




Research Article

## Transformation of Children's Rights After Divorce Outside the Religious Court of Padangsidempuan City in the Perspective of Maslahah

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**Abstract.** Divorce is a problem that is quite complicated and very dilemmatic in people's lives. Although Law Number 1 of 1974 was promulgated and enforced 39 years ago, the reality is that the practice of divorce carried out by the husband is not in front of the Religious Court hearing. In Article 39 paragraph (1) of Law No. 1 of 1974 states that divorce can only be done in front of a competent court after the court concerned has tried and cannot reconcile the two parties. To carry out a divorce, there must be enough reason, that between a man and a woman they will no longer be able to live in harmony

as husband and wife. In fact, in the jurisdiction of the Religious Court of Padangsidempuan City, there are still many who carry out divorces outside the Religious Court. This research method uses a juridical-normative method. The data sources used include primary legal materials, secondary legal materials and tertiary legal materials. After the data is collected, classified and processed, it will be compiled into a scientific paper. The results of this study show that the factors that cause divorce in the Padangsidempuan City Religious Court are economic factors, community legal knowledge factors, juridical factors, sociological factors, and customary factors (kinship system *dalihan na tolu*). The mechanism of divorce is carried out by oral talaq, a written statement submitted to the wife, and secretly without anyone knowing it. As a result of the law that arises, the wife has difficulty getting a new marriage through the Religious Affairs Office (KUA), cannot claim living expenses through the Religious Court, it is difficult to get joint property and has a negative impact on the rights of the child who is the victim. Masalahah's view of the transformation of children's rights after divorce is prone to be ignored because the rights to alimony, education, health, and inheritance rights are not fulfilled. The obligation of parents as protectors and guides for children is good. Children do not receive complete affection from their father and mother.

**Keywords:** Transformation, Children's Rights, Divorce, Masalahah.

**Abstrak.** Perceraian merupakan masalah yang cukup pelik dan sangat dilematis dalam kehidupan masyarakat. Meskipun Undang-Undang Nomor 1 Tahun 1974 telah diundangkan dan diberlakukan pada 39 tahun lalu, namun kenyataannya praktik perceraian yang dilakukan oleh suami tidak di depan sidang Pengadilan Agama. Dalam Pasal 39 ayat (1) UU No. 1 Tahun 1974 menyebutkan bahwa perceraian hanya dapat dilakukan di depan sidang pengadilan yang berwenang setelah pengadilan yang bersangkutan berusaha dan tidak dapat mendamaikan kedua belah pihak. Untuk melakukan perceraian harus cukup alasan, bahwa antara laki-laki dan perempuan itu tidak akan bisa hidup rukun lagi sebagai suami isteri. Faktanya di wilayah hukum Pengadilan Agama Kota Padangsidempuan masih banyak yang melakukan perceraian di luar Pengadilan Agama. Metode penelitian ini menggunakan metode yuridis-normatif. Sumber data yang digunakan meliputi bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Setelah data dikumpulkan, diklasifikasi dan diolah maka akan disusun menjadi sebuah karya ilmiah. Hasil penelitian ini menunjukkan bahwa faktor penyebab terjadinya perceraian di Pengadilan Agama Kota Padangsidempuan adalah faktor ekonomi, faktor pengetahuan hukum masyarakat, faktor yuridis, faktor sosiologis, dan faktor adat (sistem kekerabatan *dalihan na tolu*). Mekanisme perceraian yang dilakukan secara talak lisan, pernyataan tertulis yang disampaikan kepada isteri, dan secara diam-diam tanpa ada yang mengetahuinya. Akibat hukum yang timbul, sang isteri kesulitan melakukan perkawinan baru melalui Kantor Urusan Agama (KUA), tidak bisa menuntut biaya kehidupan melalui Pengadilan Agama, sulit akan mendapat harta bersama dan berdampak negatif terhadap hak-hak anak yang menjadi korban. Pandangan masalah terhadap transformasi hak-hak anak pasca perceraian rentan terabaikan karena tidak terpenuhinya hak nafkah, pendidikan, kesehatan, hingga hak waris. Kewajiban orang tua sebagai pelindung dan pembimbing bagi anak menjadi baik. Anak tidak mendapat kasih sayang yang utuh dari ayah dan Ibu.

**Kata Kunci:** Transformasi, Hak-Hak Anak, Perceraian, Masalahah.

## INTRODUCTION

Divorce is a legal process, where a marriage is officially and legally terminated by the authorities, resulting in both spouses no longer being husband and wife. This can involve various legal processes, such as filing a divorce petition in court, mediation, or administrative proceedings, depending on the legal jurisdiction applicable in a country. Divorce can be caused by a variety of factors, including incompatibility between couples, unresolved conflicts, domestic violence, infidelity,

or changes in life priorities and values. In general, each country has its own laws and procedures that govern the divorce process, including the conditions that must be met before the divorce can be legally recognized (Muhammad Syaifuddin, Sri Turatmiyah, dan Annalisa Yahanan 2022).

In Indonesia, there is a rule on divorce, namely Law Number 1 of 1974 concerning Marriage. Article 39 Paragraph 1 states that "*divorce can only be done in front of a Religious Court session after the institution concerned has tried and failed to reconcile the two*".(Kurniawati 2021) However, it must satisfy the reasons stipulated in Article 39 Paragraph 2 of Law Number 1 of 1974, and Article 116 of the Compilation of Islamic Law.(Dairobi dan Akbar 2024) It can be understood that the purpose of these several articles is to make it difficult for divorce to occur. In addition to the legal process, divorce can also have a significant emotional, psychological, and financial impact on both spouses and also for the children, if anyone is involved in the divorce. Therefore, it is important for couples who want a divorce to consider carefully and prepare well to cope with these effects (Abror dan MH 2020).

In the context of divorce out of court, these articles emphasize the importance of a divorce process that is in accordance with the rules of religious law or applicable laws and regulations to ensure the validity and force of the divorce law. If the divorce is carried out without complying with these provisions, it can cause legal uncertainty regarding marital status and rights related to the divorce. After a divorce, the child's financial needs must still be met. Parents who do not have physical custody still have an obligation to provide financial support, usually through the payment of child support. Divorce can have a significant emotional impact on children. The transformation of children's rights should include emotional and psychological support, such as counselling, to help the child cope with these changes. The right of children to adequate education and health services must remain a priority. Parents should work together to ensure that the child has access to good education and necessary health services (Muhsin dan Wahid 2021).

Agreements made outside of the Religious Court must have a monitoring mechanism in place to ensure that both parties comply with the agreement. This can involve a third party such as a mediator or social worker to monitor the implementation of the agreement. Legal systems and policies must be adapted to accommodate out-of-court settlements and ensure that children's rights remain guaranteed in such situations. This is emphasized in Article 41 of Law Number 1 of 1974 concerning Marriage, namely "*the impact of the breakup of the marriage bond due to divorce, both parents still have an obligation to maintain and educate their children, solely for the sake of the child. Even though they are divorced, you should give your child the rights of their children, both the right to maintenance, education, health, and housing, which in fact are guaranteed to be suitable physically and mentally, especially to get affection from their biological parents*" (Fajri dan Silahuddin 2022).

But the fact is that in the city of Padangsidempuan, there are still many people who divorce without going through the court process. Based on the results of observations, there are 9 (nine) married couples who divorced out of court. This makes it difficult for them to process their post-union rights. For example, the civil

rights of the wife. A wife who is legally married (proven by a marriage certificate), but chooses to divorce under her hands. So he cannot ask for his civil rights. Such as the right to hadhanah, maintenance, residence, and others. This means that getting a divorce outside the court gets a lot of mudharat, especially related to his rights. In addition, the rights of children after divorce are vulnerable to being ignored by both parents. One of the reasons is the lack of attention between the two towards children. On the one hand, because they are divorced, the status of the determination of hadhanah is not clear, especially they divorce out of court. So that children become abandoned as a result of divorce. As explained in Article 283 of the Criminal Code (Rongkene 2020), "if the rights of the child are not fulfilled after the divorce which incidentally results in physical or mental harm to the child, then the perpetrator can be subject to criminal sanctions". While Article 310 of the Criminal Code states that "if the perpetrator neglects the obligation to provide care, protection, and education to the child after the divorce, this can be considered a neglect and may be subject to criminal sanctions. Meanwhile, Law Number 35 of 2014 concerning Child Protection states that "anyone who commits an act that harms a child can be subject to criminal sanctions".

The application of criminal sanctions must be carried out in accordance with applicable legal procedures and based on valid evidence. The issue of transforming children's rights after divorce outside the Religious Court in the city of Padangsidempuan, can face various challenges. Many parents do not have adequate knowledge of the child's rights and the laws governing child custody and custody. This can lead to informal agreements that are unfair or not in accordance with the best interests of the child. Economic factors are often a major obstacle. Divorced parents may not have sufficient financial resources to provide adequate support for the child, both in the form of child support and access to education and health services. Cultural and social values in Padangsidempuan can influence how children's rights are viewed and treated. Therefore, this study aims to analyze the phenomenon of fulfilling children's rights after divorce outside the court among the people of Padangsidempuan City. To be able to answer academic concerns in this study, the researcher uses the concept of maslahah in tracing or seeing events that occur at the research location. This research is important to do, because there are still many academic aspects that have not been studied by previous researchers.

## **RESEARCH METHODS**

This research includes juridical normatives (Huda dan S HI 2021), which will focus on the study of relevant laws and regulations, legal doctrines, and legal literature. This research will analyze the applicable positive laws, including laws, government regulations, and court rulings related to children's rights after divorce (Ali 2021). The approach used is an in-depth case study, which will provide a more detailed understanding of the transformation of children's rights in a specific context in Padangsidempuan (Djulaeka dan Devi Rahayu 2020). In addition, the maslahah approach. This approach focuses on the welfare and best interests of children in accordance with sharia principles that prioritize the common good. The position of

this approach will also determine the principles of maslahah that are relevant to the rights of children and divorce (Susanti, Sh, dan A'an Efendi 2022).

## **RESEARCH RESULTS**

### **Children's Rights After Divorce of Both Parents**

Divorce is the process of ending a marital relationship between two previously married people. This is a serious step that can involve various aspects of life, including financial, emotional, social, and legal. Divorce officially ends the marital bond between the couple. This means that the couple is no longer considered husband and wife in the eyes of the law. Divorce usually involves a legal process that consists of steps such as filing a divorce petition, mediation (if needed), and a trial in court to resolve disputes related to the division of joint property, alimony, and children's rights. In divorce, joint property acquired during the marriage often has to be divided fairly between the two parties. This can include property, financial assets, and joint debt. If the couple has children, the divorce will also determine the rights of parents over the child, including custody, maintenance, and child custody. Divorce is often an emotionally challenging experience for couples and their children. This can cause stress, anxiety, and sadness for all parties involved. Divorce is often considered a last resort after various attempts to repair the relationship have failed. While the process may be difficult, for some couples, divorce can be a necessary step toward achieving long-term happiness and well-being (Sinaga, Pelawi, dan Sinambela 2022). Article 39 Paragraph 1 of Law Number 1 of 1974 concerning Marriage in Indonesia states that "Divorce can be granted for the following reasons (Yulianti dan Hamzah 2022):

1. One party commits a severe, malicious or blatant oblique act;
2. the lifting of the party concerned, especially those who suffer from accidents, permanent disabilities or physical illnesses, which in a way makes it impossible for the other party to carry out his or her obligations as husband or wife;
3. one party immediately becomes an apostate, an instant apostate or renounces Islam;
4. one party becomes a mental disability that is impossible to cure;
5. one party leaves the other party for two consecutive years without any cause deemed legitimate by the judge or without the knowledge of the abandoned party;
6. a harsh disagreement, so much so that there is no longer a possible living relationship between the two parties."

So, the article mentions several grounds that can be the basis for granting divorce in Indonesia, including bad behavior, accidents or illnesses that cause infertility, religious changes, permanent mental disability, neglect, or very severe differences of opinion that make living together impossible.

In Indonesia, there is a rule on divorce, namely Law Number 1 of 1974 concerning Marriage. Article 39 Paragraph 1 states that "*divorce can only be done in front of a Religious Court session after the institution concerned has tried and failed to reconcile the two*". However, it must satisfy the reasons stipulated in Article 39 Paragraph 2 of Law Number 1 of 1974, and Article 116 of the Compilation of Islamic Law. It can be understood that the purpose of these several articles is to make it

difficult for divorce to occur. In addition to the legal process, divorce can also have significant emotional, psychological, and financial impacts for both partners and also for the children, if anyone is involved in the divorce (Hidayat, Al-Amruzi, dan Sarmadi 2023).

As a result of divorce, the rights of children must be granted in accordance with applicable laws, policies, and social norms. These rights aim to protect, ensure welfare, and meet the physical, emotional, and social needs of children. The right to life and health, children have the right to live in a safe and healthy environment. The right to education, children have the right to get education that is in accordance with their development. This includes the right to quality primary and secondary education, as well as access to equal educational opportunities without discrimination. The right to protection, children have the right to be protected from all forms of violence, exploitation, neglect, and discrimination. Children also have the right to live a life that allows them to develop their identity positively, pursue their interests and talents, and achieve overall happiness and well-being. The protection and fulfillment of children's rights is a shared responsibility of the family, society, government, and institutions (Karim dan Syahril 2021).

In Islam, the rights of children after divorce are governed by sharia principles. There are several rights given to children after divorce, including: Children have the right to live with parents who are able to provide the best care, protection, and education for them. However, in some cases, the court may assign custody to one of the parents or even to the other party who is deemed better able to provide good care. Alimony (Maintenance and Living Expenses), children have the right to receive alimony which includes their basic needs such as food, clothing, shelter, and education. It is the responsibility of parents to provide for the living. Relationship with Parents: Children have the right to establish a good relationship with both parents, unless there is a clear reason to prohibit it, such as the safety and welfare of the child. Parents have a responsibility to educate their children in an Islamic way, as well as to provide correct religious understanding and moral guidance. In divorce cases, it is important to prioritize the interests and welfare of the child, as well as to comply with the legal principles applicable in Islam. It is also advisable to consult Islamic scholars or jurists to get the right advice in this matter (Dahwadin, Sofiwati, dan Somantri 2020).

Article 41 of Law Number 1 of 1974 emphasizes that "the impact of the breakup of marriage due to divorce, both parents still have an obligation to maintain and educate their children for the benefit of children" (Indonesia dan Bab 1974). Meanwhile, Article 105 of the Compilation of Islamic Law states that "the impact of the breakup of marriage due to divorce, both parents still have an obligation to maintain and educate their children for the benefit of the child, if there is a problem related to child control, the court will give a decision" (Maulana 2023). When children's rights are neglected, there are a number of serious consequences that can negatively affect a child's well-being and development. Some of the possible consequences if the rights of a child are ignored after a divorce or in other contexts are as follows:

1. **Emotional Impact:** Children can experience stress, anxiety, or depression as a result of emotional instability and worry about their situation. Insecurity and lack of emotional support can affect their mental well-being;
2. **Developmental Disorders:** The non-fulfillment of children's rights can hinder their physical, cognitive, emotional, and social development. For example, lack of access to education or lack of social support can hinder their ability to grow and develop optimally;
3. **Parent-Child Relationship Disorders:** If one or both parents do not fulfill the child's rights, this can damage the parent-child relationship. A lack of involvement, support, or attention from parents can lead to a sense of disconnection and a loss of trust from the child towards them;
4. **Physical Well-being:** Children may have difficulty meeting basic needs such as food, clothing, shelter, or access to health services if their rights are neglected. This can threaten their physical well-being and increase the risk of health problems;
5. **Environmental Instability:** The non-fulfillment of a child's rights can create an instability in the environment in which the child lives. For example, frequent displacement or unresolved conflicts between parents can create an environment that is not conducive to the development of children.
6. **Long-Term Impact:** The consequences of a child's non-fulfillment of rights can have a long-term impact on their lives, including mental health issues, difficult interpersonal relationships, and difficulties in reaching their full potential.

It is important to remember that children have rights protected by law to ensure that their needs and best interests are met. The non-fulfillment of children's rights is a serious violation of human rights and can cause adverse and detrimental impacts on such children.

### **Legal Implications for Children's Rights After Divorce in Padangsidempuan City**

Ideally, if you ignore the rights of children, you can be subject to criminal sanctions based on the Criminal Code (KUHP) in Indonesia. Several articles in the Criminal Code that regulate child protection and sanctions for those who ignore children's rights include: Article 77 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Sholikhudin dan Handayani 2024). Article 77 of the Child Protection Law states that every person who commits acts of discrimination against children so that they cause children to suffer both material and moral losses, can be punished with imprisonment. Article 304 of the Criminal Code states that: "Whoever places or allows a person to be poor, even though according to the law applicable to him or by agreement, he is obliged to provide livelihood, care or maintenance to that person, is threatened with imprisonment for a maximum of two years and eight months or a fine of up to six hundred rupiah."

It is understood that if a guardian or parent who has an obligation to provide care and maintenance, but neglects the duty so that the child becomes poor or abandoned, they can be punished. Meanwhile, Article 305 of the Criminal Code states

that: "Whoever places or allows a child who is not yet seven years old, in a poor or abandoned state, is threatened with imprisonment for a maximum of five years and six months or a fine of up to six hundred rupiah." Meanwhile, Article 306 of the Criminal Code Paragraph (1): If the crime described in Article 304 or 305 results in serious injury, then the perpetrator is threatened with imprisonment for a maximum of nine years. Then Paragraph (2): If it results in death, the perpetrator is threatened with imprisonment for a maximum of fifteen years (PURWANTO 2024).

In the context of violations of children's rights, this violation is not only seen from the aspect of general criminal law but also refers to special provisions regulated in the Child Protection Law. Parents or guardians who neglect children's rights such as providing livelihood, care, and education can be subject to criminal sanctions as stipulated in the articles of the Criminal Code above. Protecting children's rights is a serious legal responsibility. Ignoring this obligation can be subject to quite severe criminal sanctions, ranging from imprisonment to fines, depending on the impact caused by the neglect. The implementation of this sanction is expected to encourage parents or guardians to be more responsible in fulfilling their children's rights. Unlike in the city of Padangsidempuan, the majority of Muslims divorce outside the Religious Court. Although there are many legal consequences that result from it, this action seems to have become a tradition or habit that is difficult to stop. There are many reasons for people to divorce outside the court, as conveyed by Mr. Nasution, "In the city of Padangsidempuan, some people do not understand the rules about divorce that are official or legal based on the applicable law.

What is understood by the community is only divorce based on Islamic law". This statement shows that people's ignorance of divorce rules makes them not comply with it, so they are vulnerable to divorce out of court. Meanwhile, Mrs. Lubis said, "some of the people of Padangsidempuan City are highly educated, but not all of them solve domestic problems (divorce) in front of the court. Because there is a principle, the public should not know much about their home life or maintain social impact". The results of this interview provide an understanding that people do not want their domestic problems (divorce) to be known by the surrounding community. Because the event is a disgrace that must be kept secret. The social impact of the divorce makes it necessary to cover it by divorce under the hands only.

Meanwhile, Mrs. Matondang said, that "getting a divorce through the judiciary takes a lot of money, time, convoluted affairs and the process is long. While getting a divorce under hand, it doesn't cost much and the process is faster. The tendency of people to divorce outside the court, due to economic factors that are quite low. The average income of a divorced person under his hands is Rp. 500,000 per month". Based on what was revealed by Mrs. Matondang, it is proof that the economic reasons that are categorized as mediocre make the people of Padangsidempuan City choose to divorce out of court. When examined the validity of divorce outside the court, there is no benefit for later life. Precisely what exists is the non-fulfillment of children's rights after the divorce of their parents.

According to the author, the divorce carried out by some people in Padasidempuan City shows that there is a lack of knowledge about the mechanism of divorce. Although it has been regulated in Article 39 Paragraph 2 of Law Number 1 of

1974 concerning Marriage, the community has not all undergone and followed this provision. Regarding the reasons for divorce, this is emphasized in Article 39 Paragraph 1 of Law/1/1974 concerning Marriage that must include several logical reasons, not just following a mere wish or no evidence justified by law. It can be understood that the divorce is under the hands of the people of Padangsidempuan City because it does not meet the requirements or logical reasons according to applicable regulations. Then the fundamental reasons are lack of legal awareness, low economic factors, long court distances, expensive costs, and convoluted affairs. In addition to divorce out of court, the people of Padangsidempuan City are vulnerable to not paying attention to the fate of their children after a divorce. As stated by a child named Siregar, "since 2021 my parents have divorced, I have not joined one of them. But come with my grandmother. Since the two divorced, I have never again received the attention and affection I should have as a child of my biological father and mother". Meanwhile, the 12-year-old child with the initials AK said "in 2020 there was a big dispute in our family, as a result of which it could not be resolved properly.

So Dad chose to migrate outside the area to calm his emotions at that time. Until 2024, my father will not come home to meet us at home. As soon as I asked Mother, Father had said words that led to a satirical separation *kehe maau sian bagason, repeat to think au alak laimu harana inda tarpaingot ko* (leave me from this house, don't think of me as your husband anymore because I can't be warned). During my father's visit, I was only given pocket money once but school fees from my mother. Moreover, I will never get together with both again". Based on the above statement, AK's parents divorced in accordance with religious law only, namely by expressing satirical words to separate. During his father's visit, Ak never again received warmth from his parents, especially affection and concern about survival after his parents' divorce.

### **Transformation of Children's Rights After Divorce in Padangsidempuan City in the Perspective of Maslahah**

Imam Al-Ghazali, one of the important figures in the intellectual history of Islam, put forward many theories and concepts that have influenced Islamic thought to this day. One of the concepts known from Imam Al-Ghazali is the concept of "*maslahah*" or "*maqasid al-Shariah*" (the purposes of Islamic law), which is the basis for the theory of *maslahah* in Islamic legal thought. Imam Al-Ghazali understands the concept of *maslahah* as the principle that underlies Islamic laws. According to him, the laws in Islam must pay attention to and advance the welfare and interests of mankind. In addition, there is a need for flexibility in Islamic law, especially to address situations that are not explicitly regulated in the text of Islamic law. The concept of *maslahah* allows for legal adjustments to the increasingly changing social, economic, and political contexts. Imam Al-Ghazali also contributed an understanding of "*maqasid al-shariah*" (the purposes of Islamic law), emphasizing that Islamic laws aim to protect five basic interests, namely religion, soul, intellect, heredity, and property (Kudaedah 2020).

In Imam Al-Ghazali's thought, the public interest (*maslahah 'ammah*) must be prioritized in making legal decisions. This principle is an adjustment of the law to

changing circumstances and ensures that the interests of society as a whole are met. Although *maslahah* is an important factor in the formation of Islamic law, justice must still be maintained to prevent abuse and injustice. The theory of *maslahah* provides a basis for jurists (Islamic jurists) to interpret Islamic law more flexibly, so that they can respond to the challenges and needs of a developing society. The principles of justice and balance taught by Imam Al-Ghazali remain relevant in the modern context, which ensures that the dissemination of Islamic law is carried out taking into account the interests of all parties and society as a whole (Hidayatullah 2018).

From the perspective of *maslahah* al-Ghazali, the fulfillment of children's rights after divorce outside the court in the city of Padangsidempuan can be understood as part of efforts to achieve the public benefit (*maslahah 'ammah*) in society. Imam al-Ghazali views that Islamic law must pay attention to and advance the welfare and interests of mankind. According to Imam al-Ghazali, the public interest must be prioritized in legal decision-making. In this context, the welfare and interests of children as the next generation of the *ummah* must be the top priority. Any decision taken regarding the rights of children after divorce must be based on the principle of the benefit and protection of children. Therefore, Imam al-Ghazali emphasized the importance of avoiding losses (*dharar*) and challenges (*masyaqah*) for individuals and society. In the context of divorce, children are often the most vulnerable to negative impacts, such as emotional trauma, psychological disorders, and financial difficulties. Therefore, in deciding the rights of children after divorce out of court, it is necessary to ensure that the decision will not cause harm or pose an excessive challenge to the child (Efendi dan Fawzi 2022).

Imam al-Ghazali acknowledged the need for flexibility in Islamic law to address situations that are not explicitly regulated in Islamic legal texts. In this context, the regulation of children's rights after divorce outside the court can pay attention to social, economic, and cultural conditions that can improve children's welfare. For example, regulating children's rights to a proper education, access to health services, and other basic needs. Imam al-Ghazali also contributed an understanding of "*maqasid al-shariah*" (the purposes of Islamic law), emphasizing that Islamic laws aim to protect five basic interests, namely religion, soul, intellect, heredity, and property. In the context of children's rights after divorce, the protection of these rights must be the main focus, so that children can grow and develop optimally (Pura, Putra, dan Maulida 2022).

Imam al-Ghazali also acknowledged the importance of peace and reconciliation in society. In the context of divorce, it is important to discuss and mediate between the two parents to reach an agreement that puts the best interests of the child first. This can help prevent prolonged conflict and ensure a stable and safe environment for children. By paying attention to the principles of *maslahah* al-Ghazali, the fulfillment of children's rights after divorce outside the court can be done by paying attention to the best interests of children and the general welfare of the community. Thus, the decision taken can provide optimal protection for children in divorce situations. The transformation of children's rights refers to changes or developments that occur in the understanding, protection, and enforcement of

children's rights from time to time. It includes an evolution in policy, law, social practices, and public awareness of the importance of children's rights (Aini dan Niha 2020).

The understanding of children's rights has evolved from basic concepts of rights such as the right to education, health, and protection, to a more inclusive and holistic understanding. This includes the right to participation, the right to cultural and religious identity, and the right to protection from various forms of discrimination and violence. There is a shift towards improving child protection from all forms of violence, neglect, exploitation, and discrimination. Laws and policies have been strengthened to protect children from adverse situations and to enforce strict penalties against perpetrators of crimes against children. The importance of giving children the opportunity to participate in decision-making that affects their lives is increasingly being recognized. It includes the right of children to be respected, heard, and taken seriously in all matters that affect their lives, according to their level of maturity and understanding. The transformation of children's rights also includes increasing children's access to quality education services and affordable health services. This includes efforts to address barriers such as poverty, discrimination, and inequality in access to these services. With the development of technology, the importance of child protection in the digital context is increasingly recognized. This includes children's rights to privacy, online safety, and protection from exploitation and harassment in the digital space.

The importance of protecting children's rights in the midst of armed conflicts, natural disasters, and other emergency situations is increasingly recognized. This includes efforts to protect children from military recruitment, separation from family, and other psychological trauma caused by emergency situations. The importance of protecting children from economic exploitation, including child labour, human trafficking, and other forms of exploitation, is increasingly becoming a focus in transforming children's rights. Article 39 Paragraphs 1 and 2 of Law Number 1 of 1974 concerning Marriage is an article that regulates the proof and recognition of marriage in Indonesia "Marriage carried out in accordance with the rules of religious law applies to all parties concerned and third parties, if there is a discrepancy between the marriage certificate stipulated under the rules of religious law and the marriage certificate stipulated in accordance with the provisions of the applicable law, then what applies is the last."

This article emphasizes that marriages carried out in accordance with the rules of religious law apply to all parties involved as well as third parties. However, if there is a difference between a marriage certificate made based on the rules of religious law and a marriage certificate made based on the provisions of the applicable law, then the applicable is the marriage certificate made in accordance with the law. "If the marriage is carried out without a determination based on the rules of religious law or carried out with certain conditions that are prohibited by the rules of religious law, then the marriage has no legal force for the party concerned and for a third party, except if it has been carried out with a determination based on the applicable laws and regulations." This article states that if the marriage is carried out without a determination based on the rules of religious law or with certain conditions

prohibited by the rules of religious law, then the marriage does not have legal force for the parties involved and third parties, unless it has been determined based on the applicable laws and regulations.

In the context of divorce out of court, these articles emphasize the importance of a divorce process that is in accordance with the rules of religious law or applicable laws and regulations to ensure the validity and force of the divorce law. If the divorce is carried out without complying with these provisions, it can cause legal uncertainty regarding marital status and rights related to the divorce. The transformation of children's rights is a continuous process, influenced by social, political, economic, and cultural developments. It is important for the community and the government to continue to be committed to improving the protection and fulfillment of children's rights, and to ensure that every policy and action taken always puts the best interests of children first.

In the context of the transformation of children's rights after divorce in Padangsidempuan City, the maslahah perspective can provide a useful view to identify efforts that can be made for the welfare of children. Efforts should be focused on protecting the rights of children after divorce, including the right to education, health, and a safe and supportive environment. It is important to ensure that children's rights are supported by clear legal decisions and are implemented consistently, providing certainty and security for children. Facilitate dialogue and mediation between the two parents to reach an agreement that puts the best interests of the child first, in accordance with the principle of maslahah al-Ghazali on the importance of peace and reconciliation in society. Provide support and resources for families after divorce to strengthen healthy relationships between parents and children, reducing the risk of conflict and its negative impacts. Improving post-divorce children and their families' access to psychosocial services, such as counselling and emotional support, to help them cope with the impact of divorce and develop mental and emotional well-being. Provide education and training to parents on the importance of post-divorce child welfare, as well as skills in building healthy and supportive relationships with their children. Give children the opportunity to participate in decision-making that affects their lives, in accordance with the principle of maslahah which emphasizes the importance of respecting and listening to children's voices. Provide education to children about their rights after divorce, as well as provide them with a strong understanding of their own welfare interests. Ensure that law enforcement related to children's rights after divorce is based on the principles of justice and balance, in accordance with the principle of maslahah al-Ghazali which emphasizes the importance of maintaining justice in every decision. Taking into account the perspective of maslahah, these efforts are expected to produce solutions that support the welfare of children after divorce in the city of Padangsidempuan. These measures can also help ensure that children's rights are protected and fulfilled properly in divorce situations, in accordance with the principles of general welfare and justice.

## CONCLUSION

The causes of divorce at the Padangsidempuan City Religious Court are economic factors, community legal knowledge factors, juridical factors, sociological factors, and customary factors ( kinship system *dalihan na tolu*). The implementation of divorce is carried out by oral talaq, written statements submitted to the wife, and secretly without providing living support to the wife. The legal consequences that arise are the consequences for the wife to find it difficult to get a new marriage through the Religious Affairs Office, unable to claim living expenses through the Religious Court, difficult to get common property and negatively impact the rights of the child who is the victim. Starting from the unfulfilled rights of livelihood, education, health, to inheritance rights. The obligations of parents as guardians and guides of children are neglected. Of the 12 children who were the object of the study, all did not receive the full affection and attention of their fathers. Of course, this is not in accordance with the concept of maslahah which aims to provide benefits or goodness for all parties, especially children.

## BIBLIOGRAPHY

- Abror, H Khoirul, dan KHA MH. 2020. "Hukum perkawinan dan Perceraian."
- Aini, Aula Izatul, dan Aushofun Niha. 2020. "Impulse Buying Behavior Santri Perspektif Maslahah Imam Al-Ghazali." *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi Dan Pemikiran Hukum Islam* 12 (1): 17-33.
- Ali, Zainuddin. 2021. *Metode penelitian hukum*. Sinar Grafika.
- Dahwadin, Enceng Iip Syaripudin, Eva Sofiawati, dan Muhamad Dani Somantri. 2020. "Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam Di Indonesia." *YUDISIA J. Pemikir. Huk. dan Huk. Islam* 11 (1): 87.
- Dairobi, Ahmad Habib, dan Ali Akbar. 2024. "Cerai Gugat dalam Putusan Pengadilan Agama Stabat Nomor 2119/Pdt. G/2023/PA. Stb.(Ditinjau dalam Perspektif Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga dan Pasal 116 Kompilasi Hukum Islam)." *Jurnal Ilmu Hukum, Humaniora dan Politik* 4 (3): 135-41.
- Djulaeka, SH, dan SH Devi Rahayu. 2020. *Buku Ajar: Metode Penelitian Hukum*. Scopindo Media Pustaka.
- Efendi, Tiana Apriani Yustika, dan Ramdan Fawzi. 2022. "Analisis Maslahah Mursalah Menurut Imam Al Ghazali terhadap Penggunaan Rekening Bersama di Marketplace." *Jurnal Riset Ekonomi Syariah*, 1-6.
- Fajri, Muhamad, dan Muhammad Silahuddin. 2022. "TINJAUAN UNDANG-UNDANG DALAM PERCERAIAN DI LUAR PENGADILAN AGAMA." *An Nawawi* 2 (1): 1-12.
- Hidayat, Rakhmat, Fahmi Al-Amruzi, dan Akh Sukris Sarmadi. 2023. "Analisis Yuridis Perceraian di Depan Sidang Pengadilan (Studi Pasal 39 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan)." *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 17 (2): 1379-91.
- Hidayatullah, Syarif. 2018. "Maslahah Mursalah Menurut Al-Ghazali." *Al-Mizan: Jurnal Hukum Dan Ekonomi Islam* 2 (1): 115-63.

- Huda, Muhammad Chairul, dan MH S HI. 2021. *Metode Penelitian Hukum (Pendekatan Yuridis Sosiologis)*. The Mahfud Ridwan Institute.
- Indonesia, Presiden Republik, dan I Bab. 1974. "Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan." *Lembaran Negara Republik Indonesia Tahun*.
- Karim, Kairuddin, dan Muhammad Akbar Fhad Syahril. 2021. "Simplifikasi Pembagian Harta Gono-Gini Akibat Perceraian." *Jurnal litigasi amsir* 9 (1): 1-12.
- Kudaedah, Nur Asiah. 2020. "Maslahah Menurut Konsep Al-Ghazali." *DIKTUM: Jurnal Syariah dan Hukum* 18 (1): 118-28.
- Kurniawati, Rani Dewi. 2021. "Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus Di Pengadilan Agama Majalengka Kelas IA)." *Journal Presumption of Law* 3 (2): 160-80.
- Maulana, Dudung. 2023. "Telaah Pasal 105 Kompilasi Hukum Islam Tentang Hadhanah." *Posita: Jurnal Hukum Keluarga Islam* 1 (1): 1-9.
- Muhammad Syaifuddin, SH, SH Sri Turatmiyah, dan SH Annalisa Yahanan. 2022. *Hukum perceraian*. Sinar Grafika.
- Muhsin, M, dan Soleh Hasan Wahid. 2021. "Talakh Di Luar Pengadilan Perspektif Fikih Dan Hukum Positif." *Al-Syakhsyiyah: Journal of Law & Family Studies* 3 (1): 67-84.
- Pura, Nadiya Ratna, Panji Adam Agus Putra, dan Ira Siti Rohmah Maulida. 2022. "Analisis Masalah Mursalah Menurut Imam Al-Ghazali terhadap Peraturan Pemerintah No 36 Tahun 2021 tentang Pengupahan." *Dalam* , 2:43-49.
- PURWANTO, ADE. 2024. "ANALISIS PERLINDUNGAN ANAK KORBAN KEKERASAN FISIK DALAM RUMAH TANGGA DALAM PERSPEKTIF UNDANG-UNDANG NOMOR 23 TAHUN 2004."
- Rongkene, Brolin. 2020. "Tindak Pidana Pornografi Menurut Kuhp Dan Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi." *Lex Crimen* 9 (1).
- Sholikhudin, Roni, dan Budi Handayani. 2024. "PERLINDUNGAN HUKUM TERHADAP ANAK DARI TINDAK PIDANA KEKERASAN BERDASARKAN UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 35 TAHUN 2014 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK." *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 2 (2): 255-64.
- Sinaga, Janes, Stepanus Pelawi, dan Juita Lusiana Sinambela. 2022. "Perceraian dan Pernikahan Kembali Berdasarkan Markus 10: 1-11." *Indonesian Journal of Christian Education and Theology* 1 (1): 6-15.
- Susanti, Dyah Ochtorina, M Sh, dan SH A'an Efendi. 2022. *Penelitian Hukum: Legal Research*. Sinar Grafika.
- Yulianti, Linda, dan Any Suryani Hamzah. 2022. "Efektifitas Pasal 39 Ayat 1 Undang-Undang Perkawinan Tentang Perceraian Pengadilan Pada Masyarakat Desa Apitaik." *Private Law* 2 (1): 98-107.