

Reconstruction of the Child-Centered Approach Model Through Evaluation of Parental Alienation Practices in Custody Disputes in Indonesia

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Abstrak

Salah satu fenomena yang sering muncul dalam persoalan hadhanah adalah parental alienation. Dari persoalan tersebut, penelitian ini bertujuan mengkaji fenomena parental alienation dalam konteks beberapa putusan Pengadilan Agama di Indonesia. Penelitian menggunakan jenis penelitian yuridis normatif dengan pendekatan konseptual, perundang-undangan, dan pendekatan kasus. Hasil penelitian menunjukkan bahwa parental alienation berdampak negatif terhadap kondisi psikologis anak sebagai korban perceraian, sehingga diperlukan pendekatan yang mengutamakan kepentingan anak (*child-centered approach*). Sebagai tawaran solusi, penelitian ini mengajukan model pengasuhan bersama (*joint custody*) yang bersifat *child-centered*, yang dapat ditempuh melalui dua jalur: Pertama, perubahan sebagian pasal dalam Kompilasi Hukum Islam (KHI) agar *joint custody* diatur sebagai pilihan selain pengasuhan tunggal. Kedua, pengaturan teknis melalui kebijakan Mahkamah Agung berupa SEMA dan PERMA tentang parameter penerapan *joint custody*, misalnya stabilitas emosional orang tua, kemampuan ekonomi, dan persetujuan anak di usia tertentu.

Kata Kunci: Pengasuhan Orang Tua; Pendekatan Berpusat pada Anak; Hadhanah; Kepentingan Terbaik bagi Anak.

Abstract

One phenomenon that often arises in custody issues is parental alienation. In light of this issue, this study aims to examine parental alienation in several decisions of the Religious Courts in Indonesia. The research uses a normative legal research method with a conceptual, legislative, and case approach. The results of the study show that parental alienation has a negative impact on the psychological condition of children as victims of divorce, so an approach that prioritizes the interests of the child is needed. As a proposed solution, this study suggests a child-centered joint custody model that can be pursued through two avenues: First, amending certain articles of the Compilation of Islamic Law to regulate joint custody as an option alongside sole custody. Second, establishing technical regulations through Supreme Court policies

in the form of SEMA and PERMA regarding the criteria for the execution of joint custody, including the emotional health and stability of the parents.

Keywords: Parental Alienation; Child-Centered Approach; Hadhanah; The Best Interest of the Child.

INTRODUCTION

In Islamic teachings, divorce is considered the most detestable act to Allah and is therefore not recommended.¹ Divorce often has profound psychological and emotional consequences, not only for the couple but also for the children who lose the balance of love from both parents and are caught in custody disputes.² Legally, the issue of custody or guardianship is essential in religious courts because it directly concerns the protection of children's rights,³ as stipulated in Article 41 letters (a) and (b) and Article 45 of Law Number 1 of 1974 concerning Marriage, as well as Articles 105 and 156 of the Compilation of Islamic Law, which regulate the division of child custody after divorce, and reinforced by Law No. 35 of 2014 on Child Protection and the Convention on the Rights of the Child (CRC)

ratified through Presidential Decree No. 36 of 1990. All of these legal frameworks consistently emphasize that the best interests of the child must be the primary basis for resolving custody disputes.

There have been several previous studies examining child custody after divorce, including: *First*, research by Nur Triyono and Asmuni⁴ examining the concept of joint custody from the perspective of Islamic legal philosophy and gender justice; *Second*, research by Naswa Atiyatul Maola Faqih and Erfaniah Zuhriah⁵ which attempts to examine the limitations of joint custody due to the absence of explicit normative bases in Indonesian positive law; *Third*, research by Abdul Hamid Asy'ari, Jumni Nelli, and Almi Jera, also discusses the concept of joint custody from the perspective of Islamic law

¹ Ramdani Wahyu Sururie dkk., "Strategies to Prevent Increasing Divorce Rates for Muslim Families in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023): 738, <https://doi.org/10.22373/sjhk.v7i2.14819>.

² Ardianto Ardianto dkk., "The Psychological Impact of Divorce on Children in Manado City, North Sulawesi," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 6, no. 2 (2024): 77, <https://doi.org/10.30659/jua.v6i2.30914>.

³ Hamdan Arief Hanif dkk., "The Concept of Hadhanah (Child Custody) After Divorce in Islamic Civil Law," *Al Irsyad: Jurnal Studi Islam* 2, no. 2 (2023): 64, <https://doi.org/10.54150/alirsyad.v2i2.177>.

⁴ Nur Triyono dan Asmuni Asmuni, "The Implementing Joint Custody Post Divorce In Indonesia: A Philosophical Viewpoint," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 2 (2023): 314-3330, <https://doi.org/10.18860/j-fsh.v15i2.24370>.

⁵ Naswa Atiyatul Maola Faqih dan Erfaniah Zuhriah, "Pandangan Hakim Terkait Pengasuhan Anak (Joint Custody) Pasca Cerai Gugat Ditinjau UU Nomor 35 Tahun 2014 Tentang Perlindungan Anak," *Sakina: Journal of Family Studies* 7, no. 1 (2023): 142-52, <https://doi.org/10.18860/jfs.v7i2.3153>.

and affirms its compatibility with the principles of justice and the welfare of children.⁶ However, existing research is still limited to philosophical and juridical discussions, and has not focused on the psychological impact of divorce on children. There has been no research that addresses the phenomenon of parental alienation, whereby one parent alienates the child from the other parent, as a consequence of a single parenting system that potentially conflicts with the principle of the best interests of the child. Therefore, this study offers a novelty in the form of an integrative analysis that combines an evaluation of parental alienation practices, legal and child psychology approaches, and Islamic values through a child-centered approach in the development of custody disputes in Indonesia.

Parental alienation by one parent is not only normatively wrong, but also violates the principle of the best interests of the child as mandated by the Convention on the Rights of the Child (CRC) through Presidential Decree No. 36 of 1990, specifically Article 9, which guarantees children's right to maintain contact with both parents. This principle is reaffirmed in Articles 14-15 of Law Number 35 of 2014 concerning Child Protection, which regulates children's rights to care and personal relationships with their parents. This

phenomenon is evident in judicial practice, as reflected in Decision Number 1042/Pdt.G/2019/PA. Cbi and Decision Number 3477/Pdt.G/2024/PA.JS in the case of Tsania Marwa, where the determination of child custody does not necessarily guarantee access and the continuity of the child's relationship with their parents in an effective manner. A similar situation was seen in the case between Paula Verhoeven and Baim Wong, which showed that a custody ruling does not necessarily prevent further conflict or guarantee balanced parental involvement. These rulings emphasize that custody issues are not merely normative matters, but rather implementation problems that require a legal approach that is not only legalistic, but also humanistic and oriented towards the psychological needs of the child.

The focus of this study is to evaluate parental alienation in custody disputes in Indonesia and to analyze the extent to which the applicable legal framework adequately protects the child's best interests. In addition, this study highlights the absence of norms on joint custody in both positive law and Islamic family law, which limits the availability of parenting alternatives that are more responsive to children's psychological needs. Therefore, reconstructing a child-centered approach to resolution is essential to

⁶ Abdul Hamid Asy'ari dkk., "Konsep Pengasuhan Bersama (JoinCustody) Pasca Perceraian dalam Pemeliharaan Anak Menurut Hukum Islam," *Posita: Jurnal Hukum Keluarga Islam* 3, no. 1 (2025): 27-35, <https://doi.org/10.52029/pjhki.v3i1.245>.

overcome the rigidity of norms and present a more adaptive parenting model.

This study uses a normative juridical method with a conceptual approach, a statute approach, and a case approach⁷ in decisions 1042/Pdt.G/2019/PA.Cibinong and Number 3477/Pdt.G/2024/PA.JS. Primary legal materials include Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, Law Number 35 of 2014 concerning Child Protection, as well as the Convention on the Rights of the Child (CRC) ratified through Presidential Decree Number 36 of 1990, and court decisions relevant to custody disputes and the phenomenon of parental alienation. Secondary legal materials include academic literature, legal journals, books on child psychology, and other relevant scientific documents. The analysis was conducted qualitatively by examining the alignment between legal norms, child psychology theory, the principle of the best interests of the child, and practices within the scope of religious courts. This approach was used to identify normative gaps and formulate a model for reconstructing parenting that is more responsive to the emotional and psychological needs of children.⁸

The purpose of this study is to evaluate the practice of parental alienation in custody disputes in Indonesia, as well as to formulate a reconstruction of the child-centered approach model through the development of a joint custody concept that is in line with the principle of the best interests of the child and responsive to the psychological needs of the child. The results of this study are expected to contribute academically and practically to the development of family law in Indonesia. Thus, the national legal system can be more in line with Islamic values, the fulfillment of children's rights, and the principle of justice oriented towards humanity.

RESULT AND DISCUSSION

Parental Alienation and the Urgency of a Child-Centered Approach in Custody Cases in Indonesia

In Indonesia, one of the issues that often causes disputes after divorce is the determination of child custody in general, courts award custody to one parent or grant sole custody based on the judge's considerations, which may include formal factors such as the child's age. However, the application of sole custody often triggers conflict between the two parents.⁹ In practice, there is a perception that the party who obtains

⁷ Triyana Yohanes dkk., "The WTO Non-Discrimination Principle and Its Impact on Developing Indonesia's Investment," *Legality : Jurnal Ilmiah Hukum* 33, no. 2 (2025): 517, <https://doi.org/10.22219/ljih.v33i2.41046>.

⁸ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode dan Praktik Penulisan Artikel (Edisi Revisi)*, 5 (Mira Buana Media, 2022), 3:94.

⁹ Muhammad Syafiq dkk., "Legal Protection of Children After Divorce: A Comparative Study of Islamic Law and the Child Protection Act," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 24, no. 1 (2025): 67279, <https://doi.org/10.31941/pj.v24i2.6674>.

sole custody has complete control over the child's upbringing and life.¹⁰ This situation creates access restrictions, making it difficult, if not impossible, for parents without custody to interact with their children. This situation can develop into attempts to influence the child's psychological condition to distance themselves from or hate one of their parents.¹¹

Within this framework, guardianship conflicts often trigger a psychological dynamic termed Parental Alienation. This phenomenon is a process whereby one parent teaches their children to reject or be hostile towards the other parent, resulting in a disruption in the relationship between the children and their parents.¹² Parents who engage in alliance-building use various tactics to convince their children depicting the other parent as lacking affection, undeserving, or potentially hazardous.¹³ Following such occurrences, the child's psychological state begins to shift toward the non-custodial parent. The rejected parent almost always feels like a victim, defeated, and hopeless.

Parental alienation can arise in families experiencing divorce with an unfavorable

relationship between the parents. When child custody issues are being decided, the divorce process is often adversarial, as each party is in a position of opposition to prove their suitability as the primary caregiver. At the same time, custody issues are often controversial, as they raise broader debates about the best interests of the child and assessments of each parent's behavior in all divorces involving children. For targeted parents, such circumstances frequently lead to deep-seated distress and a sense of helplessness. Due to these intricacies, identification remains challenging, with the repercussions on children often surfacing only after an extended duration.

For parents who are hated, such circumstances frequently result in a profound sense of failure and hopelessness. These intricate dynamics hinder early identification, causing the long-term consequences for the child to manifest only after a significant duration. According to Gardner, as quoted by Rina, there are six indicators of child behavior that may indicate Parental Alienation Syndrome (PAS), namely:¹⁴

No.	Indicators	Description
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¹⁰ Muhammad Syafiq dkk., "Legal Protection of Children After Divorce: A Comparative Study of Islamic Law and the Child Protection Act," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 24, no. 1 (2025): 6729.

¹¹ Rika Saraswati dkk., "Pemenuhan Hak Anak Di Indonesia Melalui Perencanaan Pengasuhan, Pengasuhan Tunggal Dan Pengasuhan Bersama," *Veritas et Justitia* 7, no. 1 (2021): 190, <https://doi.org/10.25123/vej.v7i1.4066>.

¹² Rina Krismiati Gani dan Royke Tony Kalalo, "Parental Alienation Syndrome (Focus on Management)," *Jurnal Psikiatri Surabaya* 8, no. 2 (2019): 33, <https://doi.org/10.20473/jps.v8i2.18846>.

¹³ Juan Gabriel de la Cruz dkk., "The so-called parental alienation Syndrome and its Derivations," *Spanish Journal of Legal Medicine* 48, no. 1 (2022): 25, <https://doi.org/10.1016/j.remle.2021.06.001>.

¹⁴ Rina Krismiati Gani dan Royke Tony Kalalo, "Parental Alienation Syndrome (Focus on Management)," *Jurnal Psikiatri Surabaya* 8, no. 2 (2019): 32, <https://doi.org/10.20473/jps.v8i2.18846>.

1.	Drastic attitude change	Children who formerly shared an affectionate and intimate bond with their parents may abruptly exhibit hostility, aggression, or intense fear. Nevertheless, it is crucial to emphasize that where a child's resentment stems from justifiable factors, including documented maltreatment or abandonment, such a state is excluded from being classified as Parental Alienation Syndrome (PAS). ¹⁵
2.	Insubstantial Justification	To validate their animosity toward the alienated parent, children often rely on irrational, disproportionate, or nonsensical arguments. ¹⁶
3.	Absence of ambivalence	The child views the parent who alienates the child as a perfect, flawless figure, while the other parent is viewed as completely bad, without any positive qualities. ¹⁷
4.	Self-Identified Autonomy	Children often maintain that their opposition toward a parent is entirely self-derived; however, such assertions are typically shaped by the maneuvers of the alienating parent. ¹⁸
5.	Loss of guilt	The child shows no remorse for being rude, disrespectful, or rejecting their parents. ¹⁹
6.	<i>Rejected Parent</i>	Beyond rejecting the individual parent, the child also withdraws from the wider family circle, including grandparents and other relatives with whom they formerly shared affectionate connections. ²⁰

Table 1

Behavioral indicators in children that may indicate Parental Alienation Syndrome (PAS)

¹⁵ Novan Rizky Ramadan dan Qisthina Aulia, "Hubungan Pengasuhan Neglektif dan Perilaku Delinkuen pada Anak di Lembaga Pembinaan Khusus Anak Kelas 1 Medan : Studi Literatur," *Jurnal Pemasyarakatan dan Keadilan* 1, no. 1 (2021): 97, <https://doi.org/10.21831/ap.v1i2.43140>.

¹⁶ Ramadan dan Aulia, "Hubungan Pengasuhan Neglektif dan Perilaku Delinkuen pada Anak di Lembaga Pembinaan Khusus Anak Kelas 1 Medan : Studi Literatur," 98.

¹⁷ Jennifer J. Harman dkk., "Losses experienced by children alienated from a parent," *Current Opinion in Psychology* 43 (Februari 2022): 8, <https://doi.org/10.1016/j.copsyc.2021.05.002>.

¹⁸ Harman dkk., "Losses experienced by children alienated from a parent," 8.

¹⁹ Nursariani Simatupang dan Rachmad Abduh, "Pendidikan Anti Kekerasan Bagi Masyarakat Guna Pencegahan Perilaku Kekerasan Pada Anak," *DE LEGA LATA: Jurnal Ilmu Hukum* 5, no. 1 (2020): 1, <https://doi.org/10.30596/dll.v5i1.3290>.

²⁰ Angel Titalessy dan Ratriana Yuliasuti Endang Kusumiati, "Dampak Perceraian Orang Tua Terhadap Perkembangan Sosial-Emosi Remaja," *Jurnal Ilmiah Bimbingan Konseling Undiksha* 12, no. 3 (2021): 363, <https://doi.org/10.23887/jibk.v12i3.38582>.

Based on the above description, Gardner's indicators are relevant to the social reality in Indonesia. The pattern of divorce in Indonesia shows dynamics that align with these indicators, such as drastic changes in children's attitudes due to parental conflict, weak rationalization when children take sides against one parent, and the phenomenon of

borrowed scenarios that often arise in court custody cases. In addition, restricting access to one parent and the child's rejection of the extended family of the rejected parents are patterns frequently observed in practice. The following cases are concrete examples of this phenomenon:

No.	Case	Description
1	The Tsania Marwa Dispute	Although Tsania Marwa was legally awarded custody, she has been prevented from seeing her children for nearly seven years due to her former husband's refusal to grant access. An execution of the court order by the Cibinong Religious Court on April 29, 2021, was unsuccessful because of his non-compliance. Psychologically, this prolonged separation has marginalized Tsania's maternal role as her children were raised apart from her. This restricted access suggests the children may have been subjected to the father's influence, leading to Parental Alienation. Seeking further legal remedy, Tsania and four other mothers initiated a judicial review of Article 330 of the Criminal Code at the Constitutional Court in 2024. This ongoing litigation aims to hold biological parents accountable for child abduction without legal authority. Ultimately, this case underscores the fragile enforcement of custody laws in Indonesia and emphasizes the necessity for a child-centered legal framework that prioritizes the welfare of minors. ²¹
2	The Paula Verhoeven and Baim Wong Dispute	The early 2025 separation of Baim Wong and Paula Verhoeven drew significant interest because of the legal battle for custody of Kiano and Kenzo. After a six-month period of being separated from her children, Paula observed

²¹ Zulfa Rofiah, "Analisis Yuridis Kasus Hak Asuh Anak Tsania Marwah: Tantangan Perlindungan Hak Ibu dan Anak Di Indonesia," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 3 (2025): 170, <https://doi.org/10.46773/usrah.v6i3.1833>.

		a concerning shift in their conduct during a visit to her former spouse's residence. A poignant moment occurred when Kenzo expressed fear, weeping and urging his mother to leave to avoid his father's anger, which indicates profound psychological distress toward his mother. This encounter exhibits clear markers of Parental Alienation Syndrome (PAS). Consequently, Paula has been stripped of her maternal presence, and the children suffer from emotional distancing driven by negative environmental influences and disparaging narratives. ²²
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Tabel 2

Case Study in Indonesia

In the above case, parental alienation is not merely a matter of post-divorce conflict. Still, it has become a reflection of the weakness of the system protecting children's emotional rights in Indonesia. Children, who should receive love and equal access from both parents, have instead become victims of prolonged disputes. This situation highlights the importance of reorienting the parenting paradigm through a child-centered approach, so that every legal decision and action truly prioritizes the best interests of the child, rather than the ego or interests of the parents.

Similar phenomena across countries have prompted reforms to the custody system toward a more collaborative model. In

countries that have implemented joint custody, a child-centered approach has been shown to reduce post-divorce conflict.²³ Children do not feel they have to "choose" one parent over the other, but still have full access to the love of both.

The child-centered approach was not only born out of practical needs in Indonesia, but is also mandated by international law that has been ratified. Indonesia ratified the Convention on the Rights of the Child (CRC) through Presidential Decree No. 36 of 1990.²⁴

Although Indonesia has ratified the CRC, practices in the field still show the dominance of sole custody, which often

²² Alika Nuraini dan Rita Alfiana, "Hak Asuh Anak dalam Hukum Indonesia: Tinjauan Yuridis Serta Dampak Sosial Bagi Anak dan Keluarga," *Arus Jurnal Sosial dan Humaniora* 5, no. 2 (2025): 3285, <https://doi.org/10.57250/ajsh.v5i2.1632>.

²³ Tiara Ananda Rahman dan Wardani Rizkianti, "Penyelesaian Sengketa Hak Asuh Anak Setelah Perceraian: Perbandingan Antara Indonesia Dan Inggris," *JURNAL USM LAW REVIEW* 7, no. 1 (2024): 350, <https://doi.org/10.26623/julr.v7i1.8801>.

²⁴ Debby Kristin dan Chloryne Trie Isana Dewi, "The Rights of Children Refugee In Transit Country Under The CRC, a Case of Indonesia: An Intended Negligence?," *Padjadjaran Journal of International Law* 5, no. 1 (2021): 115, <https://doi.org/10.23920/pjil.v5i1.349>.

implies parental alienation practices.²⁵ There are several fundamental differences between the sole custody system, which is still dominant in Indonesia, and the joint custody model,²⁶ which is more oriented towards the best interests of the child, namely:

<i>Sole Custody</i>	<i>Joint Custody</i>
Exclusive guardianship is assigned to a single parent, limiting the other party's involvement to visitation privileges only.	Legal and physical obligations are divided between both parents, allowing the minor to reside interchangeably in both households.
Aiming to maintain domestic consistency and streamline the resolution of disputes through a single decision-maker.	Protecting the child's bond with both mother and father while shielding them from the pressure of choosing sides or being caught in parental ego conflicts.
While it may lower direct exposure to friction, it frequently compromises the child's academic progress and emotional health.	This model emphasizes the child's psychological stability. Minors tend to demonstrate higher confidence, better adaptability, and improved mental well-being when parental cooperation is prioritized.
This arrangement carries a significant threat of parental alienation, as restricted access often marginalizes the non-custodial parent.	Alienation risks are mitigated through the preservation of consistent interaction and open channels of communication with both parents.
Though less complex administratively, practical enforcement remains a major challenge, particularly within the Indonesian legal landscape.	Its complexity arises from the need for structured parenting schedules, mediation, and oversight, including penalties for non-compliance. However, it promotes collaborative post-divorce relationships.

²⁵ Ulya Layyina dkk., "Children's Voice in Parental Divorce: A Scoping Review," *INSAN Jurnal Psikologi dan Kesehatan Mental* 10, no. 2 (2025): 148, <https://doi.org/10.20473/jpkm.v10i22025.140-167>.

²⁶ Keysa Novera Aliana, "Perlindungan Hak Anak Pengungsi Menurut Konvensi Hak Anak 1989 Dan Penerapannya Di Indonesia," *Jurnal Rechten : Riset Hukum dan Hak Asasi Manusia* 6, no. 3 (2024): 45, <https://doi.org/10.52005/rechten.v6i3.213>.

It frequently evolves into a platform for competing egos and attempts by parents to discredit one another.	Fostering shared respect for maternal and paternal roles while directing collective efforts toward the child's optimal welfare.
Recommended in scenarios involving substantiated domestic abuse, significant threats, or a total breakdown in parental cooperation.	Appropriate when mutual cooperation is feasible, safety risks are absent, and the prevailing legal framework accommodates shared guardianship.

Tabel 3

Comparison of *Sole Custody & Joint Custody*

From the comparison outlined above, it is clear that the joint custody system is more conducive to the emotional balance of the child and encourages a healthy relationship between both parents. Therefore, the Indonesian legal system needs to move towards an inclusive co-parenting framework designed to prioritize the child's fundamental well-being.

Reconstruction of the Concept of Joint Custody within the Framework of the Indonesian Legal System

In the discourse on the judiciary in Indonesia, the concept of joint custody is not entirely unfamiliar if we examine the applicable positive law. Article 41(a) of Law No. 1 of 1974 on Marriage, when interpreted at a glance, opens up the possibility of joint custody.²⁷ However, this progressive provision was immediately reduced by

Article 105 of the Compilation of Islamic Law, which stipulates that the right of custody of children who are not yet discerning falls to the mother, while the father is only responsible for the costs.²⁸ As a result, religious courts tend to grant sole custody, while the other parent is only granted visitation rights, the effectiveness of which is often problematic due to weak enforcement mechanisms.

In many cases, visitation rights are not enforced because there are no effective enforcement instruments, so children are potentially exposed to psychological pressure, loyalty conflicts, and even parental alienation. This situation is reflected in child protection data, with the 2024 UNICEF Indonesia Report noting that more than 22,600 children received community-based mental health support services and around

²⁷ Kasman Bakry dkk., "Putusnya Perkawinan Dan Akibatnya Dalam Fikih Munakahat (Studi Analisis Undang-Undang Nomor 1 Tahun 1974 Pasal 38-41): The Termination of Marriage and Its Consequences in Fikih Munakahat (Analysis Study of Law No.1 of 1974 Articles 38-41)," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 2, no. 3 (2021): 427, <https://doi.org/10.36701/bustanul.v2i3.401>.

²⁸ Bakry dkk., "Putusnya Perkawinan Dan Akibatnya Dalam Fikih Munakahat (Studi Analisis Undang-Undang Nomor 1 Tahun 1974 Pasal 38-41)," 424.

63,000 parents participated in positive parenting programs in response to children's vulnerability in the family environment.²⁹

In line with this, Online Information System for the Protection of Women and Children of the Ministry of Women's Empowerment and Child Protection recorded 28,831 cases of violence against children throughout 2024, with the family environment as one of the main loc.³⁰ This situation reinforces the urgency of developing a parenting model that not only determines who will care for the child, but also ensures the continuity of the child's emotional relationship with both parents after divorce. Thus, joint custody is not merely an alternative, but a more comprehensive instrument for the psychological protection of children, including the involvement of both parents in important decisions, the prevention of domination by one party, and the existence of a parenting plan that can be evaluated periodically.

In the context of procedural law, the doctrine of *ultra petitum* (Article 178 paragraph (3) HIR/189 paragraph (3) RBg) often makes judges reluctant to grant joint custody if it is not requested by the parties, so that judges tend to choose one party and ignore the option of joint custody. However, the principle of the best interests of the child

in Article 3 of Law No. 35 of 2014 on Child Protection and Article 41 of the Marriage Law provides a substantive basis for judges to act *ex officio* for the protection of children. This principle is also in line with the Convention on the Rights of the Child (CRC), ratified through Presidential Decree No. 36 of 1990, which requires the state to ensure that children maintain relationships with both parents after divorce.

As an introduction to the opportunities for joint custody in practice, here are some examples of religious court decisions in Indonesia that show patterns of joint custody. This approach is in line with developments in family law in various countries that have adopted joint custody or shared parental responsibility, placing the child's well-being as the primary consideration. Comparative experiences show that joint custody is seen as capable of maintaining the continuity of the child's emotional relationship with both parents, reducing loyalty conflicts, and preventing the dominance of one party after divorce.

In this context, joint custody is not merely a theory, but has an empirical and comparative basis that can be developed as a progressive legal practice in the settlement of custody disputes in Indonesia. The following are several decisions of the Religious Courts

²⁹ UNICEF, *LAPORAN TAHUNAN 2024* (UNICEF, 2024), 7.

³⁰ Fiqi Saputro dan Titin Setiawati, "Representasi Kekerasan Domestik Dalam Keluarga Pada Film *Tarian Terakhir*," *Jurnal Penelitian Dan Pengkajian Ilmiah Sosial Budaya (JPPISB)* 4, no. 2 (2025): 188–89, <https://doi.org/10.47233/%20jppisb.v4i2.2154>.

in Indonesia that have factually included joint custody arrangements:

Nomor Putusan	Pola Pengasuhan	Pembagian waktu
646/Pdt.G/2020/PA.BLK	<i>Joint custody</i> dengan pola harian-mingguan	Senin–Jum’at bersama Ayah, Sabtu–Minggu bersama Ibu.
0334/Pdt.G/2019/PA.Gdt	<i>Joint custody</i> untuk anak usia 4 tahun	Senin–Jum’at bersama Ayah, Sabtu–Minggu bersama Ibu.
5162/Pdt.G/2020/PA.Badg	<i>Joint custody</i> dengan pola satu bulan bergantian	Anak bersama Ayah 1 bulan penuh, kemudian bersama Ibu 1 bulan penuh.
10/Pdt.G/2016/PTA.JK diubah dengan 574K/Ag/2016	<i>Awalnya joint custody</i> (Ibu <i>weekdays</i> , Ayah <i>weekend</i>), kemudian diubah.	Senin–Jum’at bersama Ibu Sabtu–Minggu bersama Ayah. Dalam kasasi: hak asuh anak usia 5 tahun diberikan ke Ayah.

These practices indicate a shift in religious courts toward a more flexible model of guardianship that is responsive to the needs of children. However, without clear normative reforms, this progressive trend remains casuistic in nature and has not yet become the national standard. Therefore, family law reform in Indonesia must move away from a formalistic approach toward a relational approach that focuses on the rights of children.

The post-divorce parenting system is no longer sufficient to simply answer the question of “who has custody of the child,” but must emphasize “how the child can

continue to have both parents fully present in love and responsibility.” Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) together provide a basic legal framework for child custody in accordance with the best interests of the child.

Based on Article 45 of Law No. 1 of 1974 concerning Marriage, it is emphasized that both parents have the obligation to care for and educate their children, as both parents are equally obliged to care for and educate their children, and paragraph (2) emphasizes that this obligation remains valid until the child marries or is able to stand on their own

feet, even if the marriage ends in divorce,³¹ On the other hand, Compilation of Islamic Law provides more concrete technical rules regarding hadhanah. Article 105 of Law No. 1 of 1974 on Marriage states that the custody of children who are not yet mumayyiz (under 12 years of age) belongs to the mother, and mumayyiz children have the right to choose to be cared for by their father or mother. Law No. 1 of 1974 on Marriage emphasizes joint responsibility but does not specify the mechanism for allocating custody rights after divorce, while the Compilation of Islamic Law provides traditional rules that tend to favor sole custody.

Empirically, this combination of norms results in a tendency for the courts to favor sole custody. In religious courts, joint custody only occurs when there is an amicable agreement between the parties that is included in the verdict. Without such an agreement, judges generally choose one party because there are no explicit normative guidelines. A decisive procedural factor is the judge's concern regarding the ultra petitum doctrine (Article 178 paragraph (3) HIR and Article 189 paragraph (3) RBg). When both parties request sole custody for themselves, the judge feels bound by the petitum and is reluctant to

formulate a joint custody model that has not been requested.

Procedural law does limit judges in their petitions, but substantive law (Article 41 of Law No. 1 of 1974 on Marriage)³² and the principle of the best interests of the child (in line with Article 3 of Law No. 35 of 2014 on Child Protection) mandate the court to uphold the best interests of the child, which in practice can justify progressive measures such as ex officio decisions for the protection of children. However, without clear technical guidelines, judges will certainly tend to choose formal certainty.

Thus, the reconstruction of joint custody arrangements must address three gaps:

1. The absence of positive norms governing the form and conditions of joint custody;
2. The vulnerability of visitation rights as a substitute (visitation rights are often ineffective, prone to obstruction and parental alienation due to a lack of enforcement mechanisms); and
3. The legal risk for judges (judges' concerns about issuing ultra petitum decisions).

Based on these conditions, it can be said that there is an urgent need to reconstruct joint

³¹ Rahmat Hakim Harahap dan Zainal Arifin Purba, "Discrepancies Between Legal Norms and the Practice of Appointing 'Wali Hakim' for Legally Recognized Children at Medan Tembung Religious Affairs Office," *Al-Adalah: Jurnal Hukum dan Politik Islam*, 18 Juli 2025, 306, <https://doi.org/10.30863/ajmpi.v10i2.9959>.

³² Marlino Novlyson Luhukay dan Hasriyanti Hasriyanti, "Legal Analysis of Child Custody Rights Based on District Court Decision (Study of Decision No. 108/Pdt.G/2023/PN.Son)," *Journal of Law Justice (JLJ)* 3, no. 2 (2025): 181, <https://doi.org/10.33506/jlj.v3i2.4448>.

custody arrangements. Empirically, Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law does not provide legal certainty regarding joint custody arrangements, which can lead to disparities in court decisions. There are progressive and courageous judges who grant joint custody in the best interests of the child, but there are also those who remain bound by the classical hadhanah doctrine, which adheres to a single custody system. This uncertainty itself contradicts the principle of child protection in Article 7 Paragraph (1) of Law No. 23 of 2002 in conjunction with Article 3 of Law No. 35 of 2014 on Child Protection, which states that every child has the right to be cared for by both parents. Thus, reconstruction can be pursued through two channels:

1. Amend certain articles in the Compilation of Islamic Law to explicitly stipulate joint custody as the primary option alongside sole custody. However, this approach could potentially be confusing and time-consuming because the Compilation of Islamic Law is only based on a presidential instruction in our legal system, raising questions about whether it can be subject to judicial review;
2. Technical arrangements through Supreme Court policies that provide guidance to judges on the parameters for applying joint custody, such as the emotional stability of the parents, economic capacity, and the consent of children of a certain age.

A practical and easy mechanism to implement is through the use of the Supreme Court's authority to fill legal gaps.

In the short term, the Supreme Court issued a Supreme Court Circular that provides a "safe harbor" for judges. It states that establishing joint custody is not considered ultra petitem as long as it is based on the best interests of the child and/or the agreement of the parties. This affirmation is important because supreme court circular is essentially internal and administrative in nature, so its function is more as a judicial work guide than a prescriptive norm that is binding on the public.

As a follow-up format, Supreme Court Regulations can detail the criteria for determination (e.g., the age of the child and the child's opinion if he or she is mumayyiz, no history of domestic violence, the parents' ability to communicate and cooperate, geographical distance, economic capacity), mediation procedures, the obligation to prepare a detailed parenting plan, a monitoring mechanism by social services/social workers/Integrated Service Centers for Women and Children Empowerment, and sanctions (administrative or judicial) for obstructing implementation. As part of the principle of dynamic custody, the parenting plan should ideally include a balanced division of time, a division of decision-making responsibilities, and a schedule for periodic evaluations to adjust the

parenting pattern to the child's developing needs. Thus, the Supreme Court Regulation serves as a more prescriptive normative instrument that regulates operations, while the Supreme Court Circular Letter remains in the administrative realm, providing initial interpretative space for judges.

Contrastive analysis with legal frameworks in Australia or the United States reveals distinct disparities. Under a sole custody arrangement, the non-custodial parent is frequently restricted to minimal visitation, a condition that often fosters alienation. In contrast, while a child in a joint custody system may primarily reside with one parent, critical determinations regarding their health, education, and religious upbringing remain a collective effort. This approach prioritizes the substantive involvement of both parties over mere physical contact.

For instance, the Australian Family Law Act 1975 establishes 'shared parental responsibility' as the standard practice, barring instances of maltreatment or neglect.³³ Similarly, the Netherlands mandates the creation of a formal, court-approved parenting plan following a divorce.³⁴ Even in Malaysia, where traditional 'hadhanah' principles remain

influential, Sharia courts permit joint guardianship if it aligns with the child's optimal welfare. These precedents demonstrate that joint custody transcends simple visitation; it represents a fundamental duty that secures the active participation of both parents in pivotal life choices for their children. Consequently, implementing joint custody in Indonesia serves as a vital resolution to current regulatory gaps rather than just a secondary alternative.

CONCLUSION

The practice of parental alienation remains a serious problem in the resolution of custody disputes in Indonesia. The dominance of sole parenting patterns in religious court decisions, coupled with weak regulation and enforcement of visitation rights, has the potential to sever the emotional relationship between the child and one of the parents. The findings of this study show that although the principle of the best interests of the child has been normatively recognized in legislation and court decisions, its application has not substantively addressed the psychological protection of children. As a result, children are often caught in loyalty conflicts, lose attachment figures, and

³³ Manika Chaudhary dan Raj Kumar Yadav, "The Family Law Act 1975: Evolution, Challenges, and Reforms in Divorce Based on Irretrievable Breakdown and Custody Disputes in Australia," SSRN Scholarly Paper no. 5145913 (Social Science Research Network, 20 Februari 2025), <https://papers.ssrn.com/abstract=5145913>.

³⁴ Bruce M. Smyth dan Richard Chisholm, "Shared-Time Parenting After Separation in Australia: How Much Does the Law Matter?," *Family Transitions* 66, no. 1-2 (2025): 57, <https://doi.org/10.1080/28375300.2024.2425469>.

become further victims of their parents' post-divorce conflicts.

In response to this issue, this study proposes a reconstruction of the child-centered approach model through the development of a joint custody concept that is more responsive to the psychological needs of children. This reconstruction can be achieved in two ways, namely by strengthening the norm of *hadhanah* in the Compilation of Islamic Law so that *hadhanah* can be granted jointly in the form of joint custody, and not merely accommodating sole custody. Furthermore, technical arrangements through Supreme Court policies are also needed. In the short term, a Supreme Court Circular Letter is needed to provide certainty that the establishment of joint custody is not considered *ultra petitem* as long as it is based on the best interests of the child and/or the agreement of the parties. In the long term, a Supreme Court Regulation is needed to regulate the criteria for determination, the obligation to prepare a parenting plan, the monitoring mechanism, and sanctions for obstructing implementation. Thus, joint custody is positioned not merely as an alternative form of custody, but as a legal protection instrument that ensures the continuity of the child's emotional relationship with both parents in a fair manner.

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