video keadaan tempat tinggal dan kamar tidur an. ANAK 1 di Yayasan Pondok Pesantren 12 Putra , Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode

15. Video bahwa an. ANAK 1 memiliki trauma pasca ditempatkan di Yayasan Pondok Pesantren 12 Putra , Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.15);

16. Fotokopi Surat Klinik Anugrah Medika an. ANAK 1 yang dikeluarkan oleh Klinik Anugrah Medika tanggal 30 Juli 2025, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.16);

17. Fotokopi Surat Klinik Anugrah Medika an. ANAK 1 yang dikeluarkan oleh Klinik Anugrah Medika tanggal 13 Agustus 2025, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.17);

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18. Fotokopi Bukti transfer gaji Penggugat ke ART tertanggal 27 maret 2025, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.18);

2. Bukti Saksi.

Saksi 1, Bahrum SAKSI 1, di bawah sumpah memberikan keterangan yang pada pokoknya sebagai berikut .

Bahwa saksi menerangkan kenal dengan Penggugat dan

Tergugat;

Bahwa saksi adalah kakak kandung Penggugat;

Bahwa saksi mengetahui antara Penggugat dengan Tergugat telah dikaruniai anak 2 (dua) orang yang bernama ANAK 1, lahir 16 Maret 2009 dan ANAK 2, lahir 22 Februari 2017;

Ditujukan:
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Bahwa saksi mengetahui awalnya Penggugat dan Tergugat adalah Suami Istri, namun mereka sudah bercerai pada tahun 2022;

Bahwa Setelah Penggugat dan Tergugat bercerai anak tinggal bersama Penggugat dan Tergugat secara bergantian;

Bahwa saksi mengetahui tujuan Penggugat mengajukan hak asuh anak karena anak Penggugat dan Tergugat yang Bernama ANAK 1 Ketika ikut dengan Tergugat anak tersebut sakit;

Bahwa saksi pernah melihat Ketika saksi berkunjung ke Yayasan Pesantren anak tersebut di Majalengka, pada saat itu penyakit anak sedang kambuh dan pihak Yayasan mengkrangkeng anak tersebut;

- Bahwa setahu saksi yang mengobati anak Ketika tinggal dengan Tergugat Adalah orang pintar;
- Bahwa saksi pernah berkunjung kerumah Tergugat, Ketika saksi bertemu dengan anak, anak tersebut bajunya basah bekas ngompol dan Ketika Tergugat pergi bekerja anak ditinggal sendiri;
- Bahwa saksi menerangkan Penggugat mempunyai kemampuan untuk mengurus anak, tidak pernah melakukan tindak pidana, bertanggung jawab, tidak pernah mabuk mabukkan yang menyebabkan anak jadi terlantar;

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Bahwa Penggugat khawatir Tergugat tidak bisa merawat anak Penggugat dan Tergugat, yang bernama ANAK 1, dikarenakan Tergugat sibuk bekerja sedangkan dirumah tidak ada siapa-siapa;

- Bahwa setahu saksi Ketika anak ikut Penggugat diasuh Oleh Ibu Penggugat sendiri;

Bahwa saksi mengetahui Penggugat bekerja sebagai asisten rumah tangga pergi pagi dan pulanya sore;

Saksi 2, SAKSI 2, di bawah sumpah memberikan keterangan yang pada pokoknya sebagai berikut •

Bahwa saksi kenal dengan Penggugat dan Tergugat;

Bahwa saksi Adalah adik 'par Penggugat;

Bahwa saksi mengetahui antara Penggugat dengan Tergugat telah dikaruniai anak 2 (dua) orang yang bernama ANAK 1, lahir 16 Maret 2009 dan ANAK 2, lahir 22 Februari 2017;

Bahwa saksi mengetahui awalnya Penggugat dan Tergugat adalah Suami Istri, namun mereka sudah bercerai pada tahun 2022;

Bahwa Setelah Penggugat dan Tergugat bercerai anak tinggal bersama Penggugat dan kadang kadang juga ikut bersama Tergugat;

Bahwa saksi mengetahui tujuan Penggugat mengajukan hak asuh anak karena anak Penggugat dan Tergugat yang Bernama

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ANAK IKetika ikut dengan Tergugat anak tersebut sakit;

Bahwa saksi pernah melihat Ketika saksi berkunjung ke Yayasan Pesantren anak tersebut di Majalengka, pada saat itu penyakit anak sedang kambuh dan pihak Yayasan mengkrangkeng anak tersebut;

- Bahwa setahu saksi yang mengobati anak Ketika tinggal dengan Tergugat adalah orang pintar;
- Bahwa saksi pernah berkunjung kerumah Tergugat, Ketika saksi bertemu dengan anak, anak tersebut bajunya basah bekas ngompol dan Ketika Tergugat pergi bekerja anak ditinggal sendiri dirumah;

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- Bahwa saksi menerangkan Penggugat mempunyai kemampuan untuk mengurus anak, tidak pernah melakukan tindak pidana, bertanggung jawab, tidak pernah mabuk mabukkan yang menyebabkan anak jadi terlantar;

Bahwa Penggugat khawatir Tergugat tidak bisa merawat anak Penggugat dan Tergugat, yang bernama ANAK 1, dikarenakan Tergugat sibuk bekerja sedangkan di rumah tidak ada orang;

- Bahwa setahu saksi Ketika anak ikut Penggugat diasuh oleh Ibu Penggugat sendiri;

Bahwa saksi mengetahui Penggugat bekerja sebagai asisten rumah tangga pergi pagi dan pulang sore;

Bahwa atas pertanyaan majelis, Tergugat mengajukan alat bukti surat dan saksi-saksi sebagai berikut

1. Bukti Surat.

1. Fotokopi Kartu Tanda Penduduk NIK tertanggal 24 Juni 20225 an. Komarudin, yang dikeluarkan oleh An. SUDIN DUKCAPIL Kota Jakarta Timur, Bukti surat tersebut telah diperiksa oleh Majelis Hakim, dicocokkan dengan aslinya yang ternyata sesuai dan telah dinazegelen, kemudian diberi kode bukti (T.1);
2. Fotokopi Kartu Keluarga No., tertanggal 24 Juni 2025 an. Komarudin, yang dikeluarkan oleh An. SUDIN DUKCAPIL Kota Jakarta Timur, Bukti surat tersebut telah diperiksa oleh Majelis Hakim, dicocokkan dengan aslinya yang ternyata sesuai dan telah dinazegelen, kemudian diberi kode bukti (T.2);
3. Fotokopi AKta Kelahiran Nomor tanggal 16 Maret 2009 an. ANAK 1 yang dikeluarkan tertanggal 3 Juni 2025 oleh Pejabat Pencatatan Sipil Provinsi DKI Jakarta, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode
4. Fotokopi Ijazah Nomor tertanggal 12 Juni 2024 an. an. ANAK 1, yang dikeluarkan oleh Sekolah Menengah Pertama Negeri 246 Jakarta, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan

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dengan aslinya, kemudian diberi kode (T.4). Diberi tanggal dan paraf Ketua Majelis;

5. Fotokopi AKta Kelahiran Nomor tanggal 22 Februari 2017 an. ANAK 2 yang dikeluarkan 1 Agustus 2017 oleh Kepala Suku Dinas Kependudukan dan Pencatatan Sipil Jakarta Timur, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (P.5);
6. Fotokopi AKta Cerai Nomor tertanggal 19 Juli 2022 yang dikeluarkan oleh Pengadilan Agama Jakarta Timur, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.6);
7. Fotokopi Surat Keterangan Anak Berkebutuhan Khusus Nomor 047/Komnasp/2023 tertanggal 28 Februari 2023 an. ANAK 1, yang dikeluarkan oleh Komisi Nasional Perlindungan Anak, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T. 7);
8. Fotokopi Surat Keterangan Nomor tertanggal 20 Juli 2022, an. ANAK 1 yang dikeluarkan oleh Rumah Sakit Khusus daerah Duren Sawit, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.8);
9. Fotokopi Surat Keterangan Nomor 1114/PK.01.03 tertanggal 13 Agustus 2025, an. ANAK 1 yang dikeluarkan oleh Sekolah Menengah Atas Negeri 113 Jakarta, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.9);
10. Fotokopi Chat ANAK 2 dan ANAK 1, Bukti surat tersebut tidak dimeteraikan dan tidak dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.IO);
11. Fotokopi Chat ANAK 1 di Pesantren dan bukti transfer uang, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.II);
12. Fotokopi Chat mantan isteri, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode

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(T. 12);

13. Fotokopi Chat guru di Pesantren, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.13);

Ditujukan:
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14. Fotokopi Chat guru ANAK 2 kelas 2 dan bukti transfer uang, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.14);
15. Fotokopi Chat guru ANAK 2 kelas 3 dan bukti transfer uang, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.15);
16. Fotokopi Chat wali kelas 2 SMPN 246, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.16);
17. Fotokopi Chat wali kelas 3 SMPN 246, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.17);
18. Fotokopi Chat guru BP SMPN 246, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.18);
19. Fotokopi Surat kontrol dan rawat inap RSUD Adji Darmo, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.19);
20. Fotokopi Surat rujukan RSUD Cipayung, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.20);
21. Fotokopi Surat rujukan RSUD PUDIKKES, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.21);
22. Fotokopi Surat rujukan RS Restu Kasih, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.22);
23. Fotokopi Surat rujukan dan rawat inap RS PON dan bukti chat, Bukti

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surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.23);

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Dalam hal Anda menemukan/melaporkan informasi yang terdapat situs ini atau informasi yang selarasnya ada, mohon segera menghubungi Kepaniteraan Mahkamah Agung RI melalui :



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24. Fotokopi Surat Hasil EEG RS PON dan Radiologi RS Kartini dan RS Haji, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.24);
25. Fotokopi Surat rujukan dan rawat inap RS Haji, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.25);
26. Fotokopi Surat rujukan RS Duren Sawit rekam medis dan chat humas RS Duren Sawit, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T. 26);
27. Fotokopi bukti transfer uang sebelum ANAK 1 ke Pesantren, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.27);
28. Fotokopi bukti pembayaran Pesantren Pondok Remaja, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.28);
29. Fotokopi bukti chat BP. H. Alip penanggung jawab PP Suryalana, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.29);
30. Fotokopi bukti chat wali kelas 1 SMAN 113 Jakarta, Bukti surat tersebut telah dimeteraikan dan dinazegelen serta dicocokkan dengan aslinya, kemudian diberi kode (T.30);

2. Bukti Saksi.

Saksi 1, SAKSI 1, di bawah sumpah memberikan keterangan yang pada pokoknya sebagai berikut :

Bahwa saksi kenal dengan Tergugat dan Penggugat,; Bahwa saksi bertetangga dengan Tergugat dan Penggugat sebagai mantan istri Tergugat;

Bahwa Semasa Tergugat dan Penggugat masih sebagai suami isteri telah memperoleh 2 (dua) orang anak kandung, bernama

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ANAK 1, lahir di Jakarta tanggal 16 Maret 2009 dan ANAK 2, lahir di Tangerang, tanggal 22 Februari 2017;

Bahwa Sejak perceraian anak tersebut diasuh oleh Tergugat dan Penggugat secara bergantian serta 5 bulan terakhir ini anak dalam asuhan Penggugat dan Tergugat pernah bercerita kepada saksi anak secara diam diam diambil oleh Penggugat disekolah; Bahwa anak Penggugat dengan Tergugat tersebut berلمان dengan anak saksi;



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Bahwa Tergugat sendiri yang menjaga dan merawat anaknya, kadang kadang anak tersebut pernah ditinggalkan sendiri dirumah, ketika Tergugat bekerja;

Bahwa saksi mengetahui anak tersebut disekolahkan oleh Tergugat dipesantren dan biayanya ditanggung oleh Tergugat;

Bahwa saksi mengetahui anak Tergugat dengan Penggugat tersebut akhir akhir ini sakit dan harus dilakukan pengecekan kerumah sakit atau kedokter;

Saksi 2, SAKSI 2, di bawah sumpah memberikan keterangan yang pada pokoknya sebagai berikut :

Bahwa saksi bertetangga dengan Tergugat;

Bahwa saksi kenal Penggugat sebagai mantan istri

Tergugat;

Bahwa Semasa Tergugat dan Penggugat masih sebagai suami isteri telah memperoleh 2 (dua) orang anak kandung, bernama ANAK 1, lahir di Jakarta tanggal 16 Maret 2009 dan ANAK 2, lahir di Tangerang, tanggal 22 Februari 2017;

Bahwa Sejak perceraian anak tersebut diasuh oleh Tergugat dan Penggugat secara bergantian serta 5 bulan terakhir ini anak dalam asuhan Penggugat dan Tergugat pernah bercerita kepada saksi anak secara diam diam diambil oleh Penggugat disekolah; Bahwa anak Penggugat dengan Tergugat tersebut berleman dengan anak saksi;

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sebagai dan benar



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Bahwa Tergugat sendiri yang menjaga dan merawat anaknya, kadang kadang anak tersebut pernah ditinggalkan sendiri di rumah, ketika Tergugat bekerja;

Bahwa saksi mengetahui anak tersebut disekolahkan oleh Tergugat dipesantren dan biayanya ditanggung oleh Tergugat;

Bahwa saksi mengetahui anak Tergugat dengan Penggugat tersebut akhir akhir ini sakit dan harus dilakukan pengecekan kerumah sakit atau kedokter;

Bahwa atas pertanyaan majelis hakim, Penggugat dan Tergugat menyatakan telah mencukupkan terhadap bukti-bukti tersebut dan tidak akan mengajukan bukti-bukti lainnya;

Bahwa, dalam kesimpulannya, Penggugat dan Tergugat tetap pada gugatan beserta repliknya dan jawaban beserta dupliknya masing-masing;

Bahwa untuk mempersingkat uraian putusan ini, ditunjuk segala hal sebagaimana tercantum dalam berita acara persidangan perkara ini, sebagai bagian dan dianggap termuat dalam putusan ini;

PERTIMBANGAN HUKUM

Menimbang, bahwa maksud dan tujuan gugatan Penggugat adalah sebagaimana telah diuraikan di atas;

Menimbang, bahwa Peggugat telah dipanggil secara resmi dan patut secara elektronik untuk datang menghadap kepersidangan sesuai dengan pasal 15 ayat 1 huruf (a) PERMA RI nomor 7 tahun 2022 tentang persidangan di Pengadilan yang dilaksanakan secara elektronik, telah hadir didampingi oleh para Kuasa hukumnya;

Menimbang, bahwa Tergugat telah dipanggil secara resmi dan patut dengan panggilan tercatat sesuai pasal 15 ayat 2 tentang PERMA RI nomor 7 tahun 2022 tentang persidangan di Pengadilan yang dilaksanakan secara elektronik, telah datang sendiri secara inperson menghadap dipersidangan;

Menimbang, bahwa pemberian kuasa kepada Advokat yang diberikan oleh Peggugat dalam perkara ini, telah diperiksa oleh majelis hakim dari aspek materil dan formil surat kuasa, telah dilampirkan data pendukung berupa kartu

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Dislaimer

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Dalam hal Anda menemukan inkurasi informasi yang teruat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui :



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pengenal sebagai Advokat dan berita acara pengambilan sumpah sebagai Advokat, diteliti oleh Majelis Hakim telah sesuai dengan ketentuan perundang-undangan yang berlaku, vide pasal 123 ayat 1 HIR juncto pasal 1795 KUH Perdata juncto pasal 1 Undang-undang nomor 18 tahun 2003 dan Surat Edaran Mahkamah Agung RI nomor 6 tahun 1994 tanggal 14 Oktober 1994, Oleh karena itu kedudukan Advokat/Kuasa hukum mewakili Penggugat sebagai subjek hukum dapat diterima dalam perkara ini;

Menimbang, bahwa berdasarkan ketentuan Pasal 49 Undang-undang Nomor 3 Tahun 2006 tentang perubahan atas Undang-undang Nomor 7 Tahun 1989 dan perubahan kedua dengan Undang-undang Nomor 50 Tahun 2009 tentang Peradilan Agama, maka perkara permohonan cerai talak yang diajukan Penggugat menjadi kewenangan Pengadilan Agama Jakarta Timur;

Menimbang, bahwa majelis hakim telah berusaha mendamaikan para pihak berperkara namun tidak berhasil, demikian juga berdasarkan laporan mediator bernama Hj. Yustimar, B, S.H, tanggal 10 Juli 2025, para pihak telah mengikuti proses mediasi dan tidak mencapai kesepakatan damai, dengan demikian pemeriksaan perkara a quo telah memenuhi maksud Pasal 130 HIR jo. Pasal 4 dan 7 Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan;

Menimbang, bahwa yang menjadi pokok perkara dalam hal ini adalah Penggugat mengajukan hak asuh terhadap 2 (dua) orang anak terhadap Tergugat yang bernama ANAK 1, Perempuan, lahir di Jakarta tanggal 16 Maret 2009 dan ANAK 2, Perempuan, lahir di Tangerang tanggal 22 Februari 2027 dan Penggugat meminta hak pengasuhan anak (hadhanah) ditetapkan pada Penggugat sebagai 'buk kandung'nya;

Menimbang, bahwa atas gugatan Penggugat tersebut, Tergugat telah mengajukan jawaban dan duplinya secara elektronik yang pada pokoknya adalah gugatan yang diajukan Penggugat Tergugat tidak pernah diberi waktu dan kesempatan membawa anak, meskipun anak tersebut sedang libur sekolah, anak dizinkan Oleh Penggugat ketika anak sedang sakit bahkan sudah berjalan 3 (tiga) tahun, namun anak tersebut dijemput Kembali oleh Penggugat

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Dalam hal Anda menemukan inkurasi informasi yang tertera pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui :



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arena anak harus menjalani pengobatan dan Tergugat berkeinginan anak tersebut berobat harus dilakukan secara tuntas;

Menimbang, bahwa kemudian Penggugat mengajukan replik secara tertulis yang pokoknya tetap pada gugatan, demikian juga Tergugat mengajukan duplik tertulis yang pokoknya tetap pada jawaban, selengkapny telah termuat dalam berita acara sidang perkara ini;

Menimbang, berdasarkan Pasa' 163 HIR jo. Pasal 1685 KUH Perdata, Penggugat berkewajiban untuk membuktikan hal tersebut di atas;

Menimbang, bahwa Penggugat untuk membuktikan dalil-dalilnya telah mengajukan bukti surat P.1 sampai dengan P.18 serta saksi-saksi yaitu

Bahrum SAKSI 1 dan SAKSI 2;

Menimbang, bahwa bukti P.1 berupa fotokopi Kartu Tanda Penduduk atas nama Penggugat telah memenuhi syarat formil dan materiil sebagai akta otentik, oleh karena itu mempunyai kekuatan pembuktian yang sempurna dan mengikat sesuai Pasa' 165 HIR jo. Pasa' 1870 KUH Perdata, oleh karenanya Penggugat memiliki kapasitas untuk bertindak sebagai pihak dalam perkara ini (persona standi in judicio);

Menimbang, bahwa bukti P.2 dan P.3 berupa fotokopi Salinan Putusan dan akte cerai atas nama Penggugat telah memenuhi syarat formil dan materiil sebagai akta otentik, oleh karena itu mempunyai kekuatan pembuktian yang sempurna dan mengikat sesuai Pasa' 165 HIR jo. Pasal 1870 KUH Perdata, oleh karenanya Penggugat memiliki kapasitas atau orang yang berkepentingan dalam perkara ini;

Menimbang, bahwa bukti P.4 dan P.5 telah memenuhi syarat formil dan materiil sebagai akta otentik, oleh karena itu mempunyai kekuatan pembuktian yang sempurna dan mengikat sesuai Pasa' 165 HIR jo. Pasa' 1870 KUH Perdata, membuktikan bahwa ANAK 1 Ulya Dzini dan ANAK 2 adalah anak kandung dari perkawinan antara Penggugat dengan Tergugat;

Menimbang, bahwa bukti P.6 sampai dengan P.11 menerangkan ANAK 1 Ulya Dzini atas permintaan dari Penggugat, Majelis Hakim menilai bukti tersebut hanya merupakan surat keterangan menerangkan anak mengalami

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tuberculosis meningitis, sehingga bukti tersebut bernilai pembuktian sempurna dan mengikat dan hal ini berhubungan terhadap pola asuh orang tuannya;

Menimbang, bahwa berdasarkan bukti P.12 sampai dengan P.15 berupa bukti Chat dari Penggugat kepada Tergugat, video dan foto dan diakui oleh Tergugat bukti tersebut Adalah bukti elektronik, sesuai dengan pasal 5 ayat 1 Undang undang ITE, maka bukti tersebut telah memenuhi syarat formil dan materiil, dan mempunyai kekuatan pembuktian, namun sebagai bukti permulaan dan harus dihubungkan dengan bukti lain;

Menimbang, bahwa berdasarkan bukti P.16 dan P.17 menerangkan ANAK 1 Ulya Dzhini atas permintaan dari Penggugat, Majelis Hakim menilai bukti tersebut hanya merupakan surat keterangan anak dirawat dengan baik oleh Penggugat, sehingga bukti tersebut bernilai pembuktian sempurna dan mengikat dan ada relevansinya dengan pokok perkara;

Menimbang, bahwa berdasarkan bukti P.18 menerangkan tentang gaji Penggugat sebagai ART dengan gaji sejumlah RP 3 200 000,00 (tiga juta dua ratus ribu rupiah) setiap bulan, Majelis Hakim menilai bukti tersebut hanya merupakan keterangan penghasilan Penggugat sehingga bukti tersebut bernilai pembuktian sempurna dan mengikat dan ada relevansinya dengan pokok perkara;

Menimbang, bahwa saksi 1 dan saksi 2 Penggugat telah memenuhi syarat formil dan materiil sebagai saksi sesuai Pasal 145 ayat (1) HIR dan Pasal 171 dan 172 HIR, sehingga keterangan saksi sebagaimana diuraikan dalam duduik perkara di atas tersebut dapat diterima dan bernilai sebagai alat bukti;

Menimbang, bahwa Tergugat untuk membuktikan dalil bantahannya telah mengajukan bukti surat T.1 sampai dengan T.30 dan saksi-saksi yaitu: SAKSI 1 serta SAKSI 2;

Menimbang, bahwa bukti T.1 dan T.2 berupa fotokopi Kartu Tanda Penduduk dan Kartu keluarga atas nama Tergugat telah memenuhi syarat formil dan materiil sebagai akta otentik, oleh karena itu mempunyai kekuatan pembuktian yang sempurna dan mengikat sesuai Pasal 165 HIR jo. Pasal 1870 KUH Perdata, oleh karenanya Tergugat memiliki kapasitas untuk bertindak sebagai pihak dalam perkara ini (persona standi in judicio);

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Dalam hal Anda menemukan inakurasi informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Ekspositor Mahkamah Agung RI melalui :



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Menimbang, bahwa bukti T.3 sampai dengan T.5 berupa fotokopi Akta Kelahiran dan ijazah atas nama ANAK 1 dengan ANAK 2, telah memenuhi syarat formil dan materiil sebagai akta otentik, oleh karena itu mempunyai kekuatan pembuktian yang sempurna dan mengikat sesuai Pasal 165 HIR jo. Pasal 1870 KUH Perdata, Oleh karenanya terbukti anak tersebut adalah anak kandung dari Penggugat dan Tergugat;

Menimbang, bahwa bukti T.6 berupa fotokopi akte cerai atas nama Komaruddin atas nama Tergugat telah memenuhi syarat formil dan materiil sebagai akta otentik, Oleh karena itu mempunyai kekuatan pembuktian yang sempurna dan mengikat sesuai Pasal 165 HIR jo. Pasal 1870 KUH Perdata, oleh karenanya Penggugat memiliki kapasitas atau orang yang berkepentingan dalam perkara ini;

Menimbang, bahwa berdasarkan bukti T. 7 sampai dengan T.9 berupa fotokopi surat keterangan dari KPAI, anak berkebutuhan khusus dan pengundurai diri dari SMAN 113, Oleh karena bukti tersebut merupakan keadaan dari anak yang bernama ANAK 1, maka bukti tersebut ada hubungannya dengan bantahan Tergugat, Majelis Hakim menilai atas bukti tersebut Adalah bukti semurna dan mengikat:

Menimbang, bahwa bukti T.IO sampai dengan T.18, T.26 dan T.29 serta T.30, berupa bukti chat dari ANAK 2 ANAK 1, dari Siti Kusnia, dari Pesantren dari guru pesantren, dari guru wali kelas, dari guru BP dan dari Bapak Halip Penanggung jawan Pondok Pesantren, chat rekam medis, bukti tersebut adalah bukti elektronik, sesuai dengan pasal 5 ayat 1 Undang undang ITE, maka bukti tersebut telah memenuhi syarat formil dan materiil pembuktian, dan mempunyai kekuatan pembuktian, namun majelis berpendapat sebagai bukti permulaan dan harus dihubungkan dengan bukti lain;

Menimbang, bahwa bukti T.20 sampai dengan T.25 berupa fotokopi hasil Rujukan RSUD Cipayung, rujukan RS Restu Kasih, rujukan rawat nginap dirumah sakit PON, hasil Ridiologi rumah sakit Kartini dan surat rujukan dari Rumah sakit Haji, yang menerangkan selama anak yang bernama ANAK 1 Ulya Dzini bersama Tergugat bukti tersebut ada hubungannya dengan

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bantahan Tergugat, Majelis Hakim menilai atas bukti tersebut adalah bukti semurna dan mengikat ;



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Menimbang, bahwa saksi 1 dan saksi 2 yang diajukan oleh Tergugat telah memenuhi syarat formil dan materiil sebagai saksi sesuai Pasal 145 ayat (1) HIR dan Pasal 171 dan 172 HIR, sehingga keterangan saksi saksi sebagaimana diuraikan dalam duduk perkara di atas tersebut dapat diterima dan bemilai sebagai alat bukti;

Menimbang, bahwa berdasarkan analisis bukti-bukti dari para pihak ditemukan fakta-fakta hukum sebagai berikut;

- Bahwa hubungan hukum antara Penggugat dan Tergugat adalah sebagai mantan suami isteri;
- Bahwa mereka semula terikat dalam perkawinan yang sah, selama pernikahannya telah dikaruniai 2 (dua) orang anak perempuan, yang bernama ANAK 1, lahir di Jakarta tanggal 16 Maret 2009 dan ANAK 2, lahir di Tangerang tanggal 22 Februari 2017;
- Bahwa pada tanggal 31 Mei 2022, hubungan perkawinan antara Penggugat dan Tergugat putus karena perceraian di Pengadilan Agama Jakarta Timur;
- Bahwa setelah Penggugat dan Tergugat bercerai anak anak tersebut diasuh dan tinggal bersama Penggugat dan kadang kadang bersama Tergugat;
- Bahwa terjadi perselisihan antara Penggugat dan Tergugat, mengenai hak asuh kedua orang anak tersebut diatas;
- Bahwa Penggugat tidak ada halangan baik secara syar'i maupun perundang-undangan untuk mengasuh anak;
- Bahwa Penggugat tidak pernah menghalang Tergugat untuk bertemu dengan kedua anak tersebut;
- Bahwa Penggugat mempunyai penghasilan, yang bekerja sebagai seorang Asisten rumah tangga yang berpenghasilan sejumlah Rp 3 200 000,00 (tiga juta dua ratus ribu rupiah) setiap bulan;

Menimbang, bahwa perihal petitum hak asuh anak (hadlanah) kepada Penggugat, majelis memberikan pertimbangan sebagai berikut;

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Bahwa akibat putusnya perkawinan karena perceraian bilamana terjadi perselisihan mengenai pengasuhan anak maka Pengadilan akan memberikan putusan, sesuai dengan pasal 41 huruf (a) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, "Baik ibu dan bapak tetap berkewajiban memelihara dan



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mendidik anak-anaknya, semata-mata berdasarkan kepentingan anak, bilamana ada perselisihan mengenai penguasaan anak, Pengadilan memberi keputusannya;

Bahwa dalam Pasal 14 ayat (1) dan (2) Undang-Undang Nomor 35 tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 23 tahun 2002 tentang Perlindungan Anak, disebutkan bahwa pada dasarnya setiap anak berhak untuk diasuh oleh orang tuanya sendiri secara utuh, kecuali jika ada alasan dan/atau aturan hukum yang sah menunjukkan bahwa pemisahan itu adalah demi kepentingan terbaik bagi anak;

Bahwa dalam hal seseorang ditunjuk menjadi pemelihara anak, maka Majelis berpendapat sesuai dengan ketentuan Pasal 156 huruf (c) Kompilasi Hukum Islam kedudukan seorang pemegang kuasa asuh haruslah memenuhi syarat dan kualitas dapat menjamin keselamatan Jasmani dan Rohani anak yang berada dalam asuhannya;

Menimbang, bahwa menurut ketentuan Pasal 105 huruf (a) dan Pasal 156 huruf (a) Kompilasi Hukum Islam, disebutkan apabila terjadi perceraian maka pemeliharaan anak yang belum mumayyiz atau belum berumur 12 tahun adalah hak ibunya. Sebagaimana ketentuan hadlonah dalam kitab Kifayatul Akhyar jilid II halaman 94, yang pada pokoknya setiap anak yang lahir dari perkawinan yang sah dan antara suami isteri telah terjadi perceraian, maka pemeliharaan anak dimaksud adalah hak isteri, sepanjang bekas isteri tersebut masih memenuhi : 1. Aka' sehat. 2. Merdeka. 3. Beragama Islam. 4. Menjaga diri atau kehormatan. 5. Amanah (jujur) 6. Bertempat tinggal yang jelas dan 7.

Tidak bersuamikan baru;

Bahwa berdasarkan fakta di persidangan, anak Penggugat dan Tergugat yang pertama bernama ANAK 1 sudah berusia diatas 12 (dua belas) tahun, namun tidak dimungkin dihadirkan dipersidangan karena sakit dan

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berkebutuhan kuhus dan anak yang kedua bernama ANAK 2 yaitu berusia kurang lebih 8 (delapan) tahun dan/atau belum mumayyiz;

Menimbang, bahwa berdasarkan pertimbangan-pertimbangan tersebut di atas dan demi kepentingan terbaik bagi kedua anak, yang saat ini anak yang pertama berkebutuhan khusus (sakit), anak yang kedua belum mumayyiz dan/atau dibawah 12 tahun, masih memerlukan kasih sayang dari ibu kandungnya dan juga karena Penggugat telah memenuhi syarat dan kualitas,

Ditujukan:
Kepaniteraan Mahkamah Agung Republik Indonesia berusaha untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan ketepatan informasi yang kami sajikan, hal mana akan terus kami perbaiki dari waktu ke waktu. Dalam hal Anda menemukan ketidakakuratan informasi yang tercantum pada Situs ini atau informasi yang selarasnya ada, namun belum terdapat, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui :



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sebagai pemelihara anak serta sehat secara fisik maupun mental maka gugatan Penggugat dapat dikabulkan dengan menetapkan hak pengasuhan anak (hadhanah) yang bernama ANAK 1, lahir di Jakarta, tanggal 16 Maret 2009 dan ANAK 2, lahir di Tangerang, tanggal 22 Februari 2017, berada dalam pengasuhan (hadhanah) Penggugat sebagai Ibu kandungnya;

Menimbang, bahwa meskipun hak pengasuhan anak (hadhanah) ditetapkan kepada Penggugat, tidak boleh mengurangi hak anak untuk tetap bertemu langsung dan tidak boleh memutuskan hubungan komunikasi dengan Tergugat sebagai ayah kandungnya, dalam hal menjenguk, mendidik serta mencurahkan kasih sayang terhadap anak tersebut, sebagaimana diatur dalam Pasal 45 Undang-Undang Nomor 1 Tahun 1974, bahwa kedua orang tua wajib memelihara dan mendidik anak-anak mereka sebaik-baiknya sampai anak-anak itu kawin atau dapat berdiri sendiri, kewajiban mana berlaku terus meskipun perkawinan antara kedua orang tua putus;

Menimbang, bahwa untuk memenuhi Surat Edaran Mahkamah Agung RI nomor 1 tahun 217 tentang pemberlakuan rumusan hasil rapat pleno kamar Mahkamah Agung RI sebagai pedoman pelaksanaan tugas bagi Pengadilan yang mengamatkan bahwa dalam amar penetapan hak asuh anak (hadhanah) harus mencantumkan kewajiban pemegang hadhanah memberikan akses kepada orang tua yang tidak memegang hak pengasuhan anak;

Menimbang, bahwa berdasarkan pertimbangan diatas, maka majelis hakim mewajibkan kepada Penggugat sebagai pemegang hak asuh anak (hadhanah) untuk memberikan akses yang seluas luasnya kepada Tergugat untuk bertemu, mencurahkan kasih sayang terhadap anaknya dan melakukan

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hal hal lain yang bermanfaat demi kepentingan terbaik bagi sianak dan apabila Penggugat tidak memberikan akses kepada Tergugat dapat dijadikan alasan untuk mengajukan pencabutan hak asuh anak (hadhanah);

Menimbang, bahwa oleh karena perkara ini termasuk bidang perkawinan, maka berdasarkan ketentuan pasal 89 ayat (1) Undang-Undang Nomor 7 Tahun 1989 sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan Undang-Undang Nomor 50 Tahun 2009 tentang Peradilan Agama, biaya perkara dibebankan kepada Penggugat;

Memperhatikan pasal-pasal dari peraturan perundang-undangan yang berlaku dan h kum syara' yang berkenaan dengan perkara ini;

MENGADILI

1. Mengabulkan gugatan Penggugat;
2. Menetapkan 2 (dua) orang anak yang bernama ANAK 1, lahir di Jakarta, tanggal 16 Maret 2009 dan ANAK 2, lahir di Tangerang, tanggal 22 Februari 2017, berada dalam pengasuhan (hadhanah) Penggugat sebagai Ibu kandungnya, dengan berkewajiban memberikan akses kepada Tergugat untuk bertemu dengan anak dan untuk kepentingan terbaik bagi anak tersebut;
3. Membebankan kepada Penggugat untuk membayar biaya perkara sejumlah RP 264.000,00 (dua ratus enam puluh empat ribu rupiah);

Demikian diputuskan dalam musyawarah Majelis Hakim Pengadilan Agama Jakarta Timur pada hari Kamis tanggal 2 Oktober 2025 bertepatan dengan tanggal 10 Rabilul Akhir 1447 H, oleh Drs. Ifdal, S.H., sebagai Ketua Majelis, Drs. Sohel, S.H. dan Dra. Hj. Taslimah, M.H., sebagai hakim hakim anggota tersebut, putusan tersebut diucapkan padahari itu juga dalam persidangan yang terbuka untuk umum dan dibacakan secara elektronik didalam sistem Informasi Pengadilan oleh Ketua Majelis, beserta para hakim anggota dan didampingi oleh Zamzam Lubis, S.H, M.H, sebagai Panitera Pengganti dengan dihadiri oleh Penggugat dan Tergugat secara elektronik;

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temu

Dislaimer
Kepaniteraan Mahkamah Agung Republik Indonesia bermitra untuk ada & mempromosikan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan kelengkapan informasi yang disampaikan, hal mana akan kami perbaiki dari waktu ke waktu.

Dalam hal Anda menemukan informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui :



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Indonesia**

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Ketua Majelis

Drs. Ifdal., S.H.,

Hakim Anggota

Hakim Anggota

Drs. Sohel., s.H.,

Panitera Pengganti,

Dra. Hj. Taslimah., M.H.,

Zamzam Lubis., S.H., M.H.,

Perincian Biaya Perkara .

1. Biaya pendaftaran	: R ³	30 000,00
2. Biaya proses	R	150 000,00
3. Biaya panggilan	Rp	34 000,00
4. PNBp panggilan	: Rp	20 000,00
5. Biaya redaksi	Rp	10 000,00
6. Materai	Rp	10 000,00

Jumlah

Rp 264 000,00 (dua ratus enam
puluh empat ribu rupiah).

Dislaimer

Kepaniteraan Mahkamah Agung Republik Indonesia berkecualan untuk tidak bertanggung jawab atas informasi yang disajikan dalam bentuk elektronik ini, dan tidak memberikan jaminan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan ketepatan informasi yang kami sajikan, hal mana akan kami perbaiki dari waktu ke waktu. Dalam hal Anda menemukan ketidakakuratan informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepaniteraan Mahkamah Agung melalui :



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Dislaimer
Kepaniteraan Mahkamah Agung Republik Indonesia berusaha untuk selalu mempublikasikan informasi paling baru dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan kebaruan informasi yang kita sajikan, hal mana akan kami perbaiki dari waktu ke waktu.
Dalam hal Anda menemukan ketidakakuratan informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui :

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Nomor Perkara	Penggugat	Tergugat	Status Perkara
2525/Pdt.G/2025/PA-JT	Disamakan	Disamakan	Penyerahan Memori Kasal

Data Umum | Penetapan | Jadwal Sidang | Sakal | Mediasi | Putusan | Banding | Kasasi | Biaya Perkara | Riwayat Perkara

- Tanggal Pendaftaran: Senin, 16 Jun. 2025
- Kualifikasi Perkara: Pengusutan Anak
- Nomor Perkara: 2525/Pdt.G/2025/PA-JT
- Tanggal Surat: Senin, 16 Jun. 2025
- Nomor Surat:
- Penggugat:

No	Nama
1	Disamakan
- Kuasa Hukum Penggugat:

No	Nama	Nama Pihak
1	Arlif Wicaksono, S.H., M.H.	Disamakan
- Tergugat:

No	Nama
1	Disamakan
- Kuasa Hukum Tergugat:
- Perlitum: Disamakan
- Pihak Dipublikasikan: Tidak
- Protoko: Tidak

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Sistem Informasi Penelusuran Perkara

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2525/Pdt.G/2025/PA-JT	Disamakan	Disamakan	Penyerahan Memori Kasasi

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[Penetapan](#)
[Jadwal Sidang](#)
[Saksi](#)
[Mediasi](#)
[Putusan](#)
[Banding](#)
[Kasasi](#)
[Siaya Perkara](#)
[Rivayat Perkara](#)

Data Penetapan Mediasi

Tgl. Penetapan Mediator	Kamis, 03 Jul 2025
No. Penetapan Mediator	

No	Nama	Status Mediator
1	Hj. Yustimar, B, S.H	Non-Hakim

Tgl. Mulai Mediasi	Kamis, 03 Jul 2025
Tgl. Hasil Mediasi	Kamis, 03 Jul 2025
Hasil Mediasi	Tidak Berhasil

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INFORMASI DETAIL PERKARA

Kembali

Nomor Perkara	Penggugat	Tergugat	Status Perkara
2525/Pdt.G/2025/PA-JT	Dismarkkan	Dismarkkan	Penyerahan Memori Kasasi

Data Umum	Penetapan	Jadwal Sidang	Saksi	Mediasi	Putusan	Banding	Kasasi	Biaya Perkara	Riwayat Perkara
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Tanggal Putusan	Kamis, 02 Okt. 2025
Putusan Yustise	Tidak
Sumber Hukum	- Righ Islam - Kompilasi Hukum Islam - UUP/PP - Yurisprudensi
Status Putusan	Dikabulkan
Nilai Ganti Kerugian (Rp.)	
Amat Putusan	1. Mengabulkan gugatan Penggugat; 2. Menetapkan 2 (dua) orang anak yang bernama Karissa Ulya Dathil binti Komarudin, lahir di Jakarta, tanggal 16 Maret 2009 dan Audy Muklana Putri binti Komarudin, lahir di Tangerang, tanggal 22 Feb 2017, berada dalam pengasuhan (hoashanah) Penggugat sebagai ibu kandung/nya, dengan berkewajiban memberikan akses Tergugat untuk bertemu dengan anak dan untuk kepastian gan terbaik bagi anak tersebut; 3. Membebaskan kasada Penggugat untuk membayar biaya perkara sejumlah Rp 264.000,00 (dua ratus enam puluh empat ribu rupiah);
Pembastabatan Putusan	
Tanggal Minutasi	Kamis, 02 Okt. 2025
Keterangan	

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Pemeriksaan Setempat (Descente)

Seputar Peradilan

[Print](#) | Hits: 787

PENGADILAN AGAMA KOTA CIMAHI MELAKUKAN PEMERIKSAAN SETEMPAT(DESCENTE)

Kamis, 31 Oktober 2024 Pengadilan Agama Kota Cimahi melakukan pemeriksaan setempat (descente) di daerah pacinan terhadap perkara nomor 986/Pdt.G/2024/PA.Cmi dengan ketua Majelis YM Drs. Masnun, S.H. dengan Hakim Anggota 1: YM Dra. Siti Munawaroh, S.H. dan Hakim Anggota 2: YM Drs. Mochamad Sumantri, S.H. turut dibantu oleh Ibu Sri Mulyani Amin, S.H. sebagai Panitera Pengganti.



Pengadilan Agama dapat melakukan pemeriksaan setempat (descente) dalam perkara gugatan hak asuh anak, pemeriksaan setempat ini bertujuan untuk memastikan bahwa semua aspek terkait kesejahteraan anak dipertimbangkan dalam keputusan yang akan diambil.

Pemeriksaan setempat dapat dilakukan dengan berbagai cara, seperti:

- Sidang dibuka di ruang sidang Pengadilan, kemudian dilanjutkan ke lokasi objek sengketa

- Sidang pemeriksaan setempat dibuka di Kantor Lurah/ Kepala Desa, kemudian dilanjutkan ke lokasi objek sengketa

- Sidang pemeriksaan setempat dibuka langsung di tempat objek sengketa

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Pemeriksaan Setempat (Descente)



Dalam pemeriksaan setempat, hakim dan tim pengadilan akan melakukan observasi langsung di lokasi. Penggugat akan memberikan penjelasan terkait situasi dan kondisi yang dihadapinya, sementara pegawai kelurahan setempat akan memberikan informasi tambahan.

Keputusan hakim mengenai hak asuh anak akan mempertimbangkan hasil pemeriksaan setempat sebagai salah satu pertimbangan penting dalam mengambil keputusan.