

IMPLEMENTATION OF INDONESIAN ISLAMIC FAMILY LAW TO GUARANTEE CHILDREN'S RIGHTS

Khoiruddin Nasution*; **Syamruddin Nasution****

* State Islamic University (UIN) Sunan Kalijaga, Yogyakarta; ** State Islamic University (UIN) Sultan Syarif Kasim, Pekanbaru

email: kboiruddin@uin-suka.ac.id

Abstract

This paper aims to discuss and observe the legal practice of child protection, particularly, custody and the legal attitude in Muslim society and of the parents, specifically in Indonesia. Deploying a socio-legal approach, it is clear that theoretically, through a number of laws and regulations, the state has provided legal protection to children in terms of custody, as well as from violence. In practice, the legal rights to custody are hardly obtained by children in either legal decisions or executorial steps. The paper argues that the failure of this legal protection is due to the problem of case settlement in the Islamic (religious) court, which tends to be more administrative than judiciary, and that theoretically to provide justice, the work of judges must not only be certain, but also judicial. This paper also analyses the reasons why judges in Religious Courts tend to be more oriented toward administrative issues than judiciary ones. One reason is that the atmosphere of the Religious Courts (PA) now supports administrative decisions more than judicial ones.

[Artikel ini membahas dan mengamati praktik hukum perlindungan anak khususnya penjaagaan dan perilaku hukum pada orang tua dan masyarakat muslim di Indonesia. Terlepas dari pendekatan sosiologi hukum, secara teoritis negara memberikan perlindungan hukum pada anak dalam kerangka penjaagaan dari kekerasan melalui sejumlah hukum dan peraturan. Dalam praktiknya, hak penjaagaan sulit didapatkan oleh anak baik dalam bentuk

putusan atau eksekusinya. Artikel ini menjelaskan bahwa kegagalan tersebut terkait dengan penyelesaian kasus di pengadilan agama, yang cenderung administratif daripada substantif, meski secara teoritis tetap mendorong keadilan, dan kerja hakim bukan hanya memberikan kepastian hukum tetapi juga kemanfaatan. Artikel ini juga membahas alasan putusan hakim pengadilan agama cenderung berorientasi administratif daripada substantif. Salah satu alasannya adalah atmosfer pengadilan agama yang lebih mendukung putusan administratif.]

Keywords: Indonesian Islamic Family Law, Children's Rights, Judges, Islamic Court.

A. Introduction

Guaranteeing the rights of children and protecting them from violence are the focus of this research because guaranteeing the rights of children and wives or ex-wives gave rise to various laws and regulations in the field of Indonesian Islamic Family Law. Briefly, contemporary Islamic Family Law reforms in Muslim countries, including Indonesia, aim to guarantee the rights of wives, ex-wives, and children.¹

The implementation of laws and regulations guaranteeing the rights of children and protecting them from violence has become the focus of research, since the related regulations and/or programs were

¹ Mark E. Cammack, Helen Donova, and Tim B. Heaton, "Islamic Divorce Law and Practice in Indonesia", in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, ed. by R. Michael Feener and Mark E. Cammack (Cambridge, Mass: Harvard Law School, 2007), p. 99. In this paper there are three purposes for the birth of the Indonesian Marriage Law, namely 1. To reduce the divorce rate, 2. To reduce polygamy, and 3. To reduce early marriage, because divorce, polygamy, and child marriage give rise to social problems. The victims of these practices are wives, ex-wives, and children; Khoiruddin Nasution, *Status Wanita di Asia Tenggara: Studi terhadap Perundang-Undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia* (Jakarta: INIS, 2002), p. 4. The second writing states that there are also three objectives, but somewhat different, namely; 1. Legal unification, 2. Elevating the status of women, and 3. Adjusting Islamic family law for the changing times. The objectives mentioned in the second article are more general and applicable throughout the Muslim world in reforming the Family Law. Promoting the status of women aims to guarantee the rights of the wife, ex-wife, and children, because the ex-wife and children, in general, must be victims of arbitrary divorce and polygamy.

at most 67 years old, specifically when counting from the birth of BP4, the Agency for Counseling, Fostering, and Perpetuation of Marriage (Badan Penasihat Pembinaan dan Pelestarian Perkawinan) in 1954,² 47 years when counting from the birth of the Marriage Law in 1974, 22 years when counting from the birth of the Development of a Happy Family Program (Pengembangan Keluarga Sakinah) in 1999,³ 19 years old from the birth of the Child Protection Act in 2002, around 8-12 years old if calculated from the start of marriage course businesses in 2009 and 2013,⁴ and 5 years if calculated from the start of Marriage Guidance for Bride and Groom.⁵

Guaranteeing the rights of children and protecting them from violence has been written in various laws and regulations, both substantive and procedural law, but the practice is not as good as the theory. Various views emerged from judges on why guaranteeing children's rights and protection from violence still encountered various problems in implementation.

In line with the facts of settlements involving the guaranteed legal rights of children and protecting them from violence, the resolution of divorce cases in the Indonesian Religious Court is also more administrative

² BP4 (Badan Penasihat Pembinaan dan Pelestarian Perkawinan; Marriage Construction and Preservation Advisory Board) was formally established on January 3, 1961 in Jakarta, based on Decree of the Minister of Religious Affairs No.85 of 1961 which establishes the management of BP4. Tim BP4, *BP4: Pertumbuhan dan Perkembangan* (Jakarta: Badan Penasehat Perkawinan, Perselisihan dan Perceraian (BP4), 1977), p. 25.

³ Pembinaan Gerakan Keluarga Sakinah was formally established in 1999, based on Decree of the Minister of Religious Affairs of the Republic of Indonesia No. 3 of 1999 on the Fostering a Happy Family Movement (Pembinaan Gerakan Keluarga Sakinah).

⁴ Program Kursus Perkawinan was formally established in 2009 and based on Regulation of the Director General of Islamic Guidance No. DJ.II/491 of 2009 on the Bridal Course. This regulation was then amended by Regulation of the Director General of the Islamic Community Guidance No.: DJ.II/542 in 2013, on Guidelines for Implementation of Pre-Marriage Course.

⁵ Bimbingan Perkawinan Bagi Calon Pengantin was formally established in 2017, based on Decree of the Director General of Islamic Community Guidance Number 373 of 2017 on Technical Guidance for Marriage Guidance for Prospective Brides (Keputusan Direktur Jenderal Bimbingan Masyarakat Islam Nomor 373 Tahun 2017 Tentang Petunjuk Teknis Bimbingan Perkawinan Bagi Calon Pengantin).

than substantial because judges in Islamic Courts only follow the judicial procedures and do not often look for the substantial reasons for the divorce cases that are handled.⁶

A few studies have been undertaken in connection with implementing the rights and welfare of children (*badhanab*). One study shows that of 116 samples of PA *talak* divorce⁷ decisions in major cities in Indonesia from from 2014 until 2017, 114 decisions (98,276%) did not contain the issue of child custody, *badhanab*, in their rhetoric. There were only two decisions (1,724%), namely the Decision of the Central Jakarta PA No. 1106/Pdt.G/2014/PA.JP and PA Semarang Number 1501/Pdt.G/2017/PA.Smg, which involved *badhanab*. Likewise, in the same data from 2014 until 2017, of the 123 *Cerai* Divorce⁸ sample decisions, there were 122 decisions (99,187%) that did not contain child care issues or *badhanab* in their rulings. There was only one decision which contained the issue of *badhanab* (0,813%), namely the decision from PA Medan Number 0541/Pdt.G/2017/PA. Mdn, because the Defendant filed a reconsideration suit.⁹

Similar conclusions were found in the dissertation of A Choiri that judges had a passive attitude in guaranteeing children's rights. This conclusion was obtained when responding to the large number of divorces that do not include child welfare in judicial decisions related to the Principle of Justice, Utilization, and Legal Certainty, noting one of the recommendations, namely that the judge may deviate from the principle of Ultra Petita because judges are ex officio allowed to give decisions beyond those demanded in the petitum lawsuit in child custody cases.¹⁰

⁶ Cammack, Donova, and Heaton, "Islamic Divorce Law and Practice in Indonesia", p. 103.

⁷ Talak divorce is a divorce initiated by a husband.

⁸ Cerai divorce is a divorce initiated by a wife.

⁹ Abdul Ghofur, "Rekonstruksi Perlindungan Hukum terhadap Anak Akibat Perceraian (*badhanab*) pada Pengadilan Agama", PhD. Dissertation (Yogyakarta: UII, 2018).

¹⁰ A. Choiri, "Perlindungan Hukum terhadap Hak-Hak Anak Akibat Perceraian yang tidak Dicantumkan dalam Putusan Hakim dihubungkan dengan Asas Keadilan, Kepastian Hukum dan Kemanfaatan", PhD. Dissertation (Bandung: UNISBA, 2015).

The same result was shown by Ahmad Zainal Fanani.¹¹ His dissertation critically examined the provisions in child custody disputes contained in Articles 41 and 45 of Law No. 1 of 1974 on Marriage, and Articles 105 and 156 in the Compilation of Islamic Law (KHI).

The paper discusses and analyses the implementation of Indonesian Islamic Family Law concerning the rights of children and protecting them from violence. The research is based on data gathered from interviews with 13 judges, 2 clerks, 1 lawyer, and on analyzing decisions of the Religious Court.¹² Secondary sources are all laws and regulations that contain rules for guaranteeing children's rights, as well as a number of articles that discuss guaranteeing children's rights and protecting them from violence.

Data collection methods included interviews, observations, and documentation. The sources and methods of data collection involved a triangulation of data sources and data collection methods, which were carried out interactively.

Before describing the main subject, it is important to briefly explain the regulations focused on child protection that guarantee their rights. The systematic writing in the next section, after the introduction, includes a brief description of regulations guaranteeing children's rights in various laws and regulations, in both substantive and procedural law. Finally, the research ends with notes and conclusions.

¹¹ Ahmad Zainal Fanani, "Sengketa Hak Asuh Anak dalam Hukum Keluarga Islam di Indonesia Perspektif Keadilan Gender", Ph.D. Dissertation (Surabaya: Universitas 17 Agustus, 2014).

¹² The judges referred to are: 1. Chair of the High Islamic Court (PTA) Bengkulu, 2. Vice-Chair of PTA Lampung, 3. Judge of PTA Yogyakarta, 4. Chair of the Religious Court (PA) 1A Pemasang, Central Java, 5. Chair of PA 1A Banyuwangi East Java, 6. Chair of PA 1A Bengkulu, 7. Judge of PA 1A Surabaya East Java, 8. Judges of PA 1A Gresik East Java, 9. Judges of PA 1A Pekanbaru, 10. Judge of PA 1A Sleman Yogyakarta, 11. Chair of PA 1B Dumai RIAU, 12. Chair of PA 1B Sungguminasa (Gowa) South Sulawesi, and 13. Judges of PA 1A Jember East Java. The clerks referred to are 1. Clerk of PA 1A Pekanbaru (Yasir Nasution), 2. Clerk of PA 1A Tangerang, (Kumala Sari, SH., MH, Young Registrar of Laws), and a lawyer from Pekalongan.

B. Protection of Children's Rights in Indonesian Islamic Family Law

Discussions about guaranteeing children's rights and guaranteeing that children are protected from violence can be explained in substantive and procedural law. The following is an explanation of these two aspects, starting from the aspect of legal law.

The rights of children and protecting them from violence can be found in two basic terms in Indonesian Law; 'maintenance and education of children' on the one hand and 'Child Protection' on the other. The term 'maintenance and education of children' is found in Marriage Law No. 1 of 1974 on Marriage,¹³ 'maintenance of the child' in the Compilation of Islamic Law (KHI), together with the term *badhanab* (maintenance) in Islamic Family Law (fiqh). In KHI, Maintenance, or *badhanab*, is defined by the activities of caring, nurturing, and educating children until they become adults or able to stand alone. Thus, in the KHI there are three key words in the maintenance of children, namely: 1. Parenting; 2. raising/nurturing children; 3. educating children.

The term Child Protection is found in Child Protection Law No. 23 of 2002 on Child Protection, which was amended by Law No. 35 of 2014 on Amendments to the Law No. 23 of 2002 on Child Protection. The term Child Protection included in Section I: General Provisions, Article 1, paragraph (2), "Child Protection includes activities to ensure and protect the child and their rights in order to live, grow, develop, and optimally participate in accordance with the value and dignity of humanity, as well as protection from violence and discrimination".

Therefore, key words from this definition are live, grow, develop and participate, and protection from violence and discrimination. The term 'Child Protection' in the Child Protection Law is roughly similar to 'maintenance and education of the child' in Indonesian Islamic Family Law. Theoretically, a child is protected and has guaranteed rights in Indonesian Marriage Legislation. Even in the products of Islamic legal thought, including any others non-codified, such as *fiqh*, *fatwa*, and *tafsir* (interpretation), the child also gets protection and guaranteed rights, but not so in reality. Many children are denied rights to life, both with an intact family (father and mother together), and more so in families

¹³ Law No. 1 of 1974 on Marriage, Articles 41 and 45.

whose parents are separated or divorced. This is covered under Law No. 1 of 1974 on Marriage (called the Marriage Law [Undang-Undang Perkawinan]), as the first law which contains materials of marriage, as well as provides a guarantee of the rights and protection of children. This is also found in the Compilation of Islamic Law (KHI).

The law established by the government for the same purpose, namely to provide protection and guarantee custody of children, is law No. 23 of 2002 on Child Protection. This law was amended by Law No. 35 of 2014 on Amendments to the Law No. 23 of 2002 on Child Protection. On Wednesday, May 25, 2016, President Joko Widodo issued and signed the Government Regulation in Lieu of Law (Perppu) No. 1 of 2016 as second Amendments to the Law No. 23 of 2002 on Child Protection.

The next attempt to protect children was the second commission discussions of the Supreme Court in the field of Religious Courts. In the month of October 2010 at the National Meeting in Balikpapan East Kalimantan, it was stated that judges in Religious Courts (PA) must pay attention to the provisions of Law No. 23 of 2004 on the Elimination of Domestic Violence and Law No. 23 of 2002 on Child Protection in handing down decisions related to marriage disputes.¹⁴ Thus, based on the results of the National Workshop on the side guide to Law No. 1 of 1974 and the Islamic Law Compilation (KHI), judges must consider Law No. 23 of 2004 on the Elimination of Domestic Violence (domestic violence) and Law No. 23 of 2002 on Child Protection in their decisions. It is thus no exaggeration to state how seriously the Indonesian State seeks to provide protection and guarantee the rights of children to care and nurturing.

A number of clauses in Indonesia Islamic Marriage have provided protection and guarantee of the rights of child maintenance. Various

¹⁴ Direktorat Jenderal Badan Peradilan Agama, *Buku II: Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama*, Revision edition (Jakarta: Mahkamah Agung R.I, 2011), p. 55. This entered Law No. 23 of 2004 on the Elimination of Domestic Violence (KDRT) and Law No. 23 of 2002 on Child Protection, as PA Material Law. Originally, Law No. 23 of 2004 on Domestic Violence only applies in criminal cases, while Law No. 23 of 2002 on Child Protection only applies in the District Court (PN). The enactment of these two laws in PA is a new approach to guarantee the rights of children and wives or ex-wives, as well as to protect them from acts of violence. This approach is called an Interdisciplinary Approach.

articles are briefly described below.

Firstly, the protection and guarantee for maintenance of the child mentioned in Law No. 1 of 1974 on Marriage, Article 41, states that in the event of divorce, either the mother or the father is still obliged to maintain and educate their children, and that the father is responsible for all maintenance costs, including the necessary education of children. Therefore, divorce should not be the reason for neglecting the maintenance of the child. However, in order to provide guarantees and protect the rights of child maintenance as in Article 45 of Law No. 1 of 1974, both parents are obliged to maintain and educate their children, to the best of their abilities. Maintenance and education of children is a right of the child that is to be fulfilled (liabilities) by the parents. Second, the Compilation of Islamic Law (KHI), also mentioned what is stated in Law No. 1 of 1974. KHI defined what was meant by the maintenance of the child in the General Provisions, as mentioned in the introduction. The maintenance period is mentioned in Chapter XIV (Maintenance Child Article 98), namely 21 years old, at which age it is believed the child is able to stand alone.

As for who has the right to maintain and who is responsible for the cost of child care, Article 105 mandates that (1) the mother is more entitled to maintain when the child has not matured (*mumayyiz*) or is not yet 12 years old, and (2) the father who is responsible for maintenance costs for the child.

Later, Article 149 affirmed that when a marriage breaks up because of divorce, the ex-husband (the father) must provide maintenance costs for the children who have not attained the age of 21 years. This is confirmed in Article 156 that all maintenance costs and living expenses for the children are the responsibility of the father.

As for the review of procedural law, it is contained in at least in two articles of Law No. 7 of 1989 regarding Religious Courts. First, the article that discusses a divorce case initiated by the husband, namely Article 66 article (5). When the divorce is initiated by the husband, where the mastery of children and children living can be submitted together with the petition for divorce that is pronounced after the pledge.¹⁵ Second,

¹⁵ Law No. 7 of 1989 on Religious Courts, chapter 66 article 5, "Application for mastery over the child, a living child, a living wife, and jointly owned property by

the article discusses when the wife initiates divorce, namely Article 78 and Article 86. Article 78 guarantees the maintenance and education of children in a contested divorce initiated by the wife and it may also be submitted together with the petition for divorce. The same substance is also mentioned in Article 86 paragraph (1) of Law No. 7 1989.

In addition, there are still two rights that judges possess that can be used to guarantee the right to care for children and protect them from acts of violence, namely *ex officio* rights¹⁶ and the rights granted in Article 119 of the HIR (Herzien Inlandsch Reglement).¹⁷ *Ex officio* rights, according to one judge, cannot be used because the procedural law does not support it, even adding that it is impossible to use. While according to other judges, *ex officio* rights are only limited to the rights of *iddah* and *mut'ah* of the wife, but not to custody (*hadhanah*). In addition, Article 119 of the HIR can be used to submit *hadhanah* claims. This has been a way out of *ex officio* rights revocation since 2015 with the issuance of Supreme Court Circular (SEMA) No. 03 of 2015 on the Imposition of the 2015 Supreme Court Chamber Plenary Meeting Results as a Guideline for the Implementation of Duties for the Court. The results of the Plenary Meeting Letter C, Number 10 stated, "Determination of the right of *hadhanah*, as long as it is not submitted in a lawsuit / petition, the judge may not determine *ex officio* the custodial parent of the child".

The results of the 2015 meeting were strengthened by Supreme Court Circular No. 03 of 2018 on the Imposition of the 2018 Supreme Court Chamber Meeting Plenary Meeting Results as Guidelines for Implementing Tasks for the Court, Letter A, No. 9. The decision of the Ultra Petita states, "Sema Requirement No. 03 of 2015 Letter C Number 10 is perfected so that it reads as follows: Determination of the right of *hadhanah*, as long as it is not submitted in a lawsuit / petition, the judge

husband and wife may be filed together with the petition for divorce or *talaq* pronounced after the pledge".

¹⁶ *Ex officio* rights of judges are rights that are held by judges because of their positions. Judges can use these rights maximally to create a sense of justice.

¹⁷ Chapter 119 of HIR or Chapter 143 of RBg: The head of the court has the authority to provide legal advice and assistance to the plaintiff or his representative or their attorney in filing a lawsuit. So the provisions in Article 119 of HIR or Chapter 143 of RBg puts the role of the judge active. HIR is procedural law in civil and criminal proceedings.

may not determine *ex officio* the caregiver of the child. Determination of *hadhanah* and *dwangsom* without claims includes *Ultra Petita*.”

In summary, the material for guaranteeing the rights of children and protecting them from violence is written in 1. Law No. 1 of 1974 on Marriage; 2. Compilation of Islamic Law (KHI); 3. Law No. 23 of 2002 on Child Protection, which was amended by Law No. 34 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection. In procedural law, guarantees of children's rights are contained in 1. Law No. 7 of 1989 on the Religious Courts, which was amended by Law No. 50 of 2009 on the Second Amendment to Law No. 7 of 1989 on the Religious Courts, Articles 66 (5) and Articles 78 and 86; 2. *Ex officio* rights, and 3. HIR Article 119.

The contents of the articles mentioned above that are based on various regulations make it is clear that in theory, a child should get maintenance protection and warranty rights.

C. Children's Rights in Custody Cases: Societal and Litigants' Attitudes

1. Family Law in Practice: General Overview from Relevant Works

Indonesian Islamic Family Law, according to a number of studies, is viewed in a positive light. This means that the enactment of Indonesian Islamic Family Law can achieve its goal, namely reducing the number of divorces, polygamy, and early marriage. Conversely in reality, many children are denied the implementation of child protection and guarantee rules; (1) children who don't get the right care, (2) children who don't get maintenance rights, or (3) children who don't get educational rights.

A brief explanation of the results of the study follows below, which begins with an explanation of the implementation of Indonesian Muslim Family Laws. Katz wrote in 1978 that the Indonesian Marriage Law was able to reduce the divorce rate very dramatically, about 70%, after five years of its enactment,¹⁸ consistent with the conclusions recorded by Gavin W. Jones and friends as a result of field research in the

¹⁸ June S. Katz and Ronald S. Katz, "Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited", *The American Journal of Comparative Law*, vol. 26, no. 2 (1978), p. 310.

Indramayu area, West Java. The main factors for the decline in divorce rates, according to this study are: (1) an increase in marital age; and (2) the freedom of the couple to choose their partner, in the sense of the increasing disappearance of forced marriage.¹⁹

The same conclusion was found in the study of Mack Cammack and friends, albeit in consideration of other factors with continued influence, that the existence of Law No. 1 of 1974 contributed to the decline in divorce rates in Indonesia.²⁰ The basis for Cammack's conclusions is as follows: (1) the number of divorces recorded in the records of the Religious Courts concluded by Gavin Jones;²¹ (2) national statistics writing 70% of the declining divorce rates were enacted by Law No. 1 of 1974; (3) the results of research in West Java, conducted by Asari and Djurtika, carried out in 1996, which was after the implementation of Law No. 1 of 1974, found that the divorce rate dropped dramatically (this fact is considered the most accurate); and (4) it is commonly assumed that the application of marriage law will reduce divorce rates.²²

Similar was stated by Simon Butt regarding the practice of polygamy, although not mentioning numbers. According to Butt, with the enactment of the Indonesian Marriage Law No. 1 of 1974, the number of polygamous marriages in Indonesia declined.²³

The research results of Moh. Zahid note²⁴ that although this study mentions a number of weaknesses, in some cases the Indonesian

¹⁹ Gavin W. Jones, Yahya Asari, and Tuti Djuartika, "Divorce in West Java", *Journal of Comparative Family Studies*, vol. 25, no. 3 (1994), p. 414.

²⁰ Mark Cammack, Lawrence A. Young, and Tim B. Heaton, "An Empirical Assessment of Divorce Law in Indonesia", *Studia Islamika*, vol. 4, no. 4 (1997), p. 102.

²¹ Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (New York: Oxford University Press, 1994).

²² Cammack, Young, and Heaton, "An Empirical Assessment of Divorce Law in Indonesia", p. 102.

²³ Simon Butt, *Polygamy and Mixed Marriage in Indonesia: Islam and the Marriage Law in the Courts*, SSRN Scholarly Paper, no. ID 1401135 (Rochester, NY: Social Science Research Network, 2009), pp. 131–2.

²⁴ Moh Zahid, "Dua Dekade UU Perkawinan", *Dialog: Jurnal Penelitian dan Kajian Keagamaan*, vol. 18 (1994), pp. 33–40. The weaknesses referred to in this paper are: (1) the absence of rules regarding mixed marriages, and (2) the lack of clarity on penalties for violators.

Marriage Law can achieve its original goals, namely: (1) increasing the age of marriage and reducing young marriages, (2) reducing arbitrary polygamous marriages, (3) reducing the number of divorces, and (4) seeking balance between husband and wife. There is one drawback from the data sources they use. In general, the researchers used official data from the Religious Courts and Statistical Data Centers, however, the cases that occur in the community are not all recorded by the official institution. This doubt is supported by the results of other studies, for example the research results from Julia I. Suryakusuma with the enactment of Government Regulations (Peraturan Pemerintah [PP]) No. 10 of 1983 on Marriage and Divorce Licenses for Civil Servants. The results of this study indicate that on the surface it is true that the number of polygamous marriages and divorce cases has decreased among civil servants, but at the same time, the number of non-recorded marriages (sirri marriages), infidelity, and mistresses increased.²⁵

However, a number of respondents in this study stated that, despite a number of weaknesses and negative consequences of its implementation, PP No. 10 of 1983 remains important to limit polygamy and irresponsible divorces of civil servants.²⁶

Other evidence that shows the weakness of using official data from the Religious Courts and Statistics Data Centers for research is in the results of research conducted in several villages in Gunung Kidul District, one of the remote districts in Yogyakarta. The study concluded that the majority of people living in the study area did not go to the Religious Courts to resolve marital problems, including polygamy and divorce. For them the affairs of the judiciary instead gave birth to a number of problems.²⁷ For the majority of villagers, the judicial institution is seen as a fairly spooky institution, there it should be avoided as much as possible.

Regarding the public's impression of this judicial institution, Hildred Geertz, who conducted research in a quite remote village in

²⁵ Julia I. Suryakusuma, "Seksualitas dalam Pengaturan Negara", *Tempo*, vol. 7, no. XX (1991), p. 77.

²⁶ *Ibid.*, p. 82.

²⁷ Abdurrahman and et al., *Beberapa Pola Perkawinan di Kabupaten Gunung Kidul Daerah Istimewa Yogyakarta: Kasus Perkawinan di Kecamatan Rongkop* (Yogyakarta: LPM IAIN Sunan Kalijaga, 1981), p. 33.

East Java, had the same conclusion as Abdurrahman; that this judicial institution must be avoided as much as possible. The reason is different for the people of Gunung Kidul who see the judiciary as an institution that is full of problems, for the 'Modjokuto' community, the Hildred Geertz research area, the judiciary is considered a scary institution to be feared.²⁸ In contrast, Nakamura has a different conclusion with the two studies. For the people of Yogyakarta (Kodya), where Nakamura researches, the Religious Courts are commonly used by the community to solve marital problems.²⁹

From the aforementioned studies it can be concluded that the factor of the city or village area, and the level of education of the parties in the litigation, is quite decisive in that impression. For the rural community and for those who lack education, the judiciary might indeed be considered a feared institution, while for the urban community such an impression does not exist. This conclusion is supported by the results of research in Egypt and one of the villages in South Tapanuli, North Sumatra, where the community is still very reluctant to connect with justice institutions.

2. Legal Knowledge and Attitudes of Litigants: Do They Care about Their Rights to Custody and Financial Support and Why?

In the research of Arlizza Muzayyanah on the causes of fathers not paying for their children and why the wives/ mothers did not demand it, it was concluded that there were wives who hoped, but did not know how to force, their ex-husbands to fulfill their obligation to their children. There are wives who still harbor resentment, such that they don't want to see their ex-husbands again. One former wife feels financially able to meet the livelihood needs of the children, so she feels no need to demand.³⁰ There also those who are resigned to the situation. While the

²⁸ Hildred Geertz, *The Javanese Family: A Study of Kinship and Socialization* (New York: The Free Press of Glencoe, Inc, 1961).

²⁹ Hisako Nakamura, *Divorce in Java: A Study of the Dissolution of Marriage Among Javanese Muslims* (Yogyakarta: UGM Press, 1983); Hisako Nakamura, *Perceraian Orang Jawa*, trans. by H. Zaini Ahmad Noeh (Yogyakarta: UGM Press, 1991), p. 79.

³⁰ However, the wife who said this still added comments that even though it had been prosecuted and revoked by the court, in reality the ex-husband did not have to obey the decision to pay the children's livelihoods. It deserves to be interpreted that

reason the husband does not fulfill obligations is because he is less able. That is the conclusion of a study of 6 divorced women, 2 divorced men, and a PA judge in Bantul. The judge said the parties did not carry out the demands because of legal illiteracy.³¹

However, there are also wives who are still enthusiastic about demanding livelihood support for the children, although they are sure that the husband will not fulfill the obligation to pay. The wife is satisfied when the husband understands that the duties carried out by the wife are the husband's obligations.³²

Euis Nurlaelawati found two reasons why mothers lost the right to financial support for children. First, proceedings in court. Second, the execution of the decision.³³ In relation to the court process, the judges use the basis or reasons for decisions that are inconsistent and unclear. One reason used by a judge to relinquish the right to financial support for the children might be the same used by another judge to mandate financial support for the children. Therefore, the ability of the parties to negotiate with judges is more influential than the basis on which decisions are given. Therefore, patriarchal theology based on conventional *fiqh* is the cause.³⁴ In relation to the execution, it is difficult to do because they have to pay a lot of money or the persuasive power of the husband or father is greater.³⁵

Correspondingly, there is research on judicial decisions in the Religious Court of Riau Islands Province in responding to women's rights after divorce as contained in Article 149 of the KHI. The results of research used 198 decisions as samples. These showed that 62% established implementing women's rights after divorce, meanwhile as

the ex-wife still hopes for support, it's just too much of a winding struggle to get it.

³¹ Arlizza Muzayyanah, "Pelaksanaan Pemberian Nafkah Anak Pasca Perceraian (Studi Kasus Desa Banguntapan, Bantul, DIY)", Master Thesis (Yogyakarta: UIN Sunan Kalijaga, 2018).

³² judges in the Religious Court of Jember, interview (2 Jul 2019).

³³ Euis Nurlaelawati, "The Legal Fate of Indonesian Muslim Women in Court: Divorce and Child", in *Religion, Law and Intolerance in Indonesia*, ed. by Tim Lindsey and Helen Pausacker (London: Routledge, 2016), p. 359.

³⁴ *Ibid.*

³⁵ *Ibid.*, p. 363..

much as 38% did not apply.³⁶ As for the reason (consideration) judges do not apply these provisions, there are five, namely: (1) the wife (the defendant) has no known domicile, residence, (2) the wife did not attend the court hearing, (3) the wife was rated (*nushūz*) by the judge, (4) no demands by the wife, and (5) the husband is unable or has other reasons.

Relation to the mother/wife does not play a role in the sense of not attending the hearing process of divorce or not to enter into a suit in contested divorce. This is made possible due to a lack of understanding of the law. That's basically what causes the child to lose the right for livelihood maintenance.

Correspondingly, the father does not play a role in the sense of not fulfilling the obligation to pay child support. This is made possible because (1) lack of awareness of the responsibility, or (2) lack of financial ability to ensure the rights of child support. Therefore, protecting and guaranteeing the children's rights as provided in law do not run well because the law system does not run well.³⁷

Based on the facts mentioned above, there are four conclusions that can be noted. First, the text of the law provides an option for judges to be active or passive in handling child protection cases. Second, the active rights of judges granted by law in guaranteeing children's rights and protecting them from acts of violence are not used by judges. Judges prefer to be passive in dealing with the protection of children's rights. Third, judges are very textual in understanding and applying the law guaranteeing children's rights. Fourth, the wife or mother, who is generally the object of discrimination in guaranteeing children's rights, often does not actively participate in the trial. As a result, protecting children's rights is neglected. Fifth, the execution of decisions to guarantee children's rights and guarantee protection of children from violence is also very weak. Decisions are often not executed for various reasons.

Outside the trial, the possibility of a judge entering child support in a divorce case is during the mediation process. Mediation is carried out

³⁶ Imron Rosyadi, "Perlindungan Hak-Hak Perempuan Pasca Perceraian di Indonesia: Studi terhadap Putusan Pengadilan Agama Se-Provinsi Kepulauan Riau dalam Menerapkan Pasal 149 KHI", PhD. Dissertation (Yogyakarta: UIN Sunan Kalijaga, 2010).

³⁷ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), pp. 6, 15.

after the first trial, but at the first hearing, the judge usually only confirms the identities of the parties and does not yet discuss the demands, so that during the mediation, it is unknown what the prosecutor is demanding. This situation worsens even more when the mediator is not a judge, because the chance of including child support in a divorce case is even less.

To compare with other countries, we will consider the judge and the system that applies in Zanzibar. In resolving divorce issues, three terms are used, namely *talaq*, *khuluk*, and *fasakh*. *Talaq* (Repudiation) on the initiative of the husband, *khuluk* on the wife's initiative by paying replacement money, and *fasakh* on the judge's decision. Solving problems is not based merely on who submits the case to court, but is based on legal facts. Although, for example, if a lawsuit arises from the wife in the form of *khuluk*, the verdict is not automatically in the form of *khuluk*, but can be in the form of *fasakh* when it is proven that the husband is the source of the problem. A *fasakh* ruling means the wife does not need to pay replacement money.³⁸

Likewise in India, in order to understand the case in depth, the judge is not only limited to procedural law, but the case is substantially explored. For example, when proving a husband's apostasy, when that is the reason for divorce, the judge provides a dish made with pork and asks him to eat it. When the husband is not willing to eat, the judge decides he is not truly apostate. Apostasy is just an excuse to get a divorce.³⁹

In contrast, in Indonesia when a wife brings a divorce case to court, the verdict must be in the form of *khuluk*, even though it is proven that the wife complained to the court because of the husband's barbaric behavior that is already unbearable for her. This is the conclusion of Tutik Hamidah's research.⁴⁰

³⁸ Erin E. Stiles, "It is Your Right to Buy a Divorce': Judicial Khuluu in Zanzibar", *Islamic Law and Society*, vol. 26, nos. 1–2 (Brill, 2019), pp. 12–35.

³⁹ Yüksel Sezgin and Mirjam Künkler, "Regulation of 'Religion' and the 'Religious': The Politics of Judicialization and Bureaucratization in India and Indonesia", *Comparative Studies in Society and History*, vol. 56, no. 2 (2014), pp. 448–78.

⁴⁰ Tutik Hamidah, "Violations of Ta'lik Talak and Administrative Problems of 'Iddah: A Case Study in Batu District, Batu City, East Java", presented at the International Conference of The Association of Indonesian Islamic Family Law Lecturers International Conference of The Association of Indonesian Islamic Family

D. Judicial Attitudes on Child Custody Disputes: Problem of Judiciary System and Administration (bureaucracy)

1. *Custody in Practice: Children's Welfare*

In connection with the implementation of regulations guaranteeing children's rights to support (*hadhanah*), as referred to on pages 3 and 4 regarding *talak* and *cerai* divorce⁴¹ data from 2014 until 2017, an overwhelming majority does not include any decisions regarding child custody or maintenance.⁴²

Based on this, it can be concluded that judges do not use the various rights and articles available to them through established legislation to guarantee the rights of children and protect them from acts of violence. Such rights are *officio* for judges. The articles in question can be summarized in two parts. First, Article 66 (5) for *Talak* Divorce and Article 78 and Article 86 for *Cerai* Divorce, and Law No. 7 of 1989, which was amended by Law No. 50 of 2009. Second, the use of Article 119 HIR.

These articles can be a source to guarantee children's rights and protect them from violence, but these articles can also be a source for neglect, because they are optional, and in fact, judges often prefer a passive attitude by not exercising their rights. Based on this fact, Abdul Ghofur proposes an additional article (reconstruction), so that the judge only has one choice, which is to enter child support when there is a lawsuit or a request for divorce. Reconstruction of Article 66 paragraph (5) plus one more paragraph that reads "Specifically the request for child care and fulfillment of children's rights must be filed together with the application for divorce." Likewise the reconstruction of Article 86 paragraph (1) plus one more verse that reads "Specifics regarding child custody lawsuits and fulfillment of children's rights must be filed together with divorce claims." Based on this fact, it can also be an indication that judges are less active in comprehensively and thoroughly resolving problems. In legal language, judges pay less attention to the principle of justice and

Law Lecturers (ADHKI) (Bengkulu, 16 Jul 2019).

⁴¹ *Talak* divorce is a divorce initiated by a husband.

⁴² Ghofur, "Rekonstruksi Perlindungan Hukum terhadap Anak Akibat Perceraian (*hadhanah*) pada Pengadilan Agama".

complete problem solving (the principle of expediency). Judges are more concerned with the principle of legal certainty. Likewise judges do not use *ex officio* rights and do not heed article 119 of the HIR.

In line with the findings above, A Choiri concluded in his dissertation that the judges had a passive attitude in guaranteeing children's rights. This conclusion was obtained when responding to the large number of divorces that do not include the issue of a child in a judge's decision related to the Principle of Justice and the Utilization and Legal Certainty, noting one of the recommendations, specifically that the Judge may deviate from the principle of *Ultra Petita* examination. Judges are *ex officio* allowed to render decisions beyond those demanded in the *petitum* lawsuit in child custody cases.⁴³

The same result was shown by Ufie Ahdie in her research which focused on legal protection for the livelihoods of children after divorce in the competence of the Religious Courts. The focus of research is Law No. 1 of 1974 on Marriage. The result of Ufie's research is that the material to regulate legal protection for children must be able to secure people in their rights and obligations proportionately. In the context of children's livelihood support problems, it must be resolved comprehensively and with executive power,⁴⁴ as well as binding the contents of criminal sanctions as a last resort in the context of law enforcement for those in violation, solely in order to realize the principle of justice that is fast, simple, and low cost. This suggestion arises as a response to the judge's decision that does not completely solve the problem of child care.⁴⁵

A similar conclusion was found by Ahmad Zainal Fanani.⁴⁶ This dissertation critically examines the provisions on child custody disputes contained in Articles 41 and 45 of Law No. 1 of 1974 on Marriage, and Articles 105 and 156 Compilation of Islamic Law (KHI). The

⁴³ Choiri, "Perlindungan Hukum terhadap Hak-Hak Anak Akibat Perceraian Yang tidak Dicantumkan dalam Putusan Hakim Dihubungkan dengan Asas Keadilan, Kepastian Hukum dan Kemanfaatan".

⁴⁴ Executive power is the power that gives the authorities (state instruments) the authority to carry out requirements in legal decisions by force.

⁴⁵ Ufie Ahdie, "Perlindungan Hukum Untuk Anak Pascaperceraian di Pengadilan Agama", Ph.D. Dissertation (Malang: Brawijaya University, 2011).

⁴⁶ Fanani, "Sengketa Hak Asuh Anak dalam Hukum Keluarga Islam di Indonesia Perspektif Keadilan Gender".

legal provisions for child custody disputes are problematic from the perspective of gender justice. Automatically giving custodial rights to mothers based on sex is not based on the best interests of the children. To guarantee children's rights, Religious Court judges must be guided by five considerations. First, consideration of the legal interpretations of the provisions in the law related to child custody. Second, consideration of the contextualization of the provisions of child custody law. Third, the judge must prioritize the best interests of the child. Fourth, the judge must explore the child's parent's track record. Fifth, the judge must conduct a local examination.

2. *Debate on Procedural Issues*

There are three groups of judicial situations that reflect the answer to why judges do not actively include the protection of children's rights in divorce cases, either *talaq* divorce initiated by a husband or *cerai* divorce initiated by a wife.

Group one is comprised of judges who are of the opinion that they may only solve problems raised by plaintiffs or petitioners and they may not exceed beyond claims or petitions. In this case, the request for a *talaq* divorce or *cerai* divorce suit may not involve the protection of children's rights. This view is in accordance with the principles of procedural law, namely; 1. Case must not be interpreted, 2. If a case violates the law of the event, then the decision is null and void. 3. Decisions must not go beyond the scope of the lawsuit. In this case, including the protection of children's rights in a divorce suit or request for divorce means exceeding the claim (*Ultra Petita*).

Secondly, a group of judges who have principles that they should be active in considering the protection of children's rights in a divorce case, but these judges have never handled a case in court.

In contrast, group three consists of idealist judges who have the view that judges must be active, substantial, and comprehensive in handling problems, certainly the inclusion of protecting children's rights in a divorce case. These judges have also made *ex officio* rulings, but these judges were disappointed when they did not have the support of the leadership, as it became a problem for the leader. Likewise, these judges were disappointed because in reality, only a very few judges are

in this group. Eventually, the judges in this group entered the first group of judges.

- Judges May only Solve Problems Raised by Plaintiffs or Petitioners

The first judge of the first group, judges who choose according to the Procedural Law in handling cases guaranteeing children's rights, expressed; "In principle, judges in court are passive in relation to cases that are decided. Judges may not decide more than what the parties demand. Therefore, if the parties file for divorce, the judge can only decide upon the divorce case and may not discuss the protection of children's rights".

In addition, according to this judge, the parties do not include the protection of children's rights in the request or demand for divorce because usually, the child's hadhanah (custody) is the wife's right.

- Judges Who Have Principles that They Should be Active

A judge in the second group shared, "The opportunity for the court (judge) to guarantee the right of the child's hadhanah when the parties do not include it in the claim is to suggest to the parties at the beginning that a claim be included. In this way the judge does not have to decide beyond the demands".

Another sentiment of a judge in the second group expressed that "the judge should solve the problem substantially and thoroughly. It's just the fact now that there are many Supreme Court (MA) programs that make judges go crazy".

A third judge's expression in the second group shared, "Judges can include *hadhanah* in divorce cases, both those submitted by husband or wife. The way to include it is in the trial process based on an agreement of the judge during the hearing".

- Idealist Judges Who Have the View that Judges Must be Active

There are at least two opinions in this third group. The first judge from this group expressed the following;

The judges seem not to be encouraged to be idealistic, substantive. The demand to publish a decision in one day does not seem to encourage judges to be active, substantive, and comprehensive, because they are busy completing the obligation to publish quickly. I have used ex officio rights, but lately it so rare that it is almost never. Likewise with other judges in this court, almost no one uses it because based on experience, judges who use ex officio rights are even sued by accusations of siding with certain parties (the plaintiff), and it turns out the judge was accused

of being unjust, siding with the plaintiff. More than that, the act of using the right of *ex officio hadhanah* includes being labeled an undisciplined judge. Likewise, they have also used *ex officio* rights regarding husbands who have an established economic capacity, but are reluctant to take responsibility for the financial support of their children. These judges have also received negative responses from leaders, accused of excessively using *ex officio* rights.⁴⁷

The second judge expressed this opinion,

Judges must be active and substantial in handling matters, including the inclusion of children's *hadhanah* in divorce cases, but the reality on the ground is that almost no judge is. From the legal point of view of the event, it is almost impossible to include the *hadhanah* of a child in a divorce, either divorce stemming from a wife's lawsuit or at the request of a husband, because according to the law of the event, the steps in proceeding with the divorce settlement began with the first session examining the identity of the parties in the litigation and advocating for a peaceful mediation if the two parties are present. If the defendant is not present at the first summons, a recall will be made. If they are also not present at the third summons, a verdict is made (a decision without the presence of the defendant or respondent). When two parties are present at the second trial, the judge will read the suit. It is at this second trial that the judge has the opportunity to suggest that the parties include financial support for the child. The problem that arises when it is advisable to include the child's *hadhanah* in a lawsuit is the refusal of the parties to acquiesce, with the excuse that they did not submit or file such a claim. Even when using a lawyer, there will definitely be rejection called an *Ultra Petita*. In this condition, only certain judges will stand up and argue with the parties or their lawyers. In addition, I have handed down decisions against jurisprudence with complete reasons and arguments to show the truth and background of the decision. I was disappointed when the appeals court rejected the decision on the grounds of opposing jurisprudence. In my opinion, the reasons given by the appellate court should also be clear and strong legal arguments, not just dismissing the case as 'against jurisprudence'.

⁴⁷ For the record, the use of *ex officio* rights referred to in the judge's explanation was carried out before the results of Supreme Court Circular Letter 3 of 2015 concerning Enforcement of the Formulation of the Results of the 2015 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court.

As for the experience of the two court clerks, the facts resulted in no lawsuit or divorce request upon the initiation of an active judge entering the child's hadhanah.

A Pekalongan lawyer, who often helps litigants, states that judges resolve divorce issues according to the demands of the parties. This judge does not include guarantees for children's rights if the parties do not submit them.

Based on the procedural law above, there are three conditions that put the judge in a dilemma on one side and may also have the choice to handle cases in court on the other side. First, the demand in Article 119 of HIR which requires the judge to actively assist the plaintiff. Second, the procedural law contained in Law No. 7 of 1989 the Religious Court, where litigants are given the choice to include hadhanah or not, and in this context the judge plays a minimal role in reminding the parties about the possibility of including hadhanah in the divorce case under discussion. Third, the procedural law limits that judges may only decide based on demands made in the lawsuit and they may not make considerations beyond what is contained in the suit.

In line with that, the settlement process in a divorce case does not support active judges. As noted earlier, the steps for proceeding with divorce begin with the first session to examine the identity of the parties in the litigation and advocating for a peaceful mediation, if the two parties are present. If the defendant is absent from the first summons, a recall will be made. If they are also not present at the third summons, a verdict is made (the decision without the presence of the defendant or the respondent). When two parties are present at the second hearing, the judge will read the suit aloud. In the second trial, the judge has the opportunity to suggest that the parties include the livelihood support of the child. The problem that arises when it is suggested to include the hadhanah of the child in a lawsuit is the refusal of the parties on the grounds of not submitting it or it not being filed in the demand. Lawyers definitely appear to reject it and is called *Ultra Petita*. In these conditions, only certain idealistic judges stand up and argue with the parties or lawyers.

There is another opportunity, namely during the mediation process, but there are also obstacles. First, if the parties are not present during the mediation process. Second, when the mediator is no longer a judge,

but an independent non-judicial mediator, the mediator's role can hardly be controlled by the judge.

In summary, from the explanations there are no conditions that force judges to be in an active position or that they must solve the problem substantially and comprehensively. The existence of all these choices means that, in fact, the judge generally chooses a minimal task.

Seeing the facts above is based on recording four conclusions. First, the majority of judges chooses a minimal role in resolving cases. Second, judges involved in the settlement of cases in court is more administrative (procedural) than making a decision full of legal arguments and thoughtful considerations. Third, resolved cases never arise again and do not factor into consideration of legal objectives based on the background of the birth of the law or legislation. Fourth, the establishment of a minimalist judicial attitude, specifically more administrative than judicial method for settling cases, is a result of the dry understanding of judges on the history of the birth of law or related legislation.

This condition can certainly be systematically changed with a system that forces judges to do the maximum; substantial and comprehensive. The path taken to change it individually is to change the paradigm and mindsets of judges by explaining the history that gave rise to the law so they can understand the purpose of the law; institutionally creating conditions and situations that encourage judges to be substantial and comprehensive in resolving cases. With a good system, cooperation can be established between the parties involved; judges, mediators, and lawyers/advocates.

Thus, an atmosphere needs to be created that makes judges work and resolve cases more methodologically-judicially, pointedly resolving cases based on thoughtful arguments (why the law is so), not only mentioning legal material (what the law is).

E. Concluding Remarks

Based on the above descriptions, there are two main conclusions. Firstly, in theory there is a guarantee for the rights of children that protect them from violence, as written in a number of laws and regulations. In reality, that right cannot be obtained by a child, neither in court nor in execution. It is due to the settlement of cases in the Indonesian

Religious Court that is more administrative than judiciary. In fact, to get a just decision and be able to resolve the problem completely and comprehensively, decisions must not only be certain, but the judge's decision must be judiciary. Second, the main reason why judges make more administrative than judiciary decisions is because the atmosphere that runs in the Religious Courts (PA) now supports administrative decisions, while there is much less support for judicial decisions.

BIBLIOGRAPHY

- Abdurrahman and et al., *Beberapa Pola Perkawinan di Kabupaten Gunung Kidul Daerah Istimewa Yogyakarta: Kasus Perkawinan di Kecamatan Rongkop*, Yogyakarta: LPPM IAIN Sunan Kalijaga, 1981.
- Ahdie, Ufie, “Perlindungan Hukum Untuk Anak Pascaperceraian di Pengadilan Agama”, PhD. Dissertation, Malang: Brawijaya University, 2011.
- Butt, Simon, *Polygamy and Mixed Marriage in Indonesia: Islam and the Marriage Law in the Courts*, SSRN Scholarly Paper, no. ID 1401135, Rochester, NY: Social Science Research Network, 2009.
- Cammack, Mark E., Helen Donova, and Tim B. Heaton, “Islamic Divorce Law and Practice in Indonesia”, in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, ed. by R. Michael Feener and Mark E. Cammack, Cambridge, Mass: Harvard Law School, 2007.
- Cammack, Mark, Lawrence A. Young, and Tim B. Heaton, “An Empirical Assessment of Divorce Law in Indonesia”, *Studia Islamika*, vol. 4, no. 4, 1997 [<https://doi.org/10.15408/sdi.v4i4.766>].
- Choiri, A., “Perlindungan Hukum terhadap Hak-Hak Anak Akibat Perceraian yang tidak Dicantumkan dalam Putusan Hakim Dihubungkan dengan Asas Keadilan, Kepastian Hukum dan Kemanfaatan”, PhD. Dissertation, Bandung: UNISBA, 2015.
- Direktorat Jenderal Badan Peradilan Agama, *Buku II: Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama*, Revision edition, Jakarta: Mahkamah Agung R.I, 2011.
- Fanani, Ahmad Zainal, “Sengketa Hak Asuh Anak dalam Hukum Keluarga Islam di Indonesia Perspektif Keadilan Gender”, PhD. Dissertation, Surabaya: Universitas 17 Agustus, 2014.
- Friedman, Lawrence M., *The Legal System: A Social Science Perspective*, New York: Russell Sage Foundation, 1975.
- Geertz, Hildred, *The Javanese Family: A Study of Kinship and Socialization*, New York: The Free Press of Glencoe, Inc, 1961.
- Ghofur, Abdul, “Rekonstruksi Perlindungan Hukum terhadap Anak Akibat Perceraian (*badhanab*) pada Pengadilan Agama”, PhD.

Dissertation, Yogyakarta: UII, 2018.

- Hamidah, Tutik, “Violations of Ta’lik Talak and Administrative Problems of ’Iddah: A Case Study in Batu District, Batu City, East Java”, presented at the International Conference of The Association of Indonesian Islamic Family Law Lecturers International Conference of The Association of Indonesian Islamic Family Law Lecturers (ADHKI), Bengkulu, 16 Jul 2019.
- Jones, Gavin W., *Marriage and Divorce in Islamic South-East Asia*, New York: Oxford University Press, 1994.
- Jones, Gavin W., Yahya Asari, and Tuti Djuartika, “Divorce in West Java”, *Journal of Comparative Family Studies*, vol. 25, no. 3, 1994, pp. 395–416.
- Katz, June S. and Ronald S. Katz, “Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited”, *The American Journal of Comparative Law*, vol. 26, no. 2, 1978, pp. 309–20 [<https://doi.org/10.2307/839677>].
- Muzayyanah, Arlizza, “Pelaksanaan Pemberian Nafkah Anak Pasca Perceraian (Studi Kasus Desa Banguntapan, Bantul, DIY)”, Master Thesis, Yogyakarta: UIN Sunan Kalijaga, 2018.
- Nakamura, Hisako, *Divorce in Java: A Study of the Dissolution of Marriage Among Javanese Muslims*, Yogyakarta: UGM Press, 1983.
- , *Perceraian Orang Jawa*, trans. by H. Zaini Ahmad Noeh, Yogyakarta: UGM Press, 1991.
- Nasution, Khoiruddin, *Status Wanita di Asia Tenggara: Studi terhadap Perundang-Undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia*, Jakarta: INIS, 2002.
- Nurlaelawati, Euis, “The Legal Fate of Indonesian Muslim Women in Court: Divorce and Child”, in *Religion, Law and Intolerance in Indonesia*, ed. by Tim Lindsey and Helen Pausacker, London: Routledge, 2016.
- Rosyadi, Imron, “Perlindungan Hak-Hak Perempuan Pasca Perceraian di Indonesia: Studi terhadap Putusan Pengadilan Agama Se-Provinsi Kepulauan Riau dalam Menerapkan Pasal 149 KHI”, PhD. Dissertation, Yogyakarta: UIN Sunan Kalijaga, 2010.
- Sezgin, Yüksel and Mirjam Künkler, “Regulation of ‘Religion’ and the ‘Religious’: The Politics of Judicialization and Bureaucratization

in India and Indonesia”, *Comparative Studies in Society and History*, vol. 56, no. 2, 2014, pp. 448–78 [<https://doi.org/10.1017/S0010417514000103>].

Stiles, Erin E., “‘It is Your Right to Buy a Divorce’: Judicial Khuluu in Zanzibar”, *Islamic Law and Society*, vol. 26, nos. 1–2, Brill, 2019, pp. 12–35 [<https://doi.org/10.1163/15685195-00254A06>].

Suryakusuma, Julia I., “Seksualitas dalam Pengaturan Negara”, *Tempo*, vol. 7, no. XX, 1991.

Tim BP4, *BP4: Pertumbuhan dan Perkembangan*, Jakarta: Badan Penasehat Perkawinan, Perselisihan dan Perceraian (BP4), 1977.

Zahid, Moh, “Dua Dekade UU Perkawinan”, *Dialog: Jurnal Penelitian dan Kajian Keagamaan*, vol. 18, 1994.

