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REVIEW OF THE LEGAL IMPLICATIONS OF DIVORCE ON CHILD CUSTODY ARRANGEMENTS

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ABSTRACT

Divorce not only entails property division but also raises significant concerns regarding child custody. Courts often intervene to determine which parent is better suited to care for the child after divorce. This research aims to explore the legal implications of divorce on child custody rights and understand the factors influencing custody decisions between fathers and mothers, both individually and jointly. Employing descriptive analysis with a normative approach, the study utilizes secondary data from primary, secondary, and tertiary legal sources. Findings suggest that divorce can result in the loss of child custody rights due to neglect of parental obligations and immoral behavior, which may have contributed to the divorce. Additionally, judges consider various factors in determining custody, including the child's welfare, emotional connection with parents, and parental responsibilities. Factors such as parental presence in the child's life, financial support, and emotional interactions with the child influence custody decisions. Therefore, it is recommended that parents maintain positive relationships with their children, prioritize family unity, and actively fulfill their duties in providing protection, affection, and proper education.

Keywords: child custody rights; divorce; legal implications.

INTRODUCTION

The Indonesian Constitution, embodied in the Constitution of the Republic of Indonesia of 1945, asserts that Indonesia is a legal state based on the democratic principles of Pancasila and the legal foundations outlined in the document. These principles affirm that every individual, regardless of social status, economic status, gender, or position, has equal rights and standing before the law. Therefore, all aspects of citizens' lives, including marriage and divorce, are governed by the laws applicable in Indonesia.

Marriage, as an important social and legal institution, is formally regulated by Law Number 16 of 2019 concerning Marriage. This law amends Law Number 1 of 1974 which regulated the same matters. However, it only changes the minimum age limit for women from 16 to 19 years old. In this regard, the minimum marriage age for women is equated with the

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minimum marriage age for men. According to the Marriage Law, the validity of a marriage is determined by the principles of religious law and the beliefs of the individuals getting married. This means that a marriage is considered valid if it meets all the requirements and principles of religious law and the beliefs of the individuals involved¹. Marriage is not just a physical bond but also a spiritual bond sanctioned by religious, legal, and social norms^{2,3,4}.

However, social realities show that marriages do not always run smoothly, and divorce becomes an unavoidable phenomenon in some cases. Divorce, which can be decided by the court, is the dissolution of the marriage bond due to several reasons regulated in the legislation. One of the common reasons for divorce is economic reasons and infidelity, which can lead to family disharmony resulting in divorce^{5, 6}. Government Regulation of the Republic of Indonesia Number 16 of 2019 concerning Marriage mentions various reasons that can be the basis for divorce, including adultery or behavior that endangers the spouse. The termination of marriage, regardless of the reason, still has legal consequences for child custody.

The termination of marriage does not always have to be done in court. The dissolution of the marriage bond not only changes the relationship between husband and wife but also affects the rights and obligations towards the children born from the marriage. Law Number 16 of 2019 concerning Marriage asserts that both parents have a duty to care for and educate their children to the best of their ability, even after divorce. Child custody after divorce can be granted to one or both parents, depending on the judge's considerations and the best interests of the child⁷.

Regarding divorce proceedings conducted in court, the verdict always includes child custody. If the marriage produces children, after hearing the plaintiff's lawsuit and the defendant's response, the judge will consider them and then decide on the best solution according to the judge for the couple who are divorcing, especially in the best interests of the child. Researching seven court judge decisions, which have legal force,

¹ Putri Mega Mutiara, *et al.* (2021). Tinjauan Perkawinan Periparan Berdasarkan Perspektif Hukum Islam Dan Hukum Adat. *Jurnal Poros Hukum Padjadjaran*. Vol 3 (1), p. 89.

² Santoso. (2016). Hakekat Perkawinan Menurut Undang-Undang Perkawinan. *Jurnal YUDISIA*, 7(2),Hlm 418.

³ Taylor, A. Y, *et al.* (2019). Child Marriages and Unions in Latin America: Understanding the Roles of Agency and Social Norms. *Journal of Adolescent Health*, 64(4), p. 547.

⁴ Pacheco-Montoya, *et al.* (2022). Gender Norms, Control Over Girls' Sexuality, and Child Marriage: A Honduran Case Study. *Journal of Adolescent Health*, 70(3), p. S25.

⁵ Abror, H. Khoirul. (2017). *Hukum Perkawinan dan Perceraian*, Yogyakarta: Ladang Kata, p. 162.

⁶ Akhmadeeva, E., & Galyautdinova, S. (2015). Adultery Understanding as a Psychological Problem by the Representatives of Different Ethnic Groups. *Procedia - Social and Behavioral Sciences*, 205 (May), p. 598.

⁷ Fransson, E., Sarkadi, A., Hjern, A., & Bergström, M. (2016). Why should they live more with one of us when they are children to us both?. Parents' motives for practicing equal joint physical custody for children aged 0-4. *Children and Youth Services Review*, 66, p. 157.

provides an overview that there are legal consequences of the dissolution of marriage due to divorce regarding the revocation of child custody rights. And for marriages that end in divorce, custody can be given to one (father or mother) and even to both.

This research is a new matter that has not been studied by other researchers, focusing on identifying the legal consequences of child custody after divorce and the basis for judges' considerations in determining child custody, whether to the father, mother, or both jointly.

By understanding the above issues, this research aims to identify the legal consequences of child custody after divorce and the basis for judges' considerations in determining child custody, whether to the father, mother, or both jointly. The benefit of this research is that the general public, especially divorced couples, gain a better understanding of the legal protection for children involved in their parents' divorce situation. Also, through this writing, it is hoped to contribute to the improvement of the welfare and protection of children's rights in Indonesia.

RESEARCH METHODS

This research is descriptive analysis in nature, aiming to depict and analyze the legal consequences of divorce on child custody and the basis for judges' considerations in granting child custody to the father, mother, or both. The type of research used is normative juridical, where law is conceived as regulations and principles that guide human behavior^{8,9}. The research variables include independent variables, namely the legal consequences of divorce on child custody and the basis for judges' considerations, while the dependent variable is court decisions related to child custody. Secondary data serves as the primary source, consisting of primary legal materials (legislation and court decisions), secondary materials (legal books, journals, expert works, research reports), and tertiary materials (general dictionaries, legal dictionaries, legal encyclopedias)^{10,11}. Data collection is carried out through document and literature studies, analyzed descriptively qualitatively based on concepts, theories, regulations, doctrines, and legal principles.

⁸ Arfa, F. A., & Marpaung, W. (2018). *Metodologi Penelitian Hukum Islam: Edisi Revisi*. Prenada Media, p. 16.

⁹ Ali, Z. (2021). *Metode penelitian hukum*. Sinar Grafika, p. 12.

¹⁰ Gaffar, S, *et al.* (2021). The concept of procedural law regarding the implementation of collective agreements with legal certainty in termination of employment in Indonesia. *Heliyon*, 7(4), p. 3.

¹¹ DeFond, M., & Zhang, J. (2014). A review of archival auditing research. *Journal of Accounting and Economics*, 58(2-3), p. 319.

DISCUSSION

Based on the research on seven court decisions regarding the legal consequences of divorce on child custody, variations in the revocation and granting of child custody were found. In the rulings No. 230/Pdt.G/2021/PN Amp, No. 555/Pdt.G/2022/PN Sby, and No. 51/Pdt.G/2023/PN Gsk, custody fell to the biological mother and was revoked from the father. In the rulings No. 130/Pdt.G/2022/PN Unr and No. 1213/Pdt.G/2018/PN Dps, custody fell to the biological father and was revoked from the mother. Meanwhile, in the rulings No. 198/Pdt.G/2022/PN Amp and No. 303/Pdt.G/2023/PN Amp, custody was granted to both parents despite the marriage ending in divorce. The judge considered that parents who do not financially support their children or exhibit immoral behavior are not deserving of custody. Therefore, from the findings of the research on the seven rulings, we obtain the objectives of the raised issues, including:

The Legal Consequences of Divorce on the Revocation of Child Custody Rights.

Referring to the provisions of Law Number 16 of 2019 concerning Marriage, it is stated that:

- (1) One or both parents may have their authority over one or more children temporarily revoked at the request of the other parent, the child's relatives in the direct line upwards, or adult siblings, or authorized officials, with a court decision in cases where:
 - a. they grossly neglect their duties towards their child;
 - b. they behave very badly.
- (2) Even if the parents' authority is revoked, they are still obligated to provide maintenance for the child. Article 41 letter (a). of Law Number 16 of 2019 concerning Marriage states that the consequence of the dissolution of marriage due to divorce is: (a) Both the mother and father remain obligated to care for and educate their child or children, solely based on the child's interests; if there is a dispute regarding child custody, the court will make its decision. From the reference to Law Number 16 of 2019 concerning Marriage, it can also be seen in Article 30 of Law Number 23 of 2002 which was later amended by Law Number 35 of 2014 which was further amended by Law Number 17 of 2016 concerning Child Protection: (1) In the event that parents as referred to in Article 26, neglect their duties, supervision measures may be taken against them, or parental custody may be revoked. (2) Supervision measures against parents or revocation of parental custody as referred to in paragraph 1 shall be carried out through a court decision.

These provisions clearly show that the judge's considerations in deciding to revoke child custody rights after divorce do not sever the blood relationship between the child and the biological parent whose custody rights are revoked¹². It also does not absolve the parents of their obligation to provide for their child's livelihood as regulated in Law Number 16 of 2019 and Law Number 17 of 2016. Therefore, there is no reason for one parent to refuse visitation from the other parent to meet with the child.

In response to the main issue in this research, the research findings indicate that the legal consequences of divorce on child custody are that child custody rights can be revoked for two reasons, including:

- a. The revocation of child custody rights due to neglect of parental duties towards the child resulting from divorce.

The neglect of parental responsibilities towards the child due to divorce can result in the revocation of child custody rights. As mentioned in Article 30 of Law Number 17 of 2016 concerning Child Protection, where the essence of this article is: 1). If parents neglect their duties towards the child, supervision measures may be taken or parental custody may be revoked. 2). Supervision measures or revocation of parental custody are carried out through a court decision.

Considering that the court's decision regarding child custody does not sever the blood relationship between the child and their biological parent(s), nor does it absolve the parents of their financial obligations towards the child. This is consistent with Ruling Number: No.230/Pdt.G/2021/PN Amp., where custody was actually awarded to the plaintiff (mother) alone because the defendant failed to fulfill their economic responsibilities. This ruling illustrates the defendant's lack of responsibility as the head of the household to provide for the plaintiff and their children. Similarly, with Ruling No. 555/Pdt.G/2022/Pn.Sby., where the defendant failed to demonstrate wise behavior. The defendant consistently sought faults in the plaintiff without clear reasons, despite being unable to fulfill their duties as a husband and father in meeting household needs. Identical to the two aforementioned rulings, Ruling Number: 51/Pdt.G/2023/PN.Gsk. demonstrates the defendant's failure to provide for the children born from the lawful marriage with the plaintiff.

These three rulings illustrate that one party of the parents failed to fulfill their obligations in marital life. This reality is the reason for the judge's decision to

¹² Cibro, H, *et al* (2022). Perlindungan Hukum terhadap Anak Korban Terlantar Ditinjau dari Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak (Studi Kasus Dinas Pemberdayaan Perempuan dan Perlindungan Anak Provinsi Sumatera Utara). *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, 21(3), p. 390.

revoke child custody from the party that is irresponsible or negligent in fulfilling their obligations towards the child after the dissolution of marriage due to divorce. The judge considers the best interests of the child in deciding the revocation of custody, prioritizing an environment that can provide protection and meet the child's physical, emotional, and educational needs. Although custody is revoked, the blood relationship and financial obligations of the parents towards the child remain intact, as regulated in Article 32 of Law Number 17 of 2016. Therefore, revocation of custody is an effort to ensure that the child continues to receive adequate protection and care even after the parents' divorce.

b. The Impact of a Parent's Misconduct on the Revocation of Child Custody Rights after Divorce.

The legal consequences regarding child custody in divorce cases caused by one spouse being proven to have an affair result in the loss of custody rights for that parent in raising the child. If adultery is proven in court, the parent is deemed unfit to be a good parent to the child. As stipulated in Article 34 paragraph (2) of Law Number 16 of 2019 concerning Marriage. Child custody rights are also not excluded from being granted to the father if the mother's behavior is deemed improper or immoral. This is because she is considered unfit to be a mother, especially in raising the child, as the priority is the child's well-being. The research findings from Ruling No. 130/Pdt.G/2022/PN Unr. show that the defendant's (wife's) misconduct involved having an affair with a third party. She openly admitted to the plaintiff that out of the three children born to her in her marriage with the plaintiff, only the first child is the plaintiff's, while the second and third children are the result of her marriage with another man. Because of the defendant's statement, the plaintiff requested the judge to grant custody of the first child from the plaintiff and the defendant's marriage to the plaintiff. In contrast to the reasons for revoking custody in the above ruling. Ruling No. 1213/Pdt.G/2018/N.Dps, where custody is revoked from the plaintiff because the plaintiff intended to separate the child from the defendant (father) by arranging for the child to obtain a visa to leave the country.

The attitudes displayed by the defendant in Ruling No: 130/Pdt.G/2022/PN Unr and the plaintiff in the case/dispute with Ruling No: 1213/Pdt.G/2018/N.Dps, show improper and immoral behavior, which is not good for the child. Based on this, the judge decided to revoke their custody rights over the child.

Analyzing these five cases, the judge's consideration for revoking child custody is due to one parent behaving improperly by committing immoral acts and also for failing to provide financial support to the child. Providing financial support for the child by parents whose marriage has ended in divorce places the parents in the position of still fulfilling their obligation to provide for the child, even if their custody rights have been revoked.

Analysis of Judicial Considerations in Determining Child Custody: Assignment to the Mother, Father, or Both Parents.

When a divorce occurs, both parents may contest child custody. In such cases, the court's decision determines who is more entitled to custody of the child. Within a marriage, there are teachings regarding the rights and obligations between husband and wife. These rights and obligations arise as a result of the marriage. The husband has rights and duties towards his wife, and similarly, the wife has rights and duties towards her husband. One of these obligations pertains to the husband's role as the head of the family and the wife's role as the homemaker.

The assertion that the husband is the head of the family while the wife is the homemaker is outlined in Article 31 Paragraph (3) of Law Number 16 of 2019 concerning Marriage, which states: "The husband is the head of the family and the wife is the homemaker." This is further reinforced in Article 34, which stipulates that: "The husband must protect his wife and provide all the necessities of household life according to his capabilities, and the wife must manage the household affairs to the best of her ability." However, child custody will naturally be determined differently in each court session, depending on the evidence or facts presented and other supporting factors. Custody may be awarded to the father, the mother, or both parents, as illustrated in the following table.s.

Table 1. Overview of Judge's Decisions regarding Child Custody Determination

No.	Decision	Granting Child Custody to Father, Mother, and Both Parents.
1.	No.230/Pdt.G/2021/PN Amp	Awarded to the plaintiff as the biological mother because the defendant was irresponsible during the marriage. The defendant consistently caused disputes and was deemed unable to set a proper example for the child. Considering the defendant's behavior, the judge ruled that child custody should be granted to the plaintiff (mother).

	No. 555/Pdt.G/2022/Pn.Sby	Custody of the child was awarded to the plaintiff due to the defendant's unreasonable behavior, constantly finding fault with the plaintiff without clear reasons. The defendant failed to fulfill his duties as a husband. The plaintiff tried to understand and advised the defendant, but these efforts did not lead to any positive change; instead, the defendant's behavior became increasingly uncontrollable. Considering the defendant's conduct, the judge ruled that child custody should be granted to the plaintiff (mother).
	No.51/Pdt.G/2023/PN.Gsk	Custody was awarded to the plaintiff (mother). The marriage between the plaintiff and the defendant resulted in the birth of three children. Although the defendant was still given the opportunity to communicate with the children after the divorce, he ceased providing financial support to the plaintiff and the children. Even before the divorce, the plaintiff was the one who supported their children financially. Communication between the plaintiff and the defendant was limited to matters regarding the children's school documents. The Chief Judge of the Gresik District Court decided to grant custody to the plaintiff to facilitate the management of all documents related to the children's education. Additionally, the plaintiff was the one financially supporting the children, as the defendant was unemployed and dependent on his parents.
2.	130/Pdt.G/2022/PN Unr	The plaintiff, as the biological father, requested custody of the first child because only the first child was biologically his with the defendant. The second and third children were biologically fathered by someone else, as directly admitted by the defendant. The defendant was unable to set a good example for the plaintiff's and defendant's child. Given that the defendant herself admitted that the second and third children were from her marriage to another man, there was no other recourse but to file for divorce and request the judge to grant custody of the first child (currently under the defendant's care) to the plaintiff. The judge's decision to award custody to the plaintiff (father) was based on the view that the defendant's behavior did not provide a suitable example for the child born from the marriage between the plaintiff and defendant.
	No. 1213/Pdt.G/2018/N.Dps	Custody was awarded to the defendant (the biological father). The two children from the marriage between the plaintiff and the defendant have been under the plaintiff's care since the divorce ruling. In this case, the judge upheld the defendant's exception on the grounds of <i>*ne bis in idem*</i> . Although the defendant (the father) lacks the mental and

		financial capacity to care for the children, the judge decided that the defendant has greater rights to the children because the plaintiff intended to obtain visas and take the children abroad. Therefore, the judge deemed it necessary to prevent the children from leaving the country with the plaintiff (the mother).
3.	No. 198/Pdt.G/2022/Amp	Child custody is awarded to both parents (mother and father) jointly. Before the separation/divorce, the child lived with the defendant (father). The father does not have a steady income, resulting in an unstable family economy. The family's financial needs are met by the mother, as she is the one working. The father frequently borrows money and incurs debts, which leads to conflicts when addressed. This eventually resulted in the parents living separately. Due to living with the father, the child has an emotional bond with him, while the mother has the financial capability to support the child. Therefore, the judge decided that custody should be shared between both parents.
	No.303/Pdt.G/2023/PN Amp	Custody is granted jointly to both the father and mother to care for the children because both of the plaintiff's and defendant's children are not yet of legal age, and when they reach adulthood, they can determine their own choices. This decision was made by the judge because it was revealed during the trial that the defendant behaved very badly, but the plaintiff always treated the defendant kindly and regarded their children as legitimate offspring of both the plaintiff and defendant. Therefore, it was deemed appropriate for them to be jointly cared for.

Two additional court decisions were taken into account in discussing the second subject matter, only to strengthen the analysis of how judges may consider granting custody jointly to both the father and mother in addition to granting it to only one of the parents. Based on the table provided, it is evident that custody of the child can be awarded to the father, mother, or jointly to both parents. The three considerations for granting custody in the three aforementioned decisions will be elaborated upon in the following analysis

a. Consideration for custody to be granted to the mother.

Based on the point table, (1) the judge's consideration to grant custody to the mother stems from the father's inappropriate behavior, such as having extramarital affairs, abandoning his wife and children, being dishonest in his work, unwillingness to work, and spending time at home playing games and watching movies. The father also fails to provide financial support to the mother

and children, and is absent from the court proceedings, resulting in a default judgment granting custody to the mother. The children are under the age of 5 and 2, respectively.

In granting custody to the mother, the judge considers the mother as paramount for the children, as she gave birth to them and can provide for all their needs. This decision is based on the understanding that children still require the affection and attention of a mother psychologically, and they reside with and are financially supported by the mother. The decision also refers to Law Number 16 of 2019, which stipulates that custody of children under 12 years of age typically rests with the mother, unless the mother is deceased or involved in criminal activity.

The judge also considers the father's unwise behavior, constantly finding fault with the mother without clear reasons, failing to fulfill his obligations as a husband, and lacking in meaningful communication with the mother and children, especially concerning the children's school matters. Due to the severed communication, the mother is the one providing for the children. Furthermore, the father's misconduct in the marriage, such as physically and psychologically abusing the mother and children, and economic neglect, renders the household conditions untenable.

The judge's consideration indicates that the mother has a responsibility to fulfill the physical and mental needs of the children, provide a safe environment, protect and educate them, and introduce them to responsibilities. The mother's role in shaping the children's personalities also includes setting a good example, guiding, supporting, and fostering their personal maturity. Therefore, the judge decides to grant custody to the mother as an effort to protect and meet the children's needs in accordance with applicable law.

b. Consideration for custody to be granted to the father.

Custody is granted to the father due to the actions and/or behaviors exhibited by the mother, which include:

- 1) Infidelity within the marriage;
- 2) Publicly declaring that certain children are not offspring of the marriage but rather from another man;
- 3) Failure to attend court proceedings, resulting in a default judgment in favor of the father for custody;
- 4) Acceptance of the defendant's (father's) exception; resulting in *nebis in idem*.
- 5) The plaintiff (mother) intends to take the children abroad.
- 6) Inability to set a good example for the children.

The judge's decision to grant custody to the father is considered difficult. This difficulty arises from the inherent notion that custody typically rests with the mother. Considering the sensitivity and care mothers typically exhibit towards their children, Islamic law recognizes the *Hadlonah* right, which bestows custody upon the mother. Article 105 (a) of the Compilation of Islamic Law states that "the care of children who are not yet mature (under 12 years of age) is the right of their mother." Therefore, it should rightfully be granted by the religious court.

However, in some divorce cases, custody is awarded to the father. For instance, in the case with Decision Number: 130/Pdt.G/2022/PN Unr, custody was granted to the father due to the mother's misconduct. This includes openly declaring that the second and third children are not offspring of the marriage but from another man. Based on this, it is deemed inappropriate for the first child (born of the marriage between the plaintiff and the defendant) to be raised by such a mother. Therefore, the judge granted the plaintiff's request for custody of the first child.

A slightly different reason for granting custody to the father is evident in Decision No. 1213/Pdt.G/2018/N.Dps. In this decision, custody was awarded to the father due to *nebis in idem*. This is where the plaintiff's claim in this case, with the same parties, objects, and substantive matters, has previously been decided by the court and has legal force; whether the decision was in favor or against, it cannot be reviewed again, as it has become legally binding. Additionally, it is apparent in this case that the plaintiff intends to obtain visas to take the children from the marriage abroad.

For the best future of the children born of the marriage between the Plaintiff and the Defendant, in the aforementioned case, specifically for the child under the care of the Biological Father, it is appropriate. A mother should play a role and set a good example, rather than engage in detrimental behaviors that affect the child's upbringing. Care is crucial as children require nurturing and affection in their growth process. In their daily lives, children require guidance in eating, dressing, and personal hygiene. Therefore, it is necessary for someone with compassion, patience, and a desire for the child to grow up well to fulfill these basic needs. Custody is granted to the father due to the mother's failure to set a good example. The judge considers the child's survival and future, maintaining the child's interests, providing love, and ensuring proper education. Maintaining harmony and emotional relationship between the child and the father ¹³. The judge's

¹³Widanengsih Ajeng & Maryandi Yandi. (2022). Analisis Putusan Hakim Pengadilan Agama Mengenai Hak Asuh Anak kepada Ayah. *Jurnal Riset Hukum Keluarga Islam*, p. 59.

considerations in the aforementioned decisions serve as reasons to grant custody to the father. Considering the default judgment, or judgment in absentia, against the absent party, ideally, it is considered that they have no rights. As stated in Article 125 of the Indonesian Civil Code and in Islamic jurisprudence, someone summoned by the judge or court and fails to appear is considered unjust and has no rights.

c. Consideration for custody to be granted to both the father and mother

Child custody ideally should be granted to both the father and mother jointly because it is deemed appropriate. Every child born of a lawful marriage has the right to know, be nurtured, and raised by both parents. While parents may separate due to divorce, the dissolution of marriage should not negate the parental obligations towards the child. Therefore, even if one parent loses custody rights as a result of divorce (not necessarily jointly with the child), the obligation to financially support the child persists.

In some divorce cases, the judge may consider granting custody to both parents jointly for several reasons:

- 1) The child still greatly needs the love and care of both parents.
- 2) The child requires financial support for physical growth and development.
- 3) The child is not yet mature, and when they reach maturity, they can decide whether to stay with the father or mother.

As evidenced in the considerations made by the judge in the Decision of the District Court with Number: 198/Pdt.G/2022/Amp, custody was granted to both the father and mother jointly because before the divorce, the children resided with the defendant (father). The emotional bond between the children and the father was already strong. However, the father's lack of stable employment or income destabilized the family's economy. The father often incurred debts to meet the children's needs, which ultimately led to marital discord and divorce. However, post-divorce, the judge awarded custody to both the father and mother jointly. For the judge, meeting the child's emotional and physical needs is not just about the best psychological option for the child; it also involves economic necessities for physical growth. Therefore, custody was granted jointly to both parents based on these considerations. Similar to the aforementioned decision, Decision Number: No.303/Pdt.G/2023/PN Amp also granted custody to both the father and mother jointly because the children of the plaintiff and defendant were not yet mature and thus needed care from both parents jointly. Later, when they reach maturity, the children can decide for themselves.

During the trial, the defendant's behavior towards the plaintiff was documented. The defendant continued his habit of infidelity, leading to frequent quarrels between the plaintiff and the defendant. The plaintiff often faced insults and verbal abuse from the defendant. The defendant's family unreasonably harbored animosity towards the plaintiff and spread slanderous stories about her. Unable to endure this situation, the plaintiff chose to take the children and leave the defendant's home. The plaintiff no longer feels any love for the defendant due to his unchanged behavior. Despite this behavior, the plaintiff still offered joint custody to the defendant because the children were born of a lawful marriage desired by both the plaintiff and the defendant. Therefore, for the judge, the best consideration for the children's sake was to grant custody to both parents. The children of the plaintiff and defendant are not yet mature and still greatly need love and care from both parents. The judge's decision is solely for the benefit of the children.

In this court decision, there is no specific mechanism provided for parental authority over the child. Instead, it is left to the parents (both father and mother, despite their divorce) to reach an agreement on custody arrangements, considering what is best for the child.

Normatively, post-divorce child custody is reaffirmed in Law Number 19 of 2016 concerning Marriage, as stated in Article 41 letter a, which explains that the consequences of divorce include both the father and mother still having the obligation to care for and educate their children solely based on the children's interests. If there is a dispute regarding child custody, the court will make a decision. Responsibility for the expenses arising from the care and education is detailed in Article 41 letter b, where "the expenses are the responsibility of the father, and if the father cannot fulfill this responsibility, then the mother may be burdened with the responsibility to bear the expenses."

The judge's considerations in the aforementioned decision align with the provisions of Law Number 16 of 2019 concerning Marriage. This article indicates that child custody fundamentally serves the child's interests, which impact their physical, mental, intellectual, and religious growth. From the judge's considerations, it is clear and appropriate that custody is entrusted to both parents, whether father or mother. Referring to Law Number 17 of 2016 concerning Child Protection, after the dissolution of marriage due to divorce, it is hoped that the rights of the child can be protected and fulfilled. Child custody becomes the responsibility of both parents, whether they are still in marriage or not. The implementation of child custody is not limited to formal activities alone but also

involves education aimed at ensuring the child's moral and mental health. A child in the growth and development phase requires care, affection, and a conducive environment for their development^{14,15, 16}. The parents' responsibility to care for, protect, and finance their child persists post-divorce, even if the child lives solely with the father or mother. The rights of the child must still be fulfilled by both parents who have divorced, as stated in the Child Protection Law. Therefore, the judge's decision assigns responsibility to both parents and mandates them to act as good parents who always provide love and serve as motivators for their children, even after divorce.

CONCLUSION

Based on the analysis of seven legally binding court decisions, it is found that the legal consequences of divorce regarding the revocation of child custody can occur due to two main factors. Firstly, child custody may be revoked due to negligence in fulfilling parental obligations towards the child arising from the divorce. Secondly, child custody may be revoked due to the reprehensible behavior of one of the divorced parents. Or The Impact of Parental Misconduct on the Revocation of Child Custody after Divorce. The judge's considerations in determining child custody can vary. Firstly, the judge may decide to grant custody to the father in situations where the mother engages in misconduct, abandons her husband and children, or fails to appear in court, resulting in a default judgment in favor of the father. Secondly, the judge may decide to grant custody to the mother if the father exhibits misconduct, such as having extramarital affairs, abandoning his wife and children, or failing to appear in court, resulting in a default judgment in favor of the mother. Thirdly, the judge may also consider granting custody to both parents if the child still greatly needs the affection of both parents or if the child is not yet mature, and upon reaching maturity, is expected to be able to choose and decide for themselves.

A recommendation that can be drawn from this research is that court decisions regarding child custody after divorce should prioritize the best interests of the child. This is based on an evaluation of the behavior of both parties, the emotional needs of the child, and the child's ability to make decisions in the future. Therefore, it is important for

¹⁴Handayani, I Gusti A. K. Rachmi. (2013). Urgensi Perlindungan Anak di Indonesia (*Kajian Perspektif Hukum*). *Bestuur* 2: pp. 513-514.

¹⁵Davies, Douglas. (2010). *Child development: A practitioner's guide*. Guilford Press, p. 9.

¹⁶Putri, *et al.* (2021). Perlindungan Hukum Terhadap Anak Berkonflik dengan Hukum dalam Sistem Peradilan Pidana Anak: Studi Pada Lembaga Penyelenggaraan Kesejahteraan Sosial Yayasan Pendidikan Islam I'anatush-Shibyan. *Jurnal Poros Hukum Padjadjaran*, 3(1), p. 119.

both parties to pay attention to their behavior and obligations towards the child and strive to maintain the child's well-being throughout the divorce process.

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