

Juridical Analysis of Child Custody Disputes Involving Parents with Psychological Disorder

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Abstract. *Child custody disputes following divorce in Indonesia continue to leave broad interpretive gaps and contribute to legal uncertainty. This study examines post-divorce child custody conflicts with a particular focus on cases involving parents with psychological disorders. The research employs a normative legal method through an analysis of statutory regulations and judicial decisions. Child custody in Indonesia is governed by the Marriage Law, the Compilation of Islamic Law (KHI), and the Child Protection Law, all of which consistently emphasize the principle of the best interests of the child. However, in practice, significant legal uncertainty remains, as judges often rely primarily on Article 105 of the KHI, which grants custody of non-mumayyiz children or those under the age of twelve to the mother, even when she exhibits psychological disorders. The case studies examined in this research Decision No. 4222/Pdt.G/2023/PA.Tgrs and Decision No. 0461/Pdt.G/2020/PA.Gs demonstrate differing judicial considerations in assessing evidence of psychological disorders. The findings highlight the need for a more comprehensive judicial approach and standardized psychological assessment procedures for both children and parents in custody disputes, ensuring decisions are more objective and child-protection oriented. Such measures are expected to prevent children from becoming victims of custody conflicts and to safeguard their long-term well-being.*

Keywords: *Child; Custody; Disorders; Divorce; Psychological.*

1. Introduction

Marriage constitutes a physical and spiritual union between a man and a woman to live together and establish a family or household. The primary legislation governing marital relations in Indonesia is Law No. 1 of 1974 concerning Marriage, commonly referred to as the Marriage Law (Sulastr et al., 2019: 74). Under this

law, the purpose of marriage is to form a happy and enduring family. Nevertheless, building an ideal household is far from simple, as it requires uniting two individuals with distinct personalities, which often gives rise to conflict or disagreement. When such conflicts cannot be resolved, they may culminate in the dissolution of the marriage or divorce. In fact, divorce often triggers other conflicts, one of which affects the child who is born into the marriage. (Yahya et al., 2024: 48).

Conflicts that frequently arise after divorce involve disputes over child custody between both parents. Such disputes can adversely affect a child's development and may have significant implications for the child's psychological well-being and social functioning (Pranawati et al., 2017: 15). Legally, the provisions governing child custody are codified in Article 41 of the Marriage Law, which essentially stipulate that both parents remain obligated to properly care for and educate their children even after the dissolution of the marriage. Additionally, Article 105 of the Compilation of Islamic Law (KHI) provides that in the event of divorce, custody of a child who has not yet reached the *mumayyiz* stage, or is under 12 years of age, is vested in the mother. These provisions constitute mandatory legal norms (Hadikusuma, 2018: 150). However, custody of a child who has not yet reached *mumayyiz* age may be awarded to the father if circumstances arise that justify the removal of the mother's custodial rights, including habitual intoxication, gambling, imprisonment, adultery, or other conditions that fail to guarantee the child's physical and psychological safety (Nugraha, 2024).

However, Indonesia's legal framework on child custody remains pluralistic, which in practice often gives rise to disputes over custodial authority. This issue is illustrated in Religious Court Decision Number 4222/Pdt.G/2023/PA.Tgrs, a first-instance ruling in a divorce petition filed by the husband, was adjudicated by the Tigaraksa Religious Court. During their eight-year marriage, the Petitioner (husband) and the Respondent (wife) had three children aged eight, five, and two. Although the parties initially enjoyed a harmonious marriage, conflicts gradually surfaced, driven by the Respondent's emotional instability and excessive reactions, which included cornering the Petitioner and disclosing domestic problems on social media. In the divorce petition, the Petitioner further argued that the Respondent suffered from psychological disorders, as supported by psychological consultation reports. Based on these circumstances, it appeared likely that custody would be awarded to the Petitioner, the father. Nonetheless, the court ultimately granted child custody (*hadhanah*) to the Respondent, the mother. Conversely, in Decision Number 0461/Pdt.G/2020/PA.Gs, where the mother exhibited similar psychological issues, the court granted custody to the father. In that case, the determining factor was the court's finding that the child had experienced psychological trauma caused by the mother.

Previous research has examined issues related to child custody, including the study by Meita Djohan OE (2016). However, that study focused solely on the determination of child custody in divorce proceedings based on Civil Case Number 0679/Pdt.G/2014/PA.TnK. In that case, custody was awarded to the father because the mother had remarried and was deemed incapable of ensuring the child's physical and psychological well-being. The difference between that study and the current research lies in the conditions of the parents analyzed and the use of two court decisions as comparative cases.

This research aims to examine the Indonesian positive legal framework that most explicitly governs the granting of child custody after divorce, in order to prevent legal gaps and uncertainty in similar cases. It further seeks to analyze the judicial considerations applied in Decision No. 4222/Pdt.G/2023/PA.Tgrs, which will be compared with Decision No. 0461/Pdt.G/2020/PA.Gs. Although both cases share similar factual backgrounds, their judicial reasoning and final rulings differ significantly. The urgency of this research is evident, given the increasing number of divorce cases that involve disputes over child custody. To date, Indonesian legal regulations do not explicitly specify which parent is entitled to custody, nor do they clearly define the circumstances that may disqualify or revoke a parent's custodial rights. Moreover, psychological assessments are not mandated as a procedural requirement before the determination of custody. Based on these conditions, the present study seeks to provide a deeper analysis of Indonesia's positive law and judicial considerations in child custody cases involving parents with psychological disorders.

2. Research Methods

Research is fundamentally a scientific activity that involves analytical and constructive processes carried out in a methodological, systematic, and consistent manner (Soekanto & Mamuji, 2006). In legal research, several methodological approaches are commonly employed. This study adopts a normative legal research method, which constitutes a methodological inquiry into legislation examined from both hierarchical (vertical) and harmonization (horizontal) perspectives (Muhaimin, 2020). The research utilizes a statutory approach and a case approach, supported by primary data sources consisting of legislation and secondary data sources comprising legal literature and scholarly publications. Data were collected through an examination of statutory regulations, case analysis, and a review of relevant previous literature. The data were then analyzed using a descriptive-analytical technique. The results of the study are subsequently synthesized to produce conclusions that contribute to the development of legal research and may offer solutions or improvements to existing legal policies.

3. Results and Discussion

3.1. Positive Legal Provisions in Indonesia Governing the Granting of Child Custody Rights Following Divorce

The granting of child custody rights after divorce constitutes an important and sensitive issue within Indonesia's civil law system. This matter is regulated by several complementary legal instruments. The Indonesian Civil Code (KUHPdata) addresses this issue in Article 229, which provides that the court plays a decisive role in determining guardianship for children based on judicial considerations, and in Article 231, which ensures that children do not lose their fundamental rights (Pratama & Dewi, 2023: 348). Another essential legal foundation is found in Law No. 1 of 1974 concerning Marriage. Article 41 (a) stipulates that parents remain obligated to care for and educate their children, while any dispute concerning child custody shall be resolved by the court. Article 41 (b) further provides that the father bears primary responsibility for fulfilling the child's financial needs; however, when difficulties arise, the court may determine that the mother also shares responsibility for contributing to the child's maintenance (Ivana & Cahyaningsih, 2020: 297).

In addition, specific provisions governing the granting of child custody rights for Muslim couples are regulated in the Compilation of Islamic Law (KHI), as enacted through Presidential Instruction Number 1 of 1991 (Rofiq, 2013: 202). The relevant provision is Article 105 of the KHI, which stipulates that the right of *hadhanah* (child care and custody) for a child who has not yet reached the *mumayyiz* age (under twelve years old) is granted to the mother, unless she has passed away or is deemed legally unfit (Prodjohamidjodjo, 2002). Once the child has reached *mumayyiz* age, the child is given the freedom to choose whether to reside with the father or the mother, while financial support remains the responsibility of the father. Meanwhile, Law No. 35 of 2014 concerning Child Protection further reinforces that parents are obligated to care for, nurture, educate, and protect their children, while upholding the principle of the "Best Interest of the Child."

The best interest of the child principle constitutes a fundamental doctrine in determining child custody rights. This principle prioritizes the child's overall well-being in every legal decision, including the allocation of custody and the determination of child support. In practice, courts consider several factors, such as the child's age and gender, the child's emotional attachment to each parent, the parents' financial and psychological capacity, the stability of the living environment, and any history of domestic violence (Hukumku, 2025). Moreover, this principle ensures the child's right to maintain a relationship with both parents, except where such contact may endanger the child's welfare.

In Indonesia, the principle of the best interests of the child is firmly embedded within the national legal framework governing child protection. The Child Protection Law explicitly guarantees every child's right to care, as well as protection from violence and discrimination (Saraswati, 2015: 40). This principle is further reinforced by Indonesia's ratification of the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990, which obligates the state to ensure that, in all actions concerning children, the child's best interests must serve as a primary and paramount consideration (Eleanora et al., 2021: 6–7). Moreover, Law No. 39 of 1999 on Human Rights, particularly Article 52(1), stipulates that every child is entitled to protection provided by their parents, family, and the state (Hoesin, 2006). Accordingly, in the context of divorce proceedings, the state—acting through the judiciary—is required to ensure that child custody determinations prioritize the child's rights, welfare, and overall best interests, thereby safeguarding the child's safety and well-being.

The determination of child custody does not always follow a uniform or predictable pattern. Although mothers are more frequently awarded custody of young children or those who have not yet reached the age of discernment, the court may decide otherwise if it is demonstrated that the father is better able to provide a healthy and stable environment. Judicial decisions are often shaped by social constructs that place mothers as the primary caregivers, even though such assumptions are not always supported by empirical evidence regarding their actual caregiving capacity. This reinforces the principle that courts must avoid gender-based presumptions in child custody adjudication and instead conduct an objective assessment of each parent's ability to safeguard and fulfill the child's best interests.

3.2. Judicial Considerations in Deciding Child Custody Disputes Involving Parents with Psychological Disorders

Psychological disorders are mental or emotional conditions that disrupt an individual's psychological stability and influence patterns of thought and behavior (Baihaqi et al., 2019: 88). These disorders may range from mild to severe, thereby affecting both personal functioning and interpersonal relationships. Common examples include anxiety disorders, depression, post-traumatic stress disorder, and personality disorders. Although psychological disorders differ from mental illnesses, their effects may nonetheless impair an individual's capacity to perform social roles, including parental responsibilities. A psychological disorder may be taken into judicial consideration in child custody disputes when a parent is demonstrably unable to fulfil their caregiving duties. However, such conditions do not automatically justify the termination or transfer of custody rights; courts must rely on substantiated facts and admissible evidence. Relevant evidence may include medical reports, documented incidents, and expert testimony. The court

typically examines factors such as the quality of the parent–child relationship, the parent’s ability to provide care and guidance, and other relevant indicators. Ultimately, judicial determinations regarding custody are grounded in the judge’s assessment of the child’s welfare and the overarching principle of the best interests of the child (Amelia et al., 2024: 740–742).

Therefore, examining judicial considerations in determining child custody becomes essential. In this study, the author employs a judicial decision as the object of analysis, namely Decision No. 4222/Pdt.G/2023/PA.Tgrs. In this divorce case, the court awarded custody of the three minor children to the Respondent (the mother), despite the Petitioner (the father) alleging that the Respondent suffered from psychological disorders and demonstrated emotionally unstable behavior. The judge’s reasoning was grounded in Article 105 (a) of the Compilation of Islamic Law, which provides that custody of children who have not yet reached the age of discernment (*mumayyiz*), defined as under twelve years old, is vested in the mother. In this case, the children were 8, 5, and 2 years old. In his petition, the Petitioner asserted that the Respondent exhibited symptoms of narcissistic personality disorder, supported by a psychological consultation report. He further contended that the Respondent frequently engaged in verbal and physical aggression, including several incidents involving the children. From the perspective of clinical psychology, narcissistic personality disorder is characterized by behavioral patterns marked by an excessive need for admiration, a lack of empathy, and a tendency to exploit interpersonal relationships. When present in a mother, such characteristics can negatively affect parenting practices, including reduced emotional responsiveness, emotional manipulation, and neglect of the child’s developmental needs.

However, the Panel of Judges did not readily accept the petitioner’s allegation of psychological disturbance as sufficient grounds to revoke the Respondent’s custody rights. From a legal psychology standpoint, psychological disorders must be demonstrated through objective clinical evaluation, such as an assessment conducted by a qualified forensic psychologist or psychiatrist. Accordingly, the court could not conclude that the Respondent suffered from a psychological condition that posed a risk to the children. In judicial practice, claims of psychological disorders that may affect child custody must be supported by official documentation issued by a psychiatrist or psychologist explicitly stating that the individual is mentally unfit or incapable of performing parental duties. In this case, the court determined that the evidence presented was not sufficiently compelling to justify overriding the Respondent’s custodial rights as the mother.

The judge also applied the principle of the best interests of the child by determining that young children require direct and continuous maternal care, particularly in their day-to-day upbringing. The court further considered the

continuity of caregiving, as two of the three children had been residing with the Respondent at the time the parties separated. Moreover, no direct evidence indicated that the children living with the Respondent had experienced psychological distress as a consequence of her care. In contrast, in Decision No. 0461/Pdt.G/2020/PA.Gs, issued by the Panel of Judges of the Gresik Religious Court, custody of the non-*mumayyiz* child was granted to the father (the Petitioner). The children from the marriage consisted of two *mumayyiz* children and one eight-year-old child, who was classified as non-*mumayyiz*. In this case, the court concluded that the mother (the Respondent) was psychologically and behaviorally unfit to care for the children. This conclusion was supported by factual evidence, including testimony from two witnesses who stated that the Respondent frequently exhibited anger and neglected the children's education. Additionally, the two *mumayyiz* children provided direct testimony expressing their preference to reside with their father. The court also noted that the non-*mumayyiz* child often cried and displayed fear when in the presence of the mother, which the judges interpreted as a clear indication of psychological distress.

A comparison of these two decisions indicates that judges retain the discretion to depart from general legal provisions when sufficiently compelling evidence demonstrates that a mother is morally, psychologically, or behaviorally unfit to exercise custody. Nonetheless, courts should involve forensic psychology experts in conducting comprehensive child custody evaluations, encompassing assessments of the parents' mental health, the child's relational dynamics with each parent, and the psychological impact of parental conflict on the child. This becomes particularly critical when there are indications of psychological or behavioral disorders that could endanger the child's welfare. Such evaluations provide an objective evidentiary basis that enables judges to render decisions genuinely oriented toward child protection and the best interests of the child.

4. Conclusion

Based on an analysis of Indonesia's positive legal provisions and the judicial practice of religious courts in post-divorce child custody cases, considerable interpretive space remains, creating the potential for legal uncertainty. Religious court judges generally rely on the normative rule in Article 105 of the Compilation of Islamic Law, which provides that custody of a child under twelve years of age, or who has not yet reached the stage of *mumayyiz*, is vested in the mother. For non-Muslim couples, judges instead refer to Articles 41 and 45 of the Marriage Law. The case study analysis of Decision Number 4222/Pdt.G/2023/PA.Tgrs shows that, although the ruling is normatively sound, it is not optimal because the judge did not sufficiently examine psychological factors that may pose risks to the child. Even if the medical evidence was limited, indications of psychological disturbance should have prompted the court to involve a psychological expert before issuing a

final ruling. In contrast, Decision Number 0461/Pdt.G/2020/PA.Gs awarded custody to the father due to the child's demonstrated trauma. The divergence in judicial reasoning between these two decisions suggests that courts tend to wait until a child exhibits actual trauma before considering alternative custodial arrangements. Moreover, the current legal system lacks explicit rules and mandatory procedures to guide judges in cases involving parents with psychological disorders. Thus, a more comprehensive and anticipatory judicial approach is required, including the establishment of standardized psychological assessment procedures for both children and parents before custody determinations. Such procedures would serve as preventive mechanisms to ensure caregiving that is psychologically, emotionally, and developmentally safe in accordance with the Child Protection Law and the principle of non-discrimination under the Human Rights Law. Additionally, technical guidelines for judges are needed to integrate positive legal norms, principles of child developmental psychology, and progressive jurisprudence. This would shift the legal system from a reactive model—waiting for the child to become a victim—to a proactive one capable of offering early protection to ensure the child's welfare and long-term well-being.

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