

## **Analysis of the Judge's Considerations in Decision Number: 1134/Pdt.G/2025/PA.Kjn concerning Child Custody Rights Based on the Child's Best Interests**

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### **Abstract**

Divorce under Islamic law raises complex legal issues, particularly regarding the custody of children who are not yet mumayyiz. Article 105 of the Compilation of Islamic Law (KHI) expressly stipulates that the legal custody of children who are not yet mumayyiz rests with the mother. However, in practice, there are court decisions that grant custody to the father based on the principle of the best interests of the child, which has not been studied in depth normatively. This study aims to analyze the judge's considerations in Decision Number 1134/Pdt.G/2025/PA.Kjn which deviate from the provisions of Article 105 of the KHI . The type of research used is normative juridical , using case, statutory, conceptual and analytical approaches. Primary data consists of court decisions and legislation, while secondary data consists of literature on child custody and the principle of the child's best interests . The analysis technique used is descriptive qualitative, which systematically explains and describes legal norms, child protection principles, and judges' considerations in the context of these decisions. The results of the study indicate that judges prioritize the psychological well-being and education of children in determining custody rights for fathers, even though this is contrary to Article 105 of the Compilation of Islamic Law (KHI). The approach of the best interests of children complements normative law in producing fair and contextual decisions. In conclusion, the implementation of the principle of the best interests of children by judges strengthens the application of Islamic law in resolving child custody ( *hadhanah* ) in religious courts. By considering the child's welfare as a whole, decisions are not only based on formal legal norms but also prioritize justice and more humane protection for children.

**Keywords :** judge's considerations, child custody, best interests of the child.

### **Introduction**

Child custody after divorce is a crucial issue in Indonesian family law, particularly in the realm of Islamic religious courts. Article 105 of the Compilation of Islamic Law (KHI) normatively grants custody of children who are not yet legally married to the mother, as the legal holder. However, developments in family law and contemporary social demands require the application of the principle of the child's best interests as the primary basis for deciding custody cases. (Multazam, 2024) .

The principle of the best interest of the child is the primary foundation for all decisions concerning children, emphasizing that the physical, psychological, emotional, and social well-being of children must be the highest priority in both legal and social processes ( Latumahina , 2019) . This principle implies the need to update normative regulations to align with the real context and not harm children.

This principle of the child's best interests is internationally recognized through the UN Convention on the Rights of the Child and has been adopted nationally in Child Protection Law No. 23 of 2002, which instructs the judicial system to consider the psychological and social aspects of children in every legal process. Judges' decisions must prioritize the interests and safety of children who are vulnerable to the impacts of divorce. (Muñoz Soro & Cinca, 2021) . In the context of Islamic law, although KHI Article 105 regulates the granting of custody rights to mothers for children who are not yet mumayyiz, religious court judges are invited to interpret this norm by taking into account the principles of maqasid al-shariah for the overall benefit of the child (Multazam, 2024) .

This theory serves as a foundation for guiding judges to make decisions that are not solely based on textual rules but also consider the actual conditions of a child's development within their social and family environment. Ali Akbar (2022) explains that the maqasid al-shariah prioritizes justice and child protection as the primary goals that must be maintained in the interpretation of family law, including in hadhanah cases (Akbar, 2022) . Furthermore, Febriani et al. (2025) added that the application of the principle of the child's best interests legally guides judges to make holistic decisions, considering psychosocial aspects and the child's special needs so that legal protection becomes more effective and humane. (Febriani et al., 2025) .

This principle also demands a multidimensional approach in the justice system, which includes involving mediation and family consultation to produce stable and future-oriented decisions for the welfare of children. (Akbar, 2022) . Thus, this research not only fills the empirical gap in the use of this principle in religious court decisions but also serves as a scientific contribution to the development of a more progressive and socially just interpretation of Islamic law and juvenile justice.

Although this principle has been recognized, its application in religious court practice still faces several obstacles. Strict normative provisions and limited room for interpretation sometimes make it difficult for judges to comprehensively integrate the psychosocial aspects of children into their decision-making, resulting in less responsive decisions ( Kasrulloh & Ernawati, 2025) . This gap between legal provisions and social reality needs to be bridged through in-depth normative studies, which form the basis of this research.

Several previous studies have examined the application of the principle of the best interests of the child in the context of family law and religious courts in Indonesia using various methods and findings. First, a study by Fauzan (2025) used a field research method with a conceptual approach that analyzed the views of judges at the Sukadana Religious Court. The results revealed that judges attempted to apply the principle of the best interests of the child by considering emotional closeness, the family's economic capacity, and a conducive social environment as the main factors in determining custody. (Fauzan, 2025) . Second, the study by Joni and Yanis Saputra (2025) which used normative and empirical juridical methods showed that in collective guardianship applications, judges uphold the principle of the child's best interests by paying attention to the child's right to be heard and the ongoing management of supervision. (Joni & Saputra, 2025) . Third, the research of Muhammad, Nur, et al., a descriptive-analytical study on the juvenile justice system and educational punishment

confirms the use of this principle in decision-making to minimize negative impacts on child development. (Darul A'mal Islamic Institute Lampung et al., 2022) .

Although various previous studies have discussed the principle of the best interests of children in the context of Islamic law and national law, they have still focused minimally on the concrete and contextual practice of judicial considerations in religious courts. (Akbar, 2022) . Therefore, this study offers a novel approach by taking a concrete case study decision to directly analyze the application of this principle.

In the context of Islamic law, the theory of the child's best interests refers to *maqasid al-shariah* which places the protection and benefit of children as the main goal. (Febriani et al., 2025) . In the realm of Indonesian positive law, this principle is reinforced through the Child Protection Law, which prioritizes child welfare as a benchmark for court decisions.

Based on this premise, the focus of this study is to analyze the judge's considerations in the Kajen Religious Court decision Number 1134/Pdt.G/2025/PA.Kjn with the hypothesis that the judge integrates the principle of the child's best interests adaptively and comprehensively in determining custody, beyond simply applying normative legal provisions (Multazam, 2024)

This research's scientific contribution is to provide a normative understanding of how the principle of the child's best interests is implemented in Indonesian religious court practice. It also fills a gap in the literature by analyzing actual decisions and providing recommendations for developing family law that is more responsive and just to children's interests.

## **Methods**

This research uses a normative juridical method, with a case study approach through document analysis, namely court decisions, legislative approaches, conceptual and analytical approaches to understand related legal theories and concepts. Research data is used through primary legal sources in the form of decision number 1134 / Pdt.G / 2025 / PA.Kjn , Law Number 11 of 2008 is concerning Electronic Information and Transactions (ITE Law), and secondary sources in the form of literature on child custody, judges' considerations and the principle of the child's best interests. Data collection techniques are carried out by library research on official documents and scientific literature. Data analysis is carried out descriptively qualitatively, by describing, interpreting, and explaining data according to the relevant legal and social context, which aims to describe and analyze legal norms, child protection principles, and judges' considerations in the context of decision number 1134 / Pdt.G / 2025 / PA.Kjn (Marzuki, 2013).

## **Results**

### **Substance of the Decision**

The Petitioner and Respondent were married on December 29, 2016, and have two sons, the first born in Pekalongan in 2018 and the second born in Karawang in 2023. The domestic dispute began after the birth of the second child, when the Respondent began to suspect the Petitioner of communicating with another woman in his office environment. The domestic conflict worsened because the Petitioner felt the Respondent was ignoring him. to fulfill

household and religious obligations, resulting in arguments that led to a divorce petition by the Petitioner in July 2024 (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) . After separating and in October 2024, the Respondent left the house without permission while the Petitioner was working, which confirmed the Respondent's nusyuz status according to Article 84 (Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, 1991) .

The Applicant then filed for divorce and demanded custody of the first child to be raised by him and his family, while the second child was raised by the Respondent. In the legal process, the Respondent filed a counterclaim which confirmed that the first child was raised by the Respondent . The Respondent also denied the accusation that there was no harmony in the household caused by disputes, the Respondent denied the accusation that if there were no other women in their household life, their family would be harmonious and could raise the child together, the Applicant had repeatedly filed for divorce on the grounds of nusyuz which was considered fabricated because the Respondent thought that this divorce was carried out to pave the way for the Applicant to live together with another woman who was the Applicant's work colleague . In his response at the trial, the Respondent denied the accusation and stated that it was the Applicant who often left the house. The Respondent also emphasized that the first child was actually raised by the Applicant's parents (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) .

Mediation was conducted but only succeeded in the agreement that the custody of the first child was in the care of the Petitioner while the second child remained in the hands of the Respondent, with the provision that the Petitioner still has the right to visit and interact with the child. If a subsequent custody dispute occurs, the injured party can file a lawsuit in court. In the counter-arrangement, the Respondent demanded custody of both children, along with the obligation of complete maintenance, including madliyah maintenance of IDR 3 million per month, mut'ah of IDR 50 million, and iddah of IDR 10 million. The Petitioner filed for custody of the first child and the obligation of maintenance of IDR 500 thousand for the second child, as well as the obligation to cover the costs of BPJS insurance , for complete maintenance according to the Petitioner's ability. The applicant is only able to pay madliyah maintenance of 1 million per month, starting from July 2024, mut'ah maintenance of 5 million and iddah maintenance of 4,500,000 for 3 months (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) .

The evidence submitted by the Petitioner included a birth certificate, screenshots of WhatsApp communications, a work certificate, pay slips, and testimony from the Petitioner's mother and older sibling. However, the Respondent rejected some of the evidence as it was deemed inconsistent with legal provisions. However, the Respondent acknowledged several pieces of evidence, such as the work certificate and pay slips, as supporting his claim. (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) .

The Applicant's mother testified that the household had been strained since 2021 due to the Respondent's excessive jealousy and his lack of attention to religious practices and household matters. The Applicant's mother also stated that the Respondent had filed for divorce three times. The first child clearly felt more comfortable with the Applicant because they felt safer. Meanwhile, the second child, who was in poor health, was the Respondent's responsibility. (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) .

The Applicant's older sibling testified that he witnessed several arguments and that the Respondent paid little attention to their first child, even ignoring the child's requests for attention, and spending more time playing with their cell phone. Other testimonies from the Respondent's neighbor and the Respondent's uncle stated that the Respondent consistently took care of the household and children despite ongoing domestic disputes. The neighbor and uncle also observed that the second child needed special attention due to health problems. Both testimonies from the Respondents did not know in detail the root of the breakdown in the Respondent and Applicant's household. They only knew the facts and provided testimony based on the story given by the Respondent (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) .

In his deliberations, the judge considered the psychological condition and safety of the children as the primary basis for determining custody. The Petitioner decided to take care of the first child because he was reluctant to live with his mother, while the Respondent took care of the second child, who was ill, with full attention. The judge referred to Article 41 of Law No. 1 of 1974, as well as Law No. 23 of 2002 concerning Child Protection, which was amended by Law No. 35 of 2014, and Article 105 of the Compilation of Islamic Law (KHI). (Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, 1991) .

The judge rejected the Respondent's counterclaim, which requested that he take custody of the first child, and granted the Respondent custody of the second child. Child support is regulated in detail, and the Petitioner is required to pay *madliyah*, *mut'ah*, and *iddah* support until the second child reaches adulthood. The judge also stipulated the child's right to meet and interact with the Petitioner to maintain family closeness. (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) .

### **Judge's Considerations in Child Custody**

In considering this case, the judge gave primary attention to the principle of the best interests of the child as regulated in Law Number 1 of 1974 which has been amended to Law Number 16 of 2025 and Law Number 23 of 2002 concerning Child Protection which has been amended to Law Number 35 of 2014. The judge's consideration prioritizes the comfort and psychological well-being of the child so that it does not simply refer to custody rights based on the gender of the parents, but looks contextually at the family's condition and the child's current needs. The judge noted the fact that the first child was reluctant to live with the mother because he felt more comfortable with the Petitioner (father), while the second child whose condition requires special care is still cared for by the Respondent (mother) who provides maximum attention. The judge also considered the results of the mediation which regulates the right to visitation and meetings for the Petitioner to maintain emotional ties with his children. (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) .

The division of custody rights is not only based on the normative provisions of Article 105 of the KHI which gives custody rights to children who are not yet *mumayyiz* to the mother, but further assesses who can provide the best environment for the child's holistic growth and development. (Presidential Instruction No. 1 of 1991 Concerning the Compilation of Islamic Law, 1991) . In this case, the panel of judges concluded that the first child would be better cared for by the Petitioner, who is able to provide psychosocial support and a stable

environment, while the second child would be cared for by the Respondent, who plays a full role in the child's health care. This is in line with the legal philosophy that places the interests of the child as the top priority in all decisions related to custody.

The following is a revision of the judge's considerations regarding child support and hadhanah based on Article 156 letter (d) of the Compilation of Islamic Law (KHI), including provisions for madliyah, iddah and mut'ah support adjusted to the applicant's capabilities:

In this ruling, the judge emphasized that the obligation to provide hadhanah maintenance and childcare costs is the father's responsibility as stipulated in Article 156 letter (d) of the Compilation of Islamic Law (KHI). The judge assessed that the applicant must fulfill the obligation to provide child support until the child is 21 years old or can stand alone, including covering the child's education and health costs. In addition, the judge regulated the madliyah, mut'ah, and iddah maintenance that are the Respondent's rights after the divorce. However, if the Respondent is declared nusyuz, legally the Respondent is not entitled to receive iddah maintenance. Nevertheless, the applicant voluntarily continues to provide iddah maintenance as a form of kindness and a gift, which is a special consideration in the ruling. The amount of maintenance takes into account the economic condition and legal responsibilities of the applicant according to the provisions of the Compilation of Islamic Law and the Child Protection Law. (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) .

In the context of hadhanah, the judge considered the psychological condition and special needs of the second child, who was ill, and therefore granted custody to the Respondent, who was best able to provide care. The judge referred to the father's responsibilities and comprehensive child protection principles when issuing the child support and custody order.

Thus, the judge prioritized the sharia provisions in the KHI regarding the provision of hadhanah maintenance, while also appreciating the Petitioner's commitment to providing iddah maintenance even though the Respondent was not legally entitled to receive it due to his nusyuz status. This decision aims to protect the economic rights and ensure the welfare of the children and ex-wife in accordance with the principles of justice and the best interests of the family.

In terms of evidence and witnesses, the judge examined the testimony of the Applicant's biological mother, who confirmed the existence of household disharmony since 2021 due to emotional conflict and the Respondent's perceived suboptimal household responsibilities. Another witness, the Applicant's older sibling, also testified to the Respondent's minimal attention to their first child during the conflicted household situation. Testimony from the Respondent's neighbors and uncle also demonstrated that the Respondent continued to diligently carry out their role of parenting, particularly with their second child, who required special care. (Decision Number: 1134/Pdt.G/2025/PA.Kjn, 2025) .

The judge also considered the Respondent's rebuttal, which affirmed his readiness to care for and educate his children, and denied allegations of nusyuz and irresponsibility towards his family. The judge assessed that both parties had made their respective efforts, but considering the child's psychological condition and the family situation, the division of custody as decided was best to ensure stability in the child's development. This decision is in

accordance with the legal principle that requires judges to make contextual interpretations of custody provisions with an emphasis on the child's best interests.

This ruling respects the balance of parental rights and obligations after divorce, focusing on the continuity of care and the child's essential needs. The judge emphasized that custody determinations must be based on the parents' actual potential and ability to meet the child's holistic needs, not simply on normative rules. This provides a strong legal basis for protecting children's rights and resolving family disputes based on the child's needs and well-being.

## **Discussion**

### **Integration of the Principle of Child Interests in the Consideration of Child Custody Decisions at the Kajen Religious Court**

The principle of the best interests of the child is the primary foundation for the legal protection of children's rights, reflected in the international norm of the Convention on the Rights of the Child (CRC) and ratified by Indonesia through various national regulations. Theoretically, this principle requires that every decision concerning children prioritize the child's overall physical, psychological, social, and emotional well-being, while protecting the child's rights to optimal growth and development. (Haiba & Ngraheni, 2024) . The Kajen Religious Court's decision very clearly implements this principle by separating the care of the two children based on their individual needs and psychological conditions, where the first child is cared for by the father (petitioner) for comfort and emotional bond, while the second child who requires special attention is cared for by the mother (respondent) , so that this decision confirms that the court is able to go beyond rigid normative provisions and prioritize the child's benefits substantively.

Furthermore, the theory of the best interest of the child also emphasizes that decision-making must be oriented towards the long-term welfare of the child, including aspects of the care environment, psychosocial stability, and the child's opportunity to obtain proper education and health. (Febriani et al., 2025) . In this decision, the judge explicitly considered these factors by evaluating the actual conditions of each child, thus demonstrating the adaptation of theory into humanistic and contextual legal practice. The different decisions regarding the care of these two children reflect a deep understanding of individual needs that avoids a one-size-fits-all approach .

In the aspect of maintenance and economic responsibility, this decision integrates the principles of social justice and the financial capabilities of parents, in accordance with the provisions of Article 156 letter (d) of the KHI which carries out the obligation of child maintenance to the father (Applicant), but with flexibility adjusted to the Applicant's capabilities (Presidential Instruction No. 1 of 1991 Concerning the Compilation of Islamic Law, 1991) . The judge's decision to include *madliyah*, *mut'ah*, and *iddah* maintenance by taking into account that even though the Respondent is legally not entitled to *iddah* maintenance, the Applicant still provides it as a form of generosity also indicates a legal interpretation that is not rigid and pays attention to humanitarian values. This indicates the

application of the theory of substantive justice along with the protection of children and ex-wives in the practice of Indonesian Islamic law.

However, the limitations of this decision also need to be highlighted in the context of best interest theory, namely the complexity of assessing a child's psychosocial needs solely from documents without direct empirical observation, which can affect the accuracy and fairness of the decision. This research, as a normative juridical study, has not fully accessed empirical insights that could enrich the analysis of children's and families' needs. Therefore, further research using qualitative methods and fieldwork is highly recommended to validate and deepen the implementation of this principle in court practice.

From a theoretical perspective, these findings support the notion that the principle of the child's best interests is a dynamic legal instrument that must always be interpreted based on the child's social and psychological realities. This emphasizes that Islamic family law is not merely literal or textual, but must proactively accommodate the principle of welfare (*maqasid al-shariah*) holistically. (Febriani et al., 2025). This decision is also in line with the modernization of family law, which positions children as the primary subjects of legal protection, not merely passive objects of normative rules.

Furthermore, this ruling has significant practical implications for judges in other religious courts, highlighting the importance of developing professional skills to assess a child's psychosocial aspects and concretely apply the principle of best interest in every custody case. This practice can foster harmony between written legal norms, sociocultural values, and the evolving needs of children in modern society. This awareness will strengthen the legitimacy of legal decisions and avoid claims of injustice or failure to protect children.

The theory of the child's best interests applied in decisions needs to be continuously studied and developed, involving multidisciplinary aspects, such as child psychology and family sociology, to optimize child protection outcomes in the religious justice system. Supportive interventions or policies, such as training for judges and family counselors, will have a positive impact on the implementation of this principle.

Ultimately, this research confirms that the best interests of the child are not merely normative statements, but rather essential foundations that must serve as the absolute guideline in legal decisions regarding child custody. A harmonious integration of Islamic law, national law, and international principles results in a more humane understanding of family law that is adaptive to social change.

This research opens up space for further, more empirical exploration to examine the success and obstacles in implementing the best interest of the child at the court level, especially religious courts which function to provide familiar legal protection based on justice and the welfare of children.

In conclusion, this in-depth analysis confirms that the principle of the best interests of the child is an important and effective instrument in forming child custody decisions that are not only legally fair but also substantively fair in terms of child welfare, serving as a model for judicial practices that are more responsive to children's needs in Indonesia.

## Conclusion

This study emphasizes the importance of applying the principle of the child's best interests as the primary basis for determining child custody in the Kajen Religious Court, which was actively adopted by the panel of judges in decision Number 1134/Pdt.G/2025/PA.Kjn. The hypothesis that judges consider the child's physical, psychological, and social needs as a whole is proven correct, with the division of custody appropriate to the real conditions of the first and second children. This decision provides a sense of completeness because it combines the national and Islamic legal frameworks, as well as humanitarian values in the context of maintenance and hadhanah, including adjusting maintenance of madliyah, mut'ah, and iddah to the Petitioner's ability and generosity towards the Respondent even in nusyuz status. This demonstrates an important innovation in legal interpretation that emphasizes substantive justice alongside normative legal certainty.

In addition to confirming the theory of the best interest of the child, this study also demonstrates consistency with various literature that advocates a contextual and individualized approach to post-divorce child custody. This approach recognizes the complexity of family dynamics and the child's psychosocial needs as parameters that determine the judge's decision. However, the limited empirical data in this study highlights the internal validity and generalizability of the findings, which need to be improved through further field research.

The practical implications of this ruling require procedural reforms and training for judges to accommodate children's psychological and social needs in resolving custody disputes. Courts are expected to develop adaptive child welfare standards that reflect social and cultural dynamics. Furthermore, this study emphasizes the importance of harmonizing the application of Islamic law and national law in the context of child protection.

The limitations of this normative-juridical research open up the opportunity for multidisciplinary field research as a next step, which will deepen understanding of judicial practices and families' experiences regarding the practical application of children's best interests. Qualitative methods are strongly recommended to mitigate secondary data bias and adapt child protection strategies for the future.

Theoretically, research strengthens maqasid al-shariah as a superior framework in Islamic family law that prioritizes the benefit and protection of children holistically. This broadens horizons and contributes to the development of contemporary Islamic legal science that is responsive and humanist.

This research also emphasizes that the principle of the child's best interests is an effective instrument in formulating legal decisions by integrating humanitarian, legal, and socio-cultural aspects. This provides a new foundation for a more balanced discussion of family law that favors children as legal subjects with full rights.

As a practical innovation, the research encourages judges to continuously improve their sensitivity and ability to assess the welfare of children involved in family conflicts, so that their decisions are not merely normative but also applicable and psychosocially sustainable.

On a broader scale, this research contributes to the development of national family law policies oriented toward child protection, as recommended by the Convention on the Rights of

the Child and modern Islamic law. These findings are relevant for policymakers, academics, and legal practitioners in developing a more effective and integrated child protection framework.

Thus, the results of this study not only strengthen the concept of the best interests of the child theoretically, but also reflect practical applications that are adaptive to the social conditions of families, opening the way for further research and policy development in Indonesian family law.

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