



PROTECTION CUSTODY RIGHTS AND CHILD EDUCATION AFTER DIVORCE: A NORMATIVE-EMPIRICAL STUDY IN THE LUMAJANG RELIGIOUS COURT

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Abstract

A supernatural divorce occurs when one party's whereabouts are unknown, leading to a default decision. This situation raises concerns about the protection of children's rights, particularly custody (hadhanah) and educational rights. Prior research has focused more on the procedural aspects of supernatural divorce and the legality of default decisions. However, little research examines how religious court practices protect children's rights after a supernatural divorce. This study analyzes how judges at the Lumajang Religious Court consider the right to hadhanah and the right to education after a supernatural divorce, using the theories of legal protection and maslahah mursalah. This study uses an empirical juridical method involving interviews, decision analysis, and analysis of laws and regulations. The results show that the right to hadhanah is not automatically applied under Article 105 of the Compilation of Islamic Law, but rather through an analysis of each party's actual situation, parental presence, and the principle of the best interests of the child. Judges establish legal protection by ensuring that the child's education is guaranteed, even if one parent is absent. The novelty of this research lies in integrating guarantees of children's education into decision-making as a form of implementing maslahah (beneficial interests) that are often overlooked in default decisions. This finding confirms that supernatural divorce resolutions must prioritize substantive protection and the best interests of the child.

Keywords: *supernatural divorce, hadhanah rights, children's right to education, legal protection, default judgment.*

A. Introduction

In the Luamjang Religious Court, supernatural divorce remains a common family conflict that arises when the husband's whereabouts are unknown for an extended period. In this situation, supernatural divorce cases are generally resolved in the Religious Court through the appropriate summons process. If the defendant fails to appear, the case can be decided by default (Susanti, 2019). An insane divorce not only results in the termination of the marital relationship but also often makes it difficult for the wife to obtain child custody (hadhanah) and guarantee educational support. Consequently, children's rights are not met due to the absence of a father figure in the divorce proceedings (Hardani S et al., 2019).

In divorce cases, children are the most vulnerable, especially if the whereabouts of one parent are unknown. In cases of supernatural divorce, children potentially lose their rights to custody, support, education, attention, and support from their parents (Kisworo et al., 2020). After a divorce, a father remains responsible for the costs of custody (*hadhanah*) and the child's education. Furthermore, Law Number 35 of 2014 concerning Child Protection states that both parents have an obligation to care for, educate, and protect their children so that their growth and development proceed optimally (Dewi et al., 2024)

Normatively, a father's obligations towards children are stipulated in Article 41 letter b of the 1974 Marriage Law Number 1, which emphasizes that the father bears primary responsibility for all costs of the child's education and upbringing. The court may order the mother to share in the child's education costs if the father is unable to fulfill these obligations (Suryantoro, 2024). Furthermore, the Compilation of Islamic Law explains that, in principle, the responsibility for the child's unmarried offspring rests with the mother, while Article 156 of the Compilation of Islamic Law states that a father is obligated to provide for and provide for the child's development. However, in cases of absent divorce, implementation often encounters obstacles because the father's condition is unknown and cannot be determined (Harahap et al., 2025).

Several previous studies have addressed this topic from various perspectives. Ahmad Dakhlan et al. (2022) examined the supernatural divorce settlement process in the West Sumatra Religious Court using a normative juridical approach. However, this study focused solely on the legal aspects of the trial process and neglected to consider child protection after the verdict. Eka Ristianawati (2024) used an empirical approach to examine child custody after divorce, but did not address supernatural divorce.

Handoyo et al.'s (2025) study analyzed the impact of divorce on children's education through a sociological approach, demonstrating an impact on child development. However, this study did not analyze the judge's considerations when making court decisions. Dwi Dasa Suryanto (2024) examined child custody after divorce according to the Compilation of Islamic Law using a normative juridical approach. However, this study only discusses legal regulations and has not analyzed their application in supernatural divorce cases in Religious Courts. Based on this analysis, no research has specifically examined child protection in supernatural divorce cases from the perspective of legal protection and the benefits of the *mursalah* (the benefit of the family).

A review of previous research shows that there is little research that specifically examines how judges consider and determine hadhanah rights and guarantee children's educational rights in divorce cases using a combination of normative and empirical approaches (Yanova et al., 2023). Therefore, this research focuses on how judges protect children's rights in terms of their upbringing and education, specifically at the Lumajang Religious Court. The novelty of this research lies in the findings of unseen divorce cases, which are considered a legal mechanism to end marriage and protect children. This research shows that the Compilation of Islamic Law not only functions as a normative basis, but also as a progressive framework that allows judges to realize substantive justice by including protection of hadith and guarantees of children's education in verdicts.

Based on the description above, the author wants to understand how judges at the Lumajang Religious Court consider the right to hadhanah in supernatural divorce cases. How children's educational rights are guaranteed in supernatural divorce decisions, and how children are legally protected after a supernatural divorce.

B. Method

This research uses a case study method because all data analyzed comes from interviews, observations, and documentation studies, which complement each other in understanding the phenomenon of supernatural divorce in the Lumajang Religious Court. The approaches used are normative and sociological juridical. The normative approach is used to examine the legal basis for hadhanah rights and child education, as well as applicable societal norms, focusing on written regulations (law in books) such as the Compilation of Islamic Law and court rulings (Soekanto, 2015). Meanwhile, the sociological juridical approach is used to compare these results with the practice of resolving supernatural divorce cases in the Lumajang Religious Court through interviews and field observations.

In analyzing the data, this study uses legal protection theory to assess the extent to which the state strives to guarantee children's rights through judicial institutions to ensure their fulfillment after a supernatural divorce. Furthermore, the Maslahah Mursalah theory is used to determine whether the decisions taken benefit the children's lives after the divorce.

This research was conducted at the Lumajang Religious Court from February 7–12, 2026. Subjects were selected using purposive sampling, selecting informants based on their direct relationship with the research focus. The study involved one

judge, one junior court clerk, and two supporting parties handling issues related to the protection of hadhanah rights, child education, and supernatural divorce.

Research data were collected through intensive interviews based on a semi-structured guide, direct observation of court proceedings, and review of case documents. The interviews lasted two days, while the observation and document review activities were conducted over three days. The primary sources for the research were interviews, field observations, and reviewed case documents. Supporting sources were obtained from the Lumajang District Court's rulings regarding supernatural divorce cases for the 2025–2026 period, as well as related legal provisions, including the 1974 Marriage Law, the 2014 Child Protection Law, and the Compilation of Islamic Law (KHI). Data processing followed the stages of Miles and Huberman, which include reduction, presentation, verification, and formulation of conclusions. Reduction was carried out by selecting information relevant to the research needs and then organizing it sequentially in a narrative format. Finally, conclusions were formulated to assess the success of protecting children's rights to custody and education in supernatural divorce cases (Saleh, 2023).

C. Result And Discussion

This section will examine the protection of custody rights (hadhanah) and educational rights of children after an unseen divorce at the Lumajang Religious Court. Starting from the dynamics of normative regulations regarding hadhanah rights and children's education rights in statutory regulations and the Compilation of Islamic Law, then continuing with an analysis of the practice of legal protection provided by judges in unseen divorce cases, and ending with an analysis from the perspective of the problem of murlahah. To clarify the flow of analysis and establish appropriate conceptual boundaries, the discussion in this article follows the systematic framework shown in the following figure.

Protection Custody Rights And Child Education After Divorce: A Normative-Empirical Study In The Lumajang Religious Court

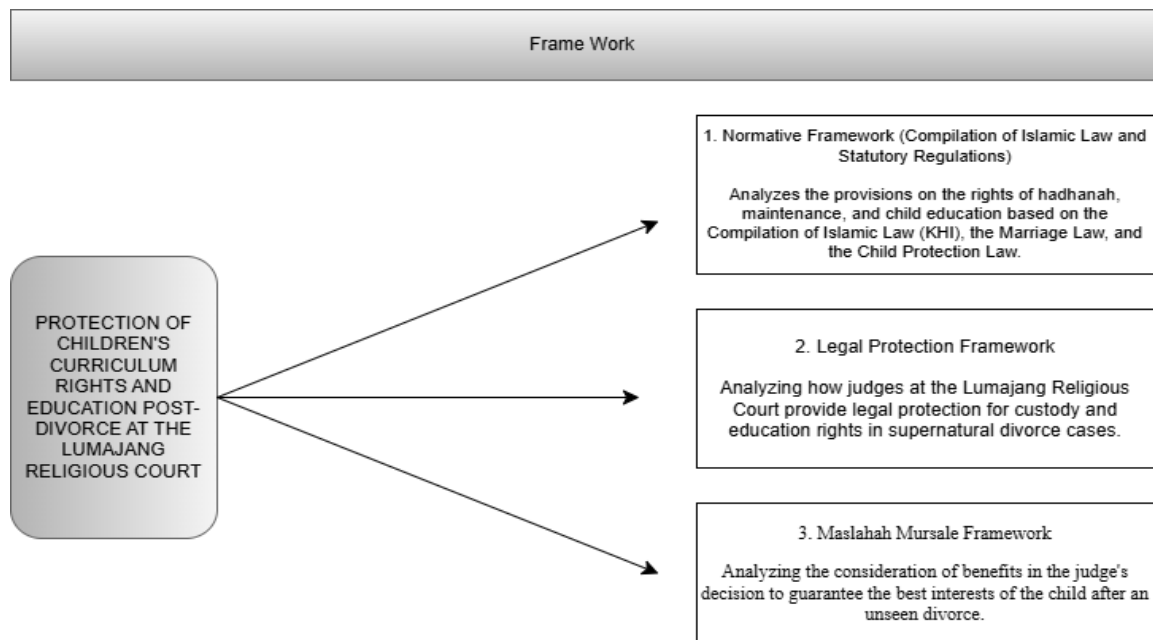


Figure 1. Protection of custody and education of children after a supernatural divorce at the Lumajang Religious Court.

According to the diagram in the image above, the analysis process is carried out through several stages. The discussion begins with a normative analysis of hadhanah rights and children's educational rights in cases of unseen divorce, based on the KHI and applicable laws. Next, an analysis of the legal protection practices applied by Lumajang Religious Court judges in deciding cases of supernatural divorce. In the final part, the analysis is carried out by looking at it from the point of view of maslahah murrasa to find out the extent to which the decisions made by the judge are able to provide benefits and guarantee the best interests of the child after divorce.

1. Invisible Divorce From The Perspective Of The Compilation Of Islamic Law

Divorce procedures according to the Islamic Law are essentially designed to ensure that the termination of marital relations is not carried out hastily, but rather through careful consideration. The requirements and procedures for divorce are outlined in Article 115 of the Islamic Law, which explains that divorce can only be processed before a Religious Court hearing after the court has unsuccessfully attempted to reconcile the parties. This provision serves as a guideline for couples to avoid easily resorting to divorce when symptoms appear that could potentially

damage marital harmony. However, if mediation fails, divorce through the courts becomes a last resort to prevent larger problems. This view aligns with Husaini's (2024) opinion that the courts have a responsibility to ensure that divorce is pursued as a final resort to avoid greater harm (Husaini, 2024).

The dissolution of a marriage, whether due to death, divorce, or court decision, is stipulated in Article 113 of the Compilation of Islamic Law (KHI) and Article 39 of the 1974 Marriage Law. Therefore, a divorce can only be granted if there are compelling reasons proving that the couple is no longer capable of living together as a family due to complex disputes. In this case, the court's role is to ensure that reconciliation efforts have been attempted but have not reached a resolution before the marriage is finally dissolved.

Based on Article 114 of the Compilation of Islamic Law (KHI), a marriage can be terminated through two channels: a divorce petition from the husband and a divorce suit from the wife. Both forms of application must be processed through the Religious Court (PA) to obtain legal legitimacy. If a wife is abandoned by her husband for two years or more without a clear place of residence, the wife has the authority to file for divorce. This provision is stated in letter b of the KHI. It should be emphasized that even if a marriage ends due to the father's status as a mafqud (indigent), the rights of children born of that marriage are not extinguished and continue to receive legal protection. These rights include identity, maintenance, care, and education.

Sayyid Sabiq explained that if the husband is in a place that is still accessible and has visible assets, then these assets may be used to support the family. Conversely, if the husband is in a remote area, difficult to reach, or has mafqud status, the judge has the authority to grant a certain grace period as a form of legal consideration. This view aligns with practice in the Lumajang District Court, where when a wife is unaware of her husband's location, she can file for a supernatural divorce through a default judgment. In this decision, the judge delegates the custody and education of the children to the wife because the husband's position is unclear (Sabiq, 1999)

In practice in the Lumajang District Court, child custody and education in supernatural divorce cases are decided based on the legal judgment of the panel of judges. Initially, the judge assesses the family's circumstances, including the parents' position and responsibilities, with reference to the principle of propriety and the provisions of Article 80 paragraph 4 of the Compilation of Islamic Law (KHI). If the husband's residence or occupation is still known, the husband is obligated to ensure

that the children continue to receive care and education. On the other hand, if the husband's position is unclear and no information regarding his responsibilities towards the child is available, the judge generally hands over care to the mother, especially for children who are not yet mumayyiz (Rahayu & Indrawati, 2024). However, if the husband's whereabouts are unknown and there is no information regarding his responsibilities towards the children, the judge usually grants the mother the right to custody, especially for children who are not yet legally mature. This decision is based on the child's best interests, taking into account social circumstances and the child's need to maintain custody and education rights (Hayati & Hidayat, 2025).

In cases of supernatural divorce, the hearing is usually conducted without the defendant's presence and is decided by default. Although this decision is made without the husband's presence, the default decision remains legally binding as long as the summons has been properly served (Adriansyah et al., 2021). In the verdict, the panel of judges expressly stipulates the rights to custody and education to provide legal certainty and allow for future execution. The determination of these rights and obligations is based on considerations of propriety, the child's actual needs, and the socioeconomic conditions revealed in court, although information about the father's actual capabilities is often limited (Hayati & Hidayat, 2025)

The decision also contains provisions regarding hadhanah rights and children's education to ensure the best interests of the child. If, in the future, the husband's whereabouts become known, or his assets are traced, the wife may request the enforcement of a final and binding decision in order to claim the father's responsibility for the child's care and education. Thus, although the case is resolved through a default judgment, the father's legal responsibility remains attached and may still be demanded for implementation. This practice shows that the Lumajang Religious Court seeks to combine the basic principles of Islamic law with civil procedural law mechanisms so that protection for children's interests can be provided fairly, firmly, and with legal certainty.

The following data on supernatural divorces is taken from interviews at the Lumajang Religious Court.

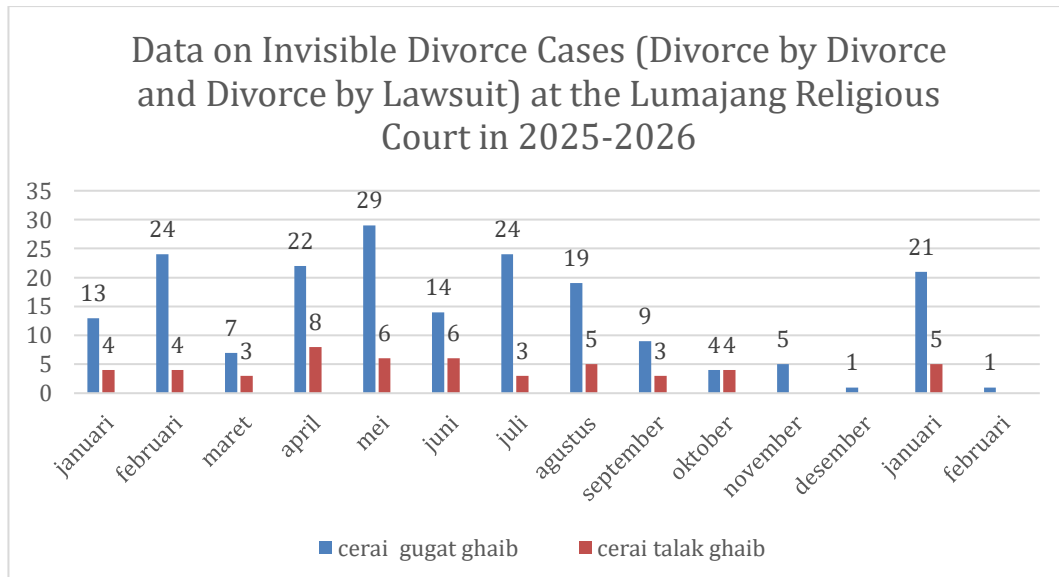


Figure 2. Bar Chart of Unseen Divorces at the Lumajang Religious Court, 2025-2026

The diagram illustrates the recapitulation of supernatural divorce cases at the Lumajang Religious Court during the 2025–2026 period, including contested divorce and talak divorce. Referring to the available data, the total number of cases presented reached 244 supernatural divorce cases throughout the 2025–2026 period, consisting of 193 contested supernatural divorce cases and 52 supernatural talak divorce cases. Based on these data, contested supernatural divorce appears to be more dominant than supernatural talak divorce. The highest number of contested supernatural divorce cases occurred in May, with approximately 29 cases, while the lowest numbers were recorded in February and July, with around 24 cases. Meanwhile, supernatural talak divorce remained relatively lower, with the highest figure occurring in April, at approximately 8 cases. However, toward the end of the data period, such as in November, December, and February, the number of cases decreased quite sharply. These data indicate that supernatural divorce at the Lumajang Religious Court is more frequently filed by wives through contested divorce. This condition shows that the husband's absence often becomes a reason for wives to file for divorce in order to obtain legal clarity regarding their marital status.

2. Implementation Of Child Custody Protection After A Divorce

Under Islamic jurisprudence, care for minors is known as guardianship, which includes protection, care, and guidance before a person is able to distinguish between good and bad. Sayyid Sabiq explains that this form of care is intended for those who are not yet capable of managing themselves, both boys and girls, because they still require assistance from adults (Sabiq, 1999). Thus, the concept of guardianship is understood as a responsibility to protect, nurture, and guide minors so that they are kept away from harmful conditions and receive direction for their optimal development.

The regulation of child care is also contained in Q.S. Al-Baqarah verse 233. This verse explains that the father bears the obligation to provide maintenance for the mother and child according to his ability, while the mother may breastfeed the child for two full years as a form of fulfilling basic needs. The period of pregnancy and breastfeeding is stated to last thirty months. If the father passes away or his whereabouts are unclear, the responsibility may be transferred to the heirs. This verse also allows weaning before the completion of two years through mutual agreement for the benefit of the child. Therefore, divorce cannot be used as a reason to eliminate the fulfillment of care, affection, and economic protection for the child's future (Tarmizi et al., 2023).

Referring to the Compilation of Islamic Law, Article 105 places the care of children who are not yet able to distinguish benefit from harm under the mother's authority. This means that when a child has not reached the age of twelve, custody is prioritized for the mother. However, after reaching the ability to choose, the child may decide whether to live with the father or the mother. In addition, letter d of the Compilation of Islamic Law emphasizes that the father continues to bear the costs of care and maintenance until the child reaches adulthood and is able to be independent.

In family life, cooperation between father and mother is needed to establish a balanced pattern of care. When the marital relationship remains intact, this division of roles can generally function more stably. The mother usually carries out more caregiving functions, while the father still plays an important role in meeting material needs and creating a home environment that is safe, peaceful, and supportive of the child's development. When divorce occurs, this balance is often disrupted. This situation may cause minors to lose the opportunity to receive affection, concern, and complete support from both parents, which may affect their emotional condition and social life (Hutabarat & Ananda, 2024).

Every minor basically needs the presence and concern of parents. Proper and attentive parenting can have a positive influence on physical, psychological, and social development. The fulfillment of these needs also supports physical, mental, and social growth. Conversely, a lack of adequate attention and care may hinder personality formation and well-being. From the perspective of legal protection, Law Number 35 of 2014 concerning child protection affirms the right to live, grow, develop, participate, and receive protection from neglect and violence. After divorce, both parents still bear the obligation to ensure the fulfillment of affection, education, care, and security for the best interests of the child (Kisworo et al., 2020).

In most cases, children often engage in deviant behavior or bad habits, even though they realize they are doing something wrong. This type of behavior can be considered a form of attention-seeking, especially when parental supervision and involvement are not optimal (Suherman & Hafis, 2022). Children fundamentally need affection, recognition, and a sense of security. When their needs are not met, they may express this through negative behavior. A child expects their parents to cooperate well, providing affection and carrying out responsibilities equally. When both parents are still in an intact marriage, this cooperation is usually easier to achieve.

In addition, SEMA No. 1 of 2025 provides technical guidelines for the implementation of judicial duties. In divorce disputes where the litigating parties do not request a determination of child custody, the judge is still required to examine information and evidence related to the care of minors. If no agreement is reached between the parties, the judge has the authority to determine the party who will receive custody based on the facts proven in court, while placing the welfare of the minor as the main priority. The judge may also require the party currently caring for the child to return the child to the father or mother who has been appointed as the custodian.

Referring to the interview statement at the Lumajang Religious Court, the judge explained that custody authority should not be given to a party whose whereabouts are unclear, because custody requires presence, capability, and the ability to carry out obligations in a concrete manner. According to her, in supernatural divorce cases, granting custody authority to the mother is based on the principle of the child's best interests. Therefore, when the father's whereabouts are unclear, the mother automatically bears the obligation to ensure the continuity of care, protection, and the basic needs of the minor (Saadah, 2026).

3. Implementation Of Protection Of Children's Educational Rights After Divorce

The responsibilities of fathers and mothers toward minors are not limited to custody, but also include the fulfillment of access to education. Access to education is a fundamental element in the protection of minors and remains the responsibility of both parents even though the marital relationship has ended. The learning process has an important position in supporting personal development and intellectual ability. Its fulfillment is intended so that minors have the opportunity to develop their abilities, interests, and potential. Adequate access to education is not only related to formal schooling, but also includes character formation, moral values, and social skills that are useful for future life (Kisworo et al., 2020).

This provision is in line with Law No. 4 of 1979 concerning Child Welfare, which regulates that every minor has the opportunity to receive education according to their stage of development, thinking ability, interests, and talents. Therefore, fathers and mothers are obliged to fulfill the educational needs of their children. The purpose of this fulfillment is so that minors receive proper education and grow into individuals with good character, knowledge, and intelligence. Thus, their development can progress according to their potential, interests, and talents.

Divorce is a legal event that affects both minors and the relationship between husband and wife. Children from divorced families often experience obstacles in adapting to school and society. Emotional conditions such as sadness, anger, anxiety, or a sense of loss may arise, especially when support and attention from both father and mother are not obtained optimally. This situation can interfere with learning focus and academic motivation. Limited guidance and emotional support may reduce learning achievement and even cause children to fall behind in learning activities. In certain situations, behavioral changes may also appear as a response to unstable family conditions (Handoyo & Waluyo, 2025)

This provision is consistent with Article 45 of Law No. 1 of 1974 concerning Marriage, which emphasizes that fathers and mothers are required to care for and provide the best possible guidance to their children. This obligation ends when the child is married or able to be independent. This norm shows that the responsibility of fathers and mothers in raising and providing education continues until the minor reaches independence. Furthermore, the second paragraph of the same article states that this obligation remains attached even after divorce occurs. This means that the dissolution of marriage does not eliminate the responsibility of fathers and mothers to provide protection, including the fulfillment of access to education, care, and proper self-development.

My interviews at the Lumajang Religious Court revealed that judges continue to determine parental obligations to children even if one party is not present at the hearing. In practice, as part of guaranteeing legal protection, judges consider the child's circumstances, the parents' economic capabilities, and the continuity of their education. This is demonstrated by Decision Number 326/Pdt.G/2026/PA.Lmj, a ruling granting the plaintiff's claim in several cases, stipulating that the child is in the mother's care, and the father must provide monthly support for the children until they reach adulthood or become independent. However, if the father's financial situation is uncertain due to invisibility, the ruling often simply states that the father must provide support for the child, without specifying a specific amount or detailing the child's education costs.

The unknown whereabouts of the father make the process of executing a supernatural divorce judgment challenging. A person can file for enforcement of a legally binding decision. However, this is difficult if the defendant's assets or address are unknown. In such circumstances, the judge can use an *ex officio* method to assert responsibility for fulfilling the child's rights, including the child's continued education, although implementation remains challenging. As a result, the mother or closest relative takes on more responsibility for caring for the child and meeting their educational needs (Masrukhin & Damayanti, 2020).

Comparison with practices in several other Religious Courts reveals a similar pattern: judges continue to impose child support on fathers even when cases are decided by default or by supernatural means. However, the amount of support and the details of educational costs vary depending on the circumstances of the parties and the evidence presented. Some courts more strictly stipulate the amount of monthly support, while others only stipulate a general obligation to provide child support. This difference demonstrates that in supernatural divorce cases, the protection of children's educational rights is highly dependent on the judge's decision and the circumstances of each case (Sepma & Erwita, 2020).

D. Conclusion

This study demonstrates that supernatural divorce not only serves as a legal mechanism to terminate a marriage through a default judgment, but also serves as a means to protect children's rights. Judges in Religious Courts determine the right to have a right to have a right to have a right to have a child's education and consider the individual circumstances of the parties involved, the child's development, and

the principle of the child's best interests. The novelty of this study lies in its use of the Compilation of Islamic Law, which serves not only as a normative basis but also as an analytical framework to assess the extent to which judges' decisions can provide concrete legal protection for children in supernatural divorce cases. In this way, the law encompasses not only the procedural aspect but also serves as a progressive tool that connects normative texts, child protection objectives, and social conditions in judicial practice.

This study is limited by its conduct at the Lumajang Religious Court, making it impossible to accurately represent practices in other regions with different social and legal characteristics. Furthermore, due to the limited number of informants and the lack of further investigation into the implementation of court decisions, this study places greater emphasis on legal considerations than on the effectiveness of post-decision implementation. Practically, it is recommended that judges at the Lumajang Religious Court strengthen considerations regarding child support, education, and childcare when deciding on supernatural divorce. Furthermore, policymakers and legislators need to strengthen regulations governing decisions related to children's rights after a supernatural divorce. Furthermore, the public, especially parents and extended families, must be more aware that divorce does not eliminate the obligation to provide for their children.

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