



Child Custody in Divorce: Child Psychology Perspective

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Abstract

Divorce often leaves a profound impact, especially for children who must face significant life changes. This study aims to analyze child custody in the context of divorce, based on a child psychology perspective and applicable laws in Indonesia. The study also identifies issues related to law enforcement and its impact on children's psychological well-being. Using a qualitative approach based on literature, this study found that custody decisions that fail to address children's emotional needs can exacerbate the negative impacts of divorce. The conclusions emphasize the importance of a legal approach that considers children's psychology to ensure their well-being.

I. INTRODUCTION

Divorce is an event that not only affects the relationship between the divorcing couples, but also has a huge impact on the children. (Ramadhani & Krisnani, 2019) While many studies focus on the impact of divorce on adults, the impact of divorce on children is often more complex and requires special attention. One crucial aspect of divorce is the decision regarding child custody. This decision directly affects the child's psychological and emotional well-being in both the short and long term.

Divorce is a complex social problem and is often unavoidable in community life. (Sardi, 2017). This incident not only affects the relationship between the couple but also has a significant impact on the children involved. In this context, one of the crucial issues that arises is determining child custody. This determination has direct implications for the child's psychological development and well-being, thus requiring serious attention from various parties, including parents, the courts, and psychology practitioners.

In Indonesia, child custody is regulated through several regulations, such as Article 41 of Law Number 1 of 1974 concerning Marriage and

Article 105 of the Compilation of Islamic Law. These two regulations provide basic guidelines on who is entitled to custody based on the child's age and the parents' circumstances. However, in practice, the implementation of these regulations often faces challenges, ranging from conflict between divorcing couples to the courts' inability to holistically consider the child's psychological needs. (Nurhadi, 2018).

Children involved in divorce proceedings often experience various forms of emotional distress, such as feelings of loss, confusion, and environmental instability. (Khoiri et al., 2025) These factors can impact their psychological development, both in the short and long term. Therefore, a more comprehensive approach is needed, not only focusing on the legal aspects but also encompassing the child's psychological perspective to ensure their well-being is maintained amidst difficult situations.

This study aims to evaluate child custody arrangements in divorce, focusing on how existing legal regulations can be implemented more effectively while taking into account children's psychological needs. This approach is expected to provide solutions that are not only legally fair but

also support children's optimal emotional and social development.

Child custody refers to the decision regarding who has the primary care and support of a child following a parental divorce. In some cases, custody may be awarded solely to one parent (sole custody), or it may be shared between both parents (joint custody). This custody decision is often determined through a legal process that involves considering various factors, including the parents' economic and social circumstances, the child's health, and the child's emotional stability.

Child custody in divorce cases is a complex and sensitive issue, especially when viewed from a child psychology perspective.(Putra, 2021)Divorce not only impacts the relationship between husband and wife but also affects the emotional and psychological well-being of children. According to Law Number 1 of 1974 concerning Marriage, both parents retain the responsibility to care for and educate their children even after divorce.

Typically, custody of children under the age of 12 is given to the mother, while the father is responsible for child support. Psychologically, divorce can have negative impacts on children, such as feelings of loss, depression, and difficulty adapting to environmental changes. Research shows that children from divorced families often face emotional disturbances and difficulties in establishing social relationships. Therefore, it is crucial for courts to assess custody decisions with the child's best interests in mind, including ensuring emotional stability and continued relationships with both parents.

In practice, courts typically consider each parent's ability to create a safe and supportive environment for the child. In certain situations, co-parenting may be an ideal option if both parents are able to work together without conflict that could harm the child. Therefore, the primary priority in determining custody is the child's psychological protection and future well-being.(Zakiyya, 2023)However, the psychological aspects of children in divorce situations often receive insufficient attention. Yet, numerous studies show that a child's psychological well-being is significantly influenced by who provides

care and how the divorce transition is handled. Therefore, it is crucial to understand the child psychology perspective in the context of custody so that decisions can truly support the child's healthy and positive development.

II. RESEARCH METHODS

This study uses a qualitative method with an in-depth literature study approach to explore various aspects related to child custody in divorce from a legal and psychological perspective.(Rukhmana et al., 2022). Primary data was obtained through analysis of legal documents, such as Article 41 of Law Number 1 of 1974 concerning Marriage and Article 105 of the Compilation of Islamic Law, which provides basic guidelines for regulating child custody rights.1 Secondary data comes from various scientific literature, such as academic journals, reference books, and relevant research reports.

The collected data was then analyzed using a thematic approach to identify key patterns in legal regulation, implementation, and the psychological impact of divorce on children. This thematic approach involved coding the data to identify key themes, such as factors influencing custody decision-making, challenges in legal implementation, and children's emotional needs. Furthermore, this study utilized triangulation techniques to ensure data validity and reliability. Data from legal documents were compared with findings in the psychological literature to obtain a more holistic picture. The analysis process was conducted through a literature review to explore the relationship between legal and psychological aspects in determining comprehensive solutions to child custody issues.

III. RESULTS AND DISCUSSION

A. Child custody rights in Article 41 of Law Number 1 of 1974 concerning Marriage

Article 41 of Law Number 1 of 1974 concerning Marriage is an important normative basis for regulating the legal consequences of divorce, one

of which concerns child custody.(Mandey, 2021)This article not only provides a legal framework for who is responsible for children after a divorce, but also emphasizes the basic principle that responsibility for children does not necessarily end even after the marriage bond has been dissolved.

The substance of Article 41 emphasizes that divorce between husband and wife does not automatically eliminate the obligations of both parents to care for and educate their children. In judicial practice, the court will determine which of the two parents is most deserving of child custody. This decision must be based absolutely on the child's best interests, not solely on the parents' requests or desires. In this context, the principle of "the best interest of the child" is the primary foundation in every court decision relating to child custody after divorce.(Hasanah, 2025).

The principle of the child's best interests encompasses a number of considerations that must be taken by the judge in determining who should hold custody. These considerations may include the child's age, the child's emotional state, the child's emotional relationship with each parent, and the parents' physical and financial ability to meet the child's needs. In many court decisions in Indonesia, children under the age of 12 tend to be cared for by the mother, because sociologically and psychologically, mothers are considered more capable of providing direct attention and affection. However, this is not an absolute rule. If the court deems the father more suitable and able to provide a better environment for the child's development, then custody can be awarded to him.(Mandey, 2021).

Even if one party is granted custody, the other party remains legally obligated to contribute to the child's care and education. This obligation includes providing for daily living expenses, education, healthcare, and other needs that support the child's optimal development. Article 41 allows the court to fairly determine the amount of child support based on the financial capacity of the party not granted custody. This also serves as a form of legal protection for children so they do not become victims of economic helplessness following their parents' divorce.(Islamic, 2019).

Furthermore, the relationship between Article 41 and Article 45 of the Marriage Law reinforces the provision that parental obligations towards children are a responsibility that continues until the child reaches adulthood or is able to stand on his or her own two feet economically and socially. Therefore, even if a divorce has occurred, there is no legal or moral reason that can justify neglecting parental responsibilities towards children.(Hasanah, 2025).

However, in judicial practice, the implementation of Article 41's provisions does not always run smoothly. Various problems frequently arise, particularly when there is a prolonged conflict between former spouses. Disputes over custody often follow emotional conflicts between husbands and wives that have not been resolved in a mature manner. In some cases, both parties fight over custody not solely for the benefit of the child, but as a form of domination or retaliation. This situation is very detrimental to the child, as they are placed in a tug-of-war situation that disrupts their emotional and psychological stability.(Full Moon, 2023).

Furthermore, there are cases where the party without custody refuses to fulfill their obligation to provide child support or maintenance. This refusal can stem from disagreement with the court's decision, financial issues, or even a personal reluctance to remain involved in the child's life after the divorce. In situations like these, the child becomes another victim of their parents' disagreements.

To address these challenges, a more progressive and child-centered legal approach is essential. One solution is to optimize mediation institutions before custody cases are decided by the court. Through mediation, former partners can be encouraged to communicate openly, recognize shared responsibilities, and find healthier agreements for the child's development. Mediation also allows for the development of mutual understanding without prolonging the conflict in a formal and rigid courtroom.(Ompusunggu, 2020).

Furthermore, oversight of the implementation of court decisions regarding custody and maintenance obligations also needs to be

strengthened. Institutions such as religious courts, district courts, or even child protection agencies can be authorized to conduct periodic evaluations of childcare conditions after a divorce. This mechanism is crucial to ensure that children's rights are protected and not violated due to neglect by either party.

Another effort is to increase legal awareness in society about the importance of parents' role in child development, even after a marriage has ended. Legal education campaigns that emphasize moral and legal responsibilities towards children after divorce can help reduce the number of child rights violations. This education should target not only parties undergoing or approaching divorce, but also the wider community, to create a legal culture that is more concerned with child welfare.(Wulandari, 2023).

Ultimately, the successful implementation of Article 41 depends not only on the content of the legal norm itself, but also on the legal awareness, moral sensitivity, and integrity of all parties involved. The state has a responsibility to ensure that children whose parents divorce continue to receive equal rights to education, protection, and affection. Custody is not simply about who has the authority to care for children, but also about how to ensure a child's future is safeguarded in a broken family situation.

B. Article 105 of the Compilation of Islamic Law on Child Custody

Article 105 of the Compilation of Islamic Law (KHI) provides clear and systematic regulations regarding post-divorce child custody in the context of Muslim families. This norm defines the division of parental responsibilities toward children after divorce, designed to ensure the continued care and protection of children, both physically, psychologically, and spiritually. This regulation demonstrates that even though a household has been divided due to divorce, children should not be placed in a disadvantageous position, either in terms of custody rights or the right to receive adequate care and education.(Amanuddin, 2022).

In general, Article 105 states that the right to custody of children who have not reached the age

of *mumayyiz*, namely children who are not yet able to differentiate between good and bad, which is usually associated with the age of under 12 years, is the right of the mother.(Nasution, 2018)This is based on sociological and psychological considerations that mothers are emotionally closer and are considered more capable of providing intense love and nurturing to young children. This provision aligns with Islamic values, which place a mother's role central to a child's development.

However, once a child reaches the age of consent, Article 105 provides the child with the opportunity to choose with whom he or she wishes to live and be cared for. This mechanism emphasizes the recognition of the child's will and autonomy in determining their emotional comfort and relational needs with their parents. In this process, the judge will consider various emotional and psychological aspects of the child and ensure that the choice is not the result of pressure from either party or the surrounding environment.(Semman, 2025).

Financial responsibility for child support, according to Article 105, rests with the father. This reflects the principle of Islamic law, which stipulates that the father is obligated to provide for the family, including the child's living expenses, education, and health care. However, in practice, the court also takes into account the father's actual circumstances, particularly if he lacks sufficient financial resources. In such situations, alternative solutions can be sought, such as the involvement of the extended family or assistance from social institutions. This flexibility provides a just framework so that obligations do not become a disproportionate burden while still ensuring the fulfillment of the child's rights.(Marini et al., 2022).

Although these regulations are designed to ensure fairness and protection for children, implementation often faces challenges. One major challenge is conflict between parents, which can lead to custody battles that are no longer based on the child's best interests, but rather on emotional, revenge, or ego-driven concerns. This is a serious issue because, if not handled properly, children can become victims of prolonged conflict, which

can disrupt their emotional balance and mental development.

Furthermore, there are also issues such as refusal or negligence in fulfilling child support obligations by fathers who do not have custody. In some cases, this refusal is done as a form of protest against a court decision, or as a form of rejection of an ex-partner, without considering the impact on the child. As a result, children often have to live in less than ideal conditions, both economically and psychologically. Legal enforcement of this child support obligation still requires strengthening, including mechanisms for monitoring and executing court decisions. (Latupono et al., 2023).

Children who have reached mumayyiz age are also not free from pressure in the process of selecting the parents who will care for them (Nasution, 2018). In reality, children often feel trapped in a dilemma, having to choose between two equally loved parties. This situation can be exacerbated by pressure from family or social circles, whether subtle or overt, to choose a particular side. Therefore, the involvement of a third party such as a mediator, child psychologist, or family counselor is crucial in this decision-making process, so that children can make decisions freely and in a stable emotional state.

In religious court practice, judges not only refer to the normative text of Article 105 of the Compilation of Islamic Law (KHI), but also consider various additional factors to ensure that decisions are truly based on the child's best interests. These factors include a safe and stable living environment, the parents' physical and mental capacity to care for the child, the child's emotional well-being, and the child's social relationships with those around them, such as extended family and peers. When it is found that the party holding custody is no longer capable of carrying out these responsibilities, or exhibits behavior that endangers the child, the court can review the decision and transfer custody to another, more suitable party.

In this case, the provisions contained in Article 105 of the Compilation of Islamic Law (KHI) show a close relationship with Article 41 of Law Number 1 of 1974 concerning Marriage,

especially regarding the division of childcare responsibilities and the father's financial obligations. Although both apply in different legal regimes, with Article 105 of the KHI applying specifically to Muslims, and Article 41 of the Marriage Law applying generally to all Indonesian citizens, the goal remains the same: comprehensive and continuous child protection after divorce. This similarity of orientation demonstrates the universal spirit within the Indonesian legal system in guaranteeing children's rights as legal subjects entitled to affection, protection, education, and a decent life.

However, overlaps and differences in the application of these two provisions can create confusion in practice. Therefore, harmonization between national law and Islamic law needs to be continuously strengthened, both through normative and institutional approaches. This is crucial to ensure that there are no legal loopholes that can be exploited to avoid responsibility or harm children.

Thus, Article 105 of the Compilation of Islamic Law (KHI) is not merely a legal norm governing the technicalities of custody distribution, but rather part of a child protection system that reflects the values of justice, compassion, and moral responsibility inherent in Muslim society. The implementation of this norm must be continuously adapted to social dynamics and children's needs to remain relevant and effective in achieving comprehensive child protection.

C. The Impact of Custody Determination on Children's Psychological Well-Being

Determining child custody after divorce is a crucial aspect of Indonesia's family law system, particularly as it concerns the interests and future of the child. One of the most crucial dimensions in custody decisions is the child's psychological well-being. Various national regulations, such as Law No. 23 of 2002 concerning Child Protection, as amended by Law No. 35 of 2014, and Law No. 1 of 1974 concerning Marriage, emphasize the need to safeguard the emotional safety and psychological well-being of children in every legal process, including when deciding who will hold custody. (Hasanah, 2025).

A child's psychological well-being encompasses not only a sense of security and stability, but also emotional connectedness with both parents. The Child Protection Law explicitly states that every child has the right to live and develop in a healthy, safe, and loving environment. In the context of divorce, this supportive environment must be maintained to the maximum extent possible, even if there are changes in the family structure. Therefore, when a court is faced with a custody case, the child's emotional and psychological aspects must be prioritized, as emphasized in the principle of the best interest of the child, which is also recognized in international law through the Convention on the Rights of the Child, which Indonesia has ratified. (Islamic, 2019).

The decision to grant full custody to one parent is often based on an assessment of who is more capable of providing stability and a suitable environment for the child. However, such a decision has the potential to have profound psychological consequences if it is not accompanied by assurances that a healthy relationship will remain between the child and the non-custodial parent. Children who lack adequate access to one parent can experience emotional distress, loss of a loving figure, and ultimately lead to long-term psychological disorders such as anxiety, stress, and low self-esteem. The absence of a parental figure can also directly lead to feelings of abandonment and loss of direction, especially during crucial stages of a child's development. (Semman, 2025).

In contrast, joint custody is seen as a more ideal solution for maintaining a child's emotional balance, provided both parents are able to maintain healthy communication and good cooperation. In practice, joint custody allows children to maintain close relationships with both parents, thus maintaining a sense of security and emotional support even after the family is separated. However, the reality on the ground shows that post-divorce conflict between parents often persists, even escalating. This tension can create an unfavorable environment and even endanger the child's psychological stability if not handled properly. In such cases, the court must thoroughly assess the appropriateness of joint

custody and consider whether the situation supports the child's emotional growth or is detrimental to it. (Mandey, 2021).

The court's role is vital in ensuring that decisions are made not only based on formal legal provisions but also take into account an evaluation of the child's actual and psychological condition. The court has the authority to determine the most suitable guardian for the child by considering various aspects, including the mental, emotional, and social conditions of each parent. To strengthen these considerations, the involvement of experts in the fields of psychology and child welfare is often necessary. In this case, the court may appoint a psychologist or social worker to conduct an independent assessment of the child's condition. The results of this assessment can provide a more accurate and in-depth picture of the child's emotional needs, which then forms the basis for determining custody.

On the other hand, the existence of psychological and social institutions also plays a crucial role in the post-divorce mediation and rehabilitation process. Psychological support is crucial not only for children but also for parents, enabling them to optimally fulfill their parenting roles despite changed circumstances. Family counseling, for example, can be a platform for rebuilding healthy communication between former partners for the benefit of the children. This effort is crucial to prevent prolonged conflict that can damage children's mental and emotional well-being.

Thus, determining child custody after divorce cannot be viewed solely as a division of legal authority between two parents, but rather as a comprehensive process of protecting the child's psychological future. All decisions must be based on the principle of the child's best interests, taking into account the child's emotional well-being, social needs, and the child's right to maintain a balanced relationship with both parents. The law should not be merely a formal tool for deciding cases, but should function as a protector of the rights of children who are not yet able to express their own needs. The emphasis on psychological well-being in determining custody is a concrete manifestation of the state and society's

responsibility to ensure optimal child development, even in structurally incomplete families.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Determining child custody in a divorce must consider the child's psychological needs while remaining grounded in applicable legal regulations. A child psychology-based approach and professional involvement in the mediation process can help ensure the well-being of children in divorce situations. Collaboration between the legal system and psychologists is crucial for creating policies that support optimal child development.

B. Suggestion

To improve child protection and well-being in divorce proceedings, stronger integration between the legal system and psychological approaches is needed. The government should encourage the development of regulations requiring the involvement of child psychology experts in all custody determination processes, as well as strengthening the capacity of family mediation institutions. Furthermore, training law enforcement officials on the importance of psychological approaches in divorce cases is essential. These steps are expected to result in fairer decisions that favor the best interests of children.

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