

# Children's Rights in The Crossfire: Examining Indonesia's Divorce Legal Culture

**Anjar Sri Ciptorukmi Nugraheni<sup>(1)</sup>**

Faculty of Law, Sebelas Maret University Surakarta  
Jl. Ir. Sutami No. 36A Surakarta, Central Java, Indonesia  
Email: [anjarsri@staff.uns.ac.id](mailto:anjarsri@staff.uns.ac.id)

**Adalia Safira Rahma<sup>(2)</sup>**

Faculty of Law, Sebelas Maret University Surakarta  
Jl. Ir. Sutami No. 36A Surakarta, Central Java, Indonesia  
Email: -

## ABSTRACT

*The divorce rate in Indonesia has shown a significant annual increase, rising from 20.24% in 2018 to 29.39% in 2023, with an average growth of approximately 2% per year. This study examines the legal culture surrounding divorce in Indonesian courts and explores the potential for law to transform societal attitudes and practices. Using a qualitative descriptive approach, the research relies on secondary data, including court decisions, prior studies, and relevant legislation, analyzed through interactive methods. The findings reveal five key aspects of Indonesian legal culture related to divorce: (1) most divorce filings are initiated by wives; (2) divorces frequently occur during the early years of marriage; (3) child rights are often overlooked in divorce lawsuits; (4) many cases proceed without the defendant's presence; and (5) societal norms tend to tolerate fathers neglecting financial responsibilities toward their families. These findings highlight the urgency of employing legal mechanisms to reshape societal attitudes toward divorce. The study proposes several measures to address these issues: emphasizing shared family responsibilities between spouses, mandating premarital counseling and family support programs, explicitly outlining divorce consequences in court rulings, broadening participation in divorce trials, and strengthening regulations on the enforcement and supervision of child and spousal maintenance rights. These recommendations aim to create a more equitable and accountable legal culture, contributing to the long-term stability and well-being of families in Indonesia.*

**Keywords:** Legal Culture, Family Resilience, Divorce.

## I. INTRODUCTION

In the past decade, the divorce rate in Indonesia is experiencing quite a concerning change with an increasing number annually. Comparing the number of divorces to the number of marriages as reported by the Indonesian Ministry of Religion and the Central Statistics Agency shows a steady upward trend. In 2018, the divorce rate stood at 20.24% relative to the number of marriages

but by 2023, it had increased to 29.39%. Compared to previous years, this figure has increased by almost 2% each year, except for data in 2020, which showed an anomaly, namely a decrease in the number of divorces. Whether or not there was a COVID-19 pandemic outbreak at the time, which caused people's mobility to decrease, more thorough research is needed. Data from 2018 to 2023 can be seen in the table below his percentage has risen consistently annually as shown in Table 1.

**Table. 1 Marriage and Divorce Data in Indonesia from 2016 to 2023**

No.	Year	Number of Marriages	Number of Divorces	Percentage
1	2018	2.016.171	408.202	20.24%
2	2019	1.968.978	439.002	22.29%
3	2020	1.780.346	291.677	16.38%
4	2021	1.742.049	447.743	25.70%
5	2022	1.705.348	516.344	30.27%
6	2023	1.577.255	463.654	29.39%

Source: Central Statistics Agency (<https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmq2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-provinsi--2020.html?year=2018>) accessed on June 24, 2024.

Although the divorce rate in Indonesia is not as high as in other countries, the percentage remains a significant concern. This increase contradicts the fundamental purpose of marriage as outlined in Article 1 of Law Number 1 of 1974 concerning Marriage. The law clearly states that marriage aims to establish a happy and lasting family based on faith in the Almighty God.

The increasing percentage of divorce rates further shows that the Indonesian family resilience index is getting lower annually. Based on Law Number 10 of 1992 concerning Population Development and Prosperous Family Development, family resilience is defined as a dynamic condition where a family shows strength and resilience. This includes physical-material and psychological-mental spiritual abilities to live independently, develop, and harmoniously enhance well-being and happiness. Based on the position of the family as a micro-

community in society, this condition is suspected of being able to weaken the foundation of community and state life.

Concerning the phenomenon of divorce, family disruption or failure can be interpreted as the destruction of family unity or failure to build social roles due to the inability of one or more family members to perform individual roles (Law Faculty of Sebelas Maret University, n.d.). Psychologists further believe that family health can be achieved by building strong and permanent relationships between women and men (Nugraheni, et al., 2013). Therefore, the phenomenon of divorce is part of the problem which is a matter of concern to all communities (Choiri, 2015).

The increasing divorce rate is unavoidable and leads to social changes that affect the legal culture of Indonesian society. According to Podgorecki in Rahardjo, legal culture shows the relevance between law and culture. The term has been used since 1966 as an independent variable in the actual functioning of law together with other variables including social, economic, and personality systems. Satjipto Rahardjo further explained that legal culture comprised all factors that determined how the legal system fits into the broader culture of the public. It is not merely a collection of isolated behaviors and thoughts but rather a comprehensive set of social values related to law and attitudes (Rahardjo, 2014).

In further developments, Friedman explained that the study of law and culture was born to explain the workings of the legal system in society as well as distinguish legal culture into two, namely internal and external (Friedman, 1975). The Internal legal culture pertains to parties within the legal structure such as judges and law enforcers while external legal culture relates to the broader legal attitudes and practices of the society.

Internal legal culture can be observed from the work of law enforcers who are supposed to enforce divorce law. M Syamsudin defined the legal culture of

judges as a set of knowledge and beliefs of judges that were manifested in decisions made due to the process and product (Syamsudin, 2012). The legal values referred to are those as stated by Gustav Radbruch including justice, legal certainty, and utility (Radbruch, 1950).

The legal culture of a society can be viewed as a set of collective knowledge and beliefs that are expressed through societal attitudes and behaviors, and then passed down across generations, forming behavioral patterns. Exploring this issue is crucial because divorce can cause significant harm to families, especially to children. Therefore, managing divorce effectively to minimize these losses is essential. The first step in this process is identifying the prevailing legal culture in society.

## **II. METHOD**

This study uses a descriptive qualitative method using secondary data. Data collection was carried out through a library or literature study method. The study included analyzing 40 judges' decisions on divorce cases where 20 were from Religious Courts and 20 from District Courts for four years, with ten decisions selected randomly each year.

The data extracted from each decision focused on five key indicators namely the party filing for divorce, the length of the marriage, the reasons for filing for divorce, the judge's decision, and the presence of the parties during the trial. These indicators were selected to provide a comprehensive overview of the legal culture of society when facing divorce. The results were further summarized and analyzed using a deductive syllogism method in Table 2. The analysis aimed to identify an effective medium to transform the legal culture to improve family law in Indonesia. The conclusions were then crystallized from these results.

## **III. RESULTS AND ANALYSIS**

## **A. Identification of Indonesian Legal Culture in Divorce**

Based on Government Regulation Number 9 of 1975 which implemented Law Number 1 of 1974 concerning Marriage, the article stipulated that when facing a divorce, either the husband or wife could file a petition with the District Court or the Religious Court. When the parties were Muslim, the petition/lawsuit would be filed with the Religious Court, otherwise it was filed with the District Court.

The parties could draft the lawsuit or when accompanied by an advocate, have it drafted by the advocate. A sample lawsuit template was available in court to assist those preparing petitions. After drafting the lawsuit, it was registered with the court clerk to obtain a case number, followed by a waiting period for the court summons. The trial process was regulated by the civil procedure codes, namely HIR and RBg, which outlined the civil trial processes in Java, Madura, and other regions. The procedure typically included submitting the lawsuit to the court, the response of the defendant, the reply of the plaintiff, the defendant's second response (duplicate), submission of evidence, and finally, the judge's decision (Harahap, 2005).

This study identified the legal culture of Indonesian society in divorce cases based on five predetermined indicators namely who filed for divorce, the length of the marriage, the main reason for divorce, whether the petition included claims related to child custody as well as support, and whether the decision was made by default or with both parties present. The indicators were derived from prior studies and reports by the Ministry of Religion, non-governmental organizations, and other entities. The analysis of 40 randomly selected judges' decisions on divorce from the Supreme Court's decision directory showed the following.

Table 2. Results of the Study on Legal Culture Identification of Indonesian Society

---

No	Year	Plaintiff		Main Reasons for Divorce			Amar		Marriage Length (<= 10 years)	Verstek
		Husband	Wife	P	E	Domestic Violence	Custody Rights	Support Rights		
1	2020	3	7	4	5	1	0	0	5	9
2	2021	6	4	6	4	0	0	0	7	1
3	2022	3	7	6	3	1	0	0	5	7
4	2023	5	5	6	3	1	4	1	2	8

The description of Table 2 was as follows. Column 1 listed the case number while Column 2 showed the year of the decision covering four years from 2020 to 2023. In each year, 10 divorce decisions were randomly selected with 20 decisions each from the Religious and District Courts. Furthermore, Columns 3 and 4 showed the party who filed for divorce. In 2020, 70% of the lawsuits were initiated by the wife, 40% in 2021, 70% in 2022, and 50% in 2023.

Columns 5, 6, and 7 further showed the percentage of primary reasons for divorce filed by the parties. The letter "P" represented for dispute/quarrel which was often caused by infidelity. The letter "E" signified Economy implying economic problems. Variations in economic problems related to the husband not providing sufficient financial support. Additionally, domestic violence accounted for 1% of cases in 2020, 2021, and 2023. Columns 8 and 9 contained information about the judge's rulings appropriate to the Plaintiff's petition regarding child custody and support rights. The table showed that among the 40 rulings, only in 2023 did a decision include provisions for child custody and support despite all cases being selected randomly and including divorced couples with children. Furthermore, Column 10 showed the marriage length of the divorced couples. In 2020, 50% of divorces included marriages lasting 10 years or less. This percentage was 70% in 2021, 50% in 2022, and 20% in 2023.

Finally, Column 11 showed the number of decisions made by default in each year.

Based on the data and literature review, the legal culture of Indonesian society regarding divorce could be described as follows.

### High Number of Divorce Initiatives from the Wife's Side

The idea to file a divorce suit was often initiated by the wife. Data from 2014 to 2019 as released by the Ministry of Religion supported this observation as presented in Table 3.

**Table 3. Divorce Data at the Ministry of Religion**

No.	Year	Total Divorces	Number of Divorce Suits	Number of Divorces by Talaq	Percentage of Divorces Filed by Wives
1	2014	361.500	254.900	106.600	70.5%
2	2015	353.900	253.900	100.000	71.7%
3	2016	365.600	263.700	101.900	72.1%
4	2017	380.700	273.700	104.000	72.6%
5	2018	419.300	307.800	111.500	73.4%
6	2019	480.600	355.800	124.800	74.0%

Source: Ministry of Religion

Data from the Central Statistics Agency of Indonesia as quoted by Cindy Mutia Annur stated that in 2020, the divorce rate had decreased to 291,677 cases with 73.7% being divorce lawsuits. However, in 2021, the divorce rate increased sharply to 447,743 cases with divorce lawsuits accounting for 75.3% (Annur, 2022). The data from both the Ministry of Religion and the Central Statistics Agency correlated closely.

The stated library data were then confirmed by the presentation in Table 2 showing similar trends. These sources showed a consistent increase in divorce initiatives from wives each year.

The condition originated from various factors with several common reasons identified across different sources. These included current disputes, economic difficulties, husbands abandoning the families for over two years, domestic violence, and infidelity. Table 2 also confirmed these reasons, clearly matching the sources.

Along with the emancipation movement of women, awareness of the rights and obligations of women in Indonesia had increased significantly. In the family sector, the belief that the husband should be the head of the family and the primary breadwinner had been deeply ingrained in the minds of Indonesian women. Consequently, when faced with conditions where the husbands failed to provide sufficiently or when the income surpassed the husband, an imbalance would be perceived. This perceived imbalance often led to feelings of dishonor, as social status in the community was more often based on the husband standing than the wife. Therefore, many believed divorce was a solution to this perceived deficiency.

### **1. Prevalence of Divorce in Young Marriages**

Most divorces occurred in households where the marriage was still relatively young, typically under five years. In these cases, the children were usually still young, and the emotional maturity of both parents remained unstable (Syamsudin, 2012). Other sources also showed that approximately 60% of all divorces occurred within the first 10 years of marriage (Rahardjo, 2004). This statistic closely correlated with results from the Surakarta religious and district courts, where 50%-60% of divorces occurred within the first 10 years of marriage.

### **2. Omission of Children's Rights in Divorce Lawsuits**

Observations showed that many divorce lawsuits solely requested the dissolution of the marriage, leading to judges issuing decisions that only addressed the requests made by the parties. It was common for parties not to include claims



for rights of the children in the lawsuits, even when the lawsuits mentioned children born from the marriage. When asked, respondents explained that claims for the rights of the children were not included due to the ignorance of the claims. Upon learning this, the parties expressed a desire to include claims for the rights of the children in the lawsuits but were hindered by procedural rules. To include the claims, parties would have to withdraw the lawsuit and refile it or wait until the divorce was finalized before filing a new lawsuit for child custody or support rights.

A publication found that over 90% of judges' decisions in divorce cases mentioning children in the *posita* did not include provisions for children's rights (Nugraheni, et al., 2013). The results correlated with Achmad Choiri's publication reporting that 96% of Religious Court judges' decisions ignored children's rights (Choiri, 2015).

In divorce cases, courts assumed that when a particular issue was not included in the lawsuit, it was not in dispute and therefore did not need to be addressed in the judge's decision. This method was consistent with Article 41 paragraph (1) of the Marriage Law. Judges did not guide the parties on parental obligations after the marriage ended.

Advocates often deferred to the clients regarding the scope of the lawsuit. Lynn's study distinguished between two types of divorce lawyers namely reasonable and unreasonable. Reasonable lawyers aimed to settle disputes amicably but were prepared to go to trial when necessary. The lawyers were knowledgeable about the law and possible legal outcomes, objective, and independent in judgment, guiding clients toward fair resolutions. Unreasonable lawyers, on the other hand, intensified conflicts, relied excessively on litigation, and viewed negotiations as battlegrounds rather than opportunities for reasonable accommodation (Mather, et al, 2007).

Interviews with advocates showed that requests for child custody and support rights were often omitted from lawsuits based on judges' instructions. Judges frequently advised that since children were already under the care of the mother, there was no need to request custody formally. When questioned, judges cited Article 41 of the Marriage Law stipulating that custody disputes should be resolved by the court. This led judges to assume that when the children were already with the mother and no lawsuit had been filed by the father, there was no dispute and no need to address custody. However, societal norms placed significant pressure on mothers to care for the children after a divorce. Mothers who refused custody risked being labeled as problematic with the blame for the divorce often placed on the mother. Society further stigmatized mothers who relinquished custody to fathers.

Similarly, the issue of child support was often neglected during the process of divorces. When wives filed for divorce without requesting child support, judges assumed the wife was capable of providing for the children. This study found that many wives simply wanted to sever ties with the husbands including financial dependence. In these cases, the intervention of a neutral third party such as a judge could play a crucial role in determining the future of the children, ensuring the children did not become victims of the parents' divorce.

Analyzing the explanation, this study offered a different opinion from the judges. For the best interests of the children, legal certainty regarding the custody whether with the father or mother should be established as a separate norm and included in the judge's decision. The judge should also determine who would be responsible for the children's support, how much should be provided, and how it should be paid.

The existence of a custody dispute or disagreement over support should not be the sole factor determining whether the issues were addressed in the verdict. Children's legal certainty was a right that needed to be guaranteed by

including it in the judge's decision. This legal certainty would enhance children's sense of security and comfort, potentially reducing the psychological burden of the parents' divorce and promoting better growth as well as development.

The author elucidates the statement mentioned above via the lens of the legal certainty theory proposed by Peter Mahmud Marzuki. In his work *Introduction to Legal Science*, Peter asserts that legal certainty encompasses two meanings: firstly, the presence of general rules that inform individuals of permissible and impermissible actions; secondly, the provision of legal protection for individuals against governmental caprice, as these general rules delineate the actions the state may undertake against individuals. Legal certainty encompasses statutory provisions and the uniformity of judicial rulings.

The party filing for divorce was usually in an unstable emotional state, busy thinking about each other and immediately getting a resolution to the problems. When filing for divorce, these parties often forget the children from the marriage. These children have personal needs and desires which should also be considered during the divorce process.

The parties often forget about the existence of children who needed to be considered and did not know that children's rights could be requested simultaneously in a cumulative lawsuit. When the lawsuit had been filed, it was too late to add the contents of the *petitum* because the change could only be added with the consent of the defendant. The forgetfulness and ignorance of the plaintiff often formed a habit in the implementation of divorce law in Indonesia.

### **3. High Number of Divorce Cases Decided in the Defendant's Absence**

The habit of plaintiffs not including children's rights in the lawsuits led to the interests of the defendant being unchallenged. Therefore, defendants often had no reason to attend the trial. When only a divorce was requested, defendants frequently had no objections and were further reluctant to appear in court. This

lack of attendance contributed to the high percentage of divorce cases, approximately 80%-90% being decided in the absence of the defendant.

#### **4. Society's Permissive Attitude Towards Fathers Neglecting Financial Responsibilities**

Indonesian society exhibited a permissive attitude toward fathers who failed to provide financial support for the wives and children after a divorce. Society recognized the potential negative impact of parental divorce on children's development including the risk of neglect. However, there was a general sense of helplessness, as these issues were perceived as private matters within the domestic sphere beyond the reach of outsiders.

Although Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UUPKDRT) addressed economic neglect, the scope was limited to households still intact. For divorced couples living in separate households, the law's provisions did not apply.

#### **B. Changing the Legal Culture of Society Towards Family Resilience**

Roscoe Pound stated that law served two functions namely tools for social control and social engineering. The law as a tool of social control acted as a mechanism to regulate and limit societal movements, ensuring that the regulations remained within legal boundaries. Meanwhile, the law as a tool for social engineering guided society toward desired aspirations.

As explained in sub-chapter A above, Indonesian society's legal culture when facing divorce must be managed and directed. Friedman explains that legal culture, as one of the sub-systems in the legal system, contains elements of social attitudes and values, including ideas, attitudes, hopes and opinions held by leaders and members, including internal legal culture and external legal culture. Internal legal culture is the legal culture of members of society who carry out specialized legal tasks, such as advocates, judges, and legislature members. External legal culture is the legal culture that exists in the general society. From the legal culture

that lives in this society, it can be seen how the values held by society are then manifested in their attitudes.

Combining the above explanations, the concept that can be accommodated by Indonesian Law as a means of social control is to change the legal culture of the community by including provisions that first, the family is a joint responsibility between husband and wife, not just the husband. Second, it is necessary to provide provisions for couples who are going to get married and assistance for families experiencing problems. Third, there is a provision that the judge's decision must regulate the legal consequences of a divorce. Fourth, it is necessary to expand the parties who can attend the trial; fifth, there are provisions related to executing the right to support and its supervision. A more detailed explanation can be seen below.

First, Article 34 chapter VI of the Marriage Law Number 1 of 1974 stipulated that a husband was obliged to protect the wife and provide for the household according to ability. This was further emphasized in Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI), where Article 48 of the KHI emphasized the responsibility of the husband for household expenses. However, this often led wives to file for divorce, assuming that household expenses were the husband's sole obligation even in situations where both partners were working or the wife was the primary breadwinner. The existing provisions needed reinterpretation, emphasizing that both husband and wife were proportionally responsible for household expenses. This new understanding allowed couples to communicate and negotiate family financial management, preventing the wife from feeling oppressed when required to contribute more.

According to Surah Hud: 6 in the Qur'an, sustenance was a gift from Allah and no one could guarantee that the husband's income would always surpass the wife's. When the wife earned more, it was appropriate for the wife

to share the financial burden. Ja'far further stated that the concept of justice, equality, Islamic brotherhood, and *mu'asyarah bil ma'ruf* should be prioritized for the benefit and formation of a *sakinah, mawaddah wa rahmah* in a family (Ja'far and Hermanto, 2021).

Second, the Family Resilience Bill (RUU), Article 17 required prospective couples to participate in a premarital guidance program organized by the government. Although the law had not been enacted, the Ministry of Religion had initiated programs such as the Marriage Guidance Program (Bimwin) and Pusaka Sakinah. In 2020, approximately 10% of prospective brides and grooms participated in the program with a target of reaching 40% in 2021 (Rizati, 2021). Juwaini Saleh further supported the initiative, viewing it as beneficial from an Islamic legal perspective for the welfare of the couple, family, society, and state (Saleh, et al., 2022).

This study suggested that the government should not bear the full burden of organizing marriage guidance, as many religious institutions already offered these programs. Instead, the government could provide guidelines for organizing and implementing marriage guidance including curriculum, methods, and accredited training hours, as well as issue marriage guidance certificates as a mandatory requirement for couples planning to marry. Zur Raffar emphasized the importance of parenting skills in determining family welfare. These skills comprised maintaining relationships with Allah SWT, children, and fellow human beings, covering spiritual, mental, emotional, physical, and social aspects (Raffar, et al., 2021). Appropriate to the mandate in Article 41 of the UUP, all parents should have a parenting plan before, during, or after marriage. Therefore, Masduki proposed Islamic parenting as a solution to overcome the problems of Islamic families (Masduki, 2020).

Mentoring for couples experiencing family issues which was provided by the Advisory Board for the Development and Preservation of Marriage (BP4)

should focus on preventive efforts rather than merely addressing problems after arising. Furthermore, parents played a crucial role in forming a harmonious family (Hariyanto, 2021). In this context, the study recommended promoting the concept of family resilience and maximizing the eight functions of the family as outlined in Article 7, paragraph (2) of Government Regulation Number 87 of 2014. Village funds which were traditionally allocated for physical and economic development could also be directed toward programs supporting these family functions.

Third, legal consequences related to children should be explicitly addressed in the judge's decision regarding divorce. The consequences of divorce were directly tied to the consequences of marriage, affecting the legal status of the couple, the relationship between parents and children, as well as the status of joint property. Divorce should not merely change the legal relationship between husband and wife but also comprehensively address the future of children. It should not be assumed that both parents would automatically fulfill legal obligations. Rather, legal certainty for children regarding custody and support should be emphasized in the judge's decision. The determination of child custody should not be based solely on gender but rather on the parent's willingness and ability to fulfill the duties (Nugraheni, et al., 2019). By including these obligations in the divorce decree, the execution could proceed without the need for additional lawsuits which would only prolong uncertainty for the children and incur additional costs. In families where the mother became the head of the household after divorce, economic welfare often declined, prompting the costs of pursuing child custody or support rights to be unaffordable.

Fourth, the parties allowed to attend trials needed to be expanded to prevent default decisions and to change the fourth legal culture. The reasons that surfaced during divorces showed that the separation between husband and wife was often fraught with conflict, rather than being amicable. Therefore, the judge's role as a mediator or *hakam* became crucial, not just during mediation but

throughout the subsequent trial stages. According to HIR/RBg, the parties were those with a direct interest. In the context of divorce which severed ties between two families, the definition of "parties" needed to be broadened. This expanded definition should comprise families from the upward line of descent, adult descendants, and lateral relatives up to the third degree. The expansion also correlated with the Family Resilience Bill's definition in Article cc, paragraph (hh). Family members other than the husband and wife could attend the trial with this broader definition, thereby avoiding default decisions. The presence of the extended family was expected to reinforce the family's responsibility.

Law Number 23 of 2002 concerning Child Protection as last amended by Law Number 1 of 2023 concerning the Criminal Code provided layered legal protection for children. The first layer of protection came from parents as the nuclear family. When this primary layer failed, the responsibility shifted to the extended family with protection provided by society through private agencies or orphanages as backup. When the third layer proved insufficient, the state was obligated to offer direct legal protection. In the context of divorce, the government played a role in creating regulations that safeguarded children's rights, prioritizing the best interests. In *argumentum per analogiam* as the principle of publication applied to marriage through *walimatul 'ursy*, divorce should be made public/family to minimize slander. The presence of the family at the divorce trial would further implement this principle of transparency.

The fifth addressed provisions related to the execution and supervision of maintenance rights. Empirical evidence showed that despite court decisions regarding the maintenance of wives and children, the execution and supervision of these rights had not been optimal. Parents who failed to fulfill the alimony obligations could be sued through litigation or non-litigation avenues (Mawarni and Nugraheni, 2019). However, lawsuits in the domain of family law were not governed by the Criminal Code. There needed to be a specialized method for cases including family members. Therefore, there was an ongoing discussion



about the establishment of a family court in Indonesia (Nugraheni and Pranoto, 2018). The proposed family court initiated by LBH APIK differed from the existing Religious Courts as it would cover a broader scope. This family court would handle both criminal and civil cases, but only those including individuals with familial relationships, whether by blood or marriage.

The enactment of the Draft Law on Maternal and Child Welfare into law on June 4, 2024, marked a significant development in Indonesia's legal landscape. Part of the key provisions in this law was the responsibility of parents including mothers, fathers, and extended families during the first thousand days of a child's life. Furthermore, Article 10 of the law outlined the obligations of parents which should be jointly fulfilled by both the mother and father with support from the family and community for the child's well-being. This law added an additional layer of legal protection for mothers and children.

#### **IV. CONCLUSION AND SUGGESTION**

##### **A. Conclusion**

In conclusion, the study explained the behavioral patterns of Indonesian society in the context of divorce. The legal culture of the society showed five prominent trends. Firstly, the initiative to file for divorce often came from the wife. Secondly, many divorces occurred when the marriage was still young. Thirdly, many plaintiffs did not include requests related to the fulfillment of children's rights in the lawsuits. Fourthly, numerous divorce cases were examined and decided without the presence of the defendant. Finally, there was a permissive attitude in society towards fathers who failed to provide support for the wives and children.

Based on these observations, the study considered it appropriate for divorce lawsuits to include claims related to child custody and support rights. This

method aimed to resolve family issues, provide legal certainty for children, and reduce the number of divorce cases decided in the absence of the defendant.

The concept that could be accommodated by law as a tool of social control was to change the legal culture by including several key provisions. First, the responsibility for the family should be shared between husband and wife, rather than being solely the husband's duty. Second, there should be provisions for couples preparing for marriage and for those experiencing family problems. Third, the legal consequences of divorce should be regulated in the judge's decision. Fourth, the range of parties allowed to attend divorce trials should be expanded. Lastly, there should be provisions related to the execution and supervision of support rights.

## **B. Suggestion**

Along with the women's emancipation movement, awareness of the rights and obligations of women in Indonesia is increasing. The issuance of the law on the Welfare of Mothers and Children in the First Thousand Days of Life (UU KIA) is expected to be a new legal framework to protect women and children in Indonesia, most of whom are marginalized in court decisions. In this case, the concept that can be accommodated by law as a means of social control, is to change the legal culture by including stricter provisions in the Indonesian Marriage Law and its implementing regulations that first, the family is a joint responsibility between husband and wife, not just the husband. Second, it is necessary to provide provisions for couples who are going to get married and assistance for families experiencing problems. Third, there is a provision that the judge's decision must regulate the legal consequences of a divorce. Fourth, it is necessary to expand the parties who can attend the trial; fifth, there are provisions related to executing the right to support and its supervision.

## **REFERENCES**

- Agnes Harvelian, Muchamad Ali Safa'at, Aan Eko Widiarto, I. D. Q. (2020). Constitutional Interpretation of Original Intent on Finding The Meaning.
- A. Kumedi Ja'far and Agus Hermanto. "Reinterpretation Of The Rights And Duties Of Contemporary Husbands And Wives." *Samarah* 5, no. 2 (2021): 648–67. <https://doi.org/10.22373/sjhk.v5i2.9124>.
- Ahmad Choiri. "Perlindungan Hukum Terhadap Anak Korban Perceraian Yang Terabaikan Oleh Hakim Peradilan Agama." Aula Badilag MA, 2015.
- Anjar SC Nugraheni, Diana Tantri C, Zeni Luthfiyah. "Komparasi Hak Asuh dan Hak Nafkah Anak dalam Putusan-Putusan Perceraian di Pengadilan Negeri dan Pengadilan Agama Kota Surakarta." *Jurnal Hukum Yustisia* 87 (September 2013).
- Anjar SC Nugraheni, Pranoto. "Inisiasi Pengadilan Keluarga (Family Court) Pada Sistem Peradilan Di Indonesia," February 1, 2018.
- Badan Pusat Statistik. "Nikah dan Cerai Menurut Provinsi," 2018. <https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-provinsi--2020.html?year=2023>.
- Cindy Mutia Annur. "Kasus Perceraian Meningkat 53%, Mayoritas Karena Pertengkaran," 2022. <https://databoks.katadata.co.id/datapublish/2022/02/28/kasus-perceraian-meningkat-53-mayoritas-karena-pertengkaran>.
- Erie Hariyanto et al.,. "Sakinah Family Empowerment by Optimizing the Role of BP4 and Parents Mental Revolution Perspective." *Samarah*, 2021. <https://doi.org/10.22373/sjhk.v5i2.10965>.
- Gustav Radbruch. *The Legal Philosophies of Law*. Cambridge, Massachusetts: Harvard University Press, 1950.
- Izzah Nur Aida Zur Raffar et al.,. "Parenting Skills According to The Islamic Perspective Towards Family Well-Being." *Samarah* 5, no. 2 (2021): 552–78. <https://doi.org/10.22373/sjhk.v5i2.9576>.
- K. Nugraheni, ASN; Setiono; Harahap, B.; Tejomurti. "The Development of Child Custody Regulation in Indonesia Divorce Law." *International Journal of Business, Economics, and Law* 18 (2019): 77–83.
- Lawrence Meir Friedmann. *The Legal System: A Social Science Perspective*. New York: Russel Sage Foundation, 1975.
- Law Faculty of Sebelas Maret University, Lecture, n.d.
- Lynn Mather. Craig A. McEwen. Richard J Maiman. *Divorce Lawyers at Work:*

*Varieties of Professionalism in Practice Dalam Stewart Macaulay. Lawrence M Friedman. Elizabeth Mertz.* New York: Foundation Press, 2007.

M Syamsudin. *Konstruksi Baru. Budaya Hukum Hakim: Berbasis Hukum Progressif.* Jakarta: Kencana Prenadamedia, 2012.

—————. *Konstruksi Baru. Budaya Hukum Hakim: Berbasis Hukum Progressif.* Jakarta: Kencana Prenadamedia, 2012.

M Yahya Harahap. *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan.* Jakarta: Sinar Grafika, 2005.

Masrizal Mukhtar Juwaini Saleh, Nurullah Amri, Mustafa Kamal, Afrizal Abdullah. "Marriage Guidance Towards Family Resilience in Aceh: A Study of Islamic Law Philosophy." *Samarah* 6, no. 2 (2022): 594–613. <https://doi.org/10.22373/sjhk.v6i2.12448>.

Monavia Ayu Rizati. "Rasio Perceraian Di Jawa Tengah Tertinggi Nasional," 2021. <https://databoks.katadata.co.id/datapublish/2021/01/22/rasio-perceraian-di-jawa-tengah-tertinggi-nasional>.

Peter Mahmud Marzuki, Pengantar Ilmu Hukum. Jakarta, Kencana Prenada Media Group, 2011

Satjipto Rahardjo. *Ilmu Hukum.* Edited by Awaludin Marwan. 8th ed. Bandung: PT Citra Aditya Bakti, 2014.

Satjipto Rahardjo dalam Eman Suparman. *Pilihan Hukum Arbitrase Dalam Sengketa Komersial Untuk Penegakan Hukum.* Jakarta: Tatanusa, 2004.

Tyas Sekar Mawarni and Anjar Sri Ciptorukmi Nugraheni. "Upaya Hukum Terhadap Orangtua Yang Tidak Melaksanakan Kewajiban Alimentasi Dalam Perspektif Perlindungan Anak." *Jurnal Privat Law*, 2019. <https://doi.org/10.20961/privat.v7i2.39341>.

Yusron Masduki. "Islamic Parenting as a Method of Sakinah Family." *International Journal of Psychosocial Rehabilitation*, 2020. <https://doi.org/10.37200/ijpr/v24i5/pr201691>.