

Original Article

Legal Inequality in Determining Child Custody Rights After Divorce: A Gender-Based Normative Analysis

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Abstract

This study examines legal inequality in determining child custody (hadhanah) after divorce in Indonesia. Although the Marriage Law, the Compilation of Islamic Law (KHI), and the Child Protection Law provide a normative framework, court practices remain inconsistent and often gender-biased, disadvantaging mothers as primary caregivers. Using a normative–empirical socio-legal approach, this research analyzes statutory regulations, Supreme Court jurisprudence, and twelve child custody decisions from Religious Courts obtained from the Supreme Court Decision Directory. No data from general courts or NGOs were used. The findings reveal three main problems: the absence of clear technical standards in custody regulations, inconsistent judicial reasoning that prioritizes fathers’ economic capacity over caregiving history, and weak enforcement of child support and post-verdict monitoring. These conditions result in limited implementation of the “best interests of the child” principle and perpetuate structural gender inequality. The study recommends legal and institutional reforms, including clearer judicial guidelines, gender-sensitive training for judges, mandatory psychosocial assessments, and stronger enforcement mechanisms for child support to ensure substantive justice for children and mothers.

Keywords: Child; Family Law; Gender Bias; Hadhanah; Religious Courts

Introduction

Child custody after divorce remains a central issue in Indonesian family law because it directly concerns the welfare, protection, and psychological stability of children. Although divorce legally terminates the marital relationship, parental responsibilities toward children persist. Indonesian law formally regulates custody through Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), and Law No. 23 of 2002 on Child Protection, all of which emphasize the principle of the best interests of the child. However, judicial practice frequently reveals inconsistencies and gender bias.¹ Mothers, despite often serving as primary caregivers, may lose custody due to economic considerations, moral judgments, or patriarchal stereotypes. Consequently, the legal system that should function as a protective mechanism may instead reproduce structural inequalities, creating a gap between normative guarantees and practical outcomes.²

Normatively, existing regulations provide only general standards and lack measurable operational criteria for determining caregiving suitability.³ Judges therefore exercise broad discretion without clear technical guidance, resulting in unequal outcomes and weak enforcement of child support

¹ Zulfa Rofiah, ‘Analisis Yuridis Kasus Hak Asuh Anak Tsania Marwah: Tantangan Perlindungan Hak Ibu Dan Anak Di Indonesia’, *USRAH: Jurnal Hukum Keluarga Islam*, 6.3 (2025), 169–85 <<https://doi.org/10.46773/usrah.v6i3.1833>>.

² Kenneth Adriel and Mia Hadiati, ‘Deconstructing Gender Bias in Child Custody Decisions in the Indonesian Legal System’, *JHJK*, 7.1 (2025), 431–45 <<https://doi.org/10.46924/jhjk.v7i1.307>>.

³ Ahdie Atid Dzikra, Kamarusdiana Kamarusdiana, and Yassardin Yassardin, ‘Disparity in Child Custody Decisions from the Perspective of the Marriage Law and KHI’, *Rechtenstudent*, 5.1 (2024), 1–11 <<https://doi.org/10.35719/rch.v5i1.325>>.



obligations.⁴ Many court decisions are not accompanied by effective post-verdict monitoring or enforcement mechanisms, leaving custodial mothers without financial support. These conditions demonstrate that custody disputes are shaped not only by legal doctrine but also by socio-economic and cultural realities. Therefore, a socio-legal approach is necessary to examine both the regulatory framework and its practical implementation.⁵

The principle of the best interests of the child is also recognized internationally as a universal legal standard. Indonesia, as a State Party to the Convention on the Rights of the Child (CRC), is obligated to ensure that all judicial decisions affecting children prioritize their welfare and development.⁶ Nevertheless, this principle is often applied merely rhetorically rather than substantively. Courts rarely rely on objective tools such as psychological assessments or documented caregiving history, thereby weakening the practical realization of children's rights.⁷

From a gender justice perspective, custody disputes cannot be separated from structural inequality embedded in family relations. Feminist legal scholarship highlights that family law frequently privileges men's economic authority over women's unpaid caregiving labor. In Indonesia, mothers' daily contributions in childcare and emotional support are rarely quantified in legal reasoning, while fathers' financial capacity is often treated as the dominant factor. This imbalance risks marginalizing women's lived experiences and undermines equality before the law.⁸

Furthermore, the absence of standardized judicial criteria creates legal uncertainty and inconsistent jurisprudence. Unlike jurisdictions that apply structured custody evaluations such as parenting plans or social assessments, Indonesian courts rely heavily on judicial discretion.⁹ When not guided by objective parameters, such discretion may lead to subjective and moralistic judgments, producing divergent outcomes in similar cases and reducing predictability and fairness within the justice system. Empirical legal research is therefore essential to bridge the gap between normative texts and judicial realities.¹⁰

This study adopts a normative juridical approach based on library research. The analysis relies exclusively on documentary legal sources rather than fieldwork. Primary materials consist of legislation governing child custody, including Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), the Child Protection Law, Supreme Court jurisprudence, and related judicial regulations and policies.¹¹ Secondary materials include academic books, journal articles, and scholarly publications on family law, gender justice, and child protection. Religious Court decisions available through the Supreme Court Decision Directory are examined as documentary legal texts to illustrate

⁴ Muhammad Farid, Muhammad Syukri Albani, and Fauziah Lubis, 'Legal Reconstruction of Hadhanah Rights Due to Divorce in Indonesia from a Maqashid Syari'ah Perspective', *JURNAL AKTA*, 12.1 (2025), 123 <<https://doi.org/10.30659/akta.v12i1.43809>>.

⁵ Syamsul Fatoni and others, 'Asas Proporsionalitas: Perspektif Hukum Positif Dan Maqosid Syariah Dalam Sistem Peradilan Pidana', *Jurnal Hukum IUS QUILA IUSTUM*, 32.1 (2025), 46–71 <<https://doi.org/10.20885/iustum.vol32.iss1.art3>>.

⁶ M. Jafar, 'Tinjauan Yuridis Hak Asuh Anak (Hadhanah) Setelah Perceraian Menurut Kompilasi Hukum Islam', *Rechtsnormen Jurnal Komunikasi Dan Informasi Hukum*, 3.1 (2024), 28–54 <<https://doi.org/10.56211/rechtsnormen.v3i1.625>>.

⁷ Allifia Hariaji and M Sifa Fauzi Yulianis, 'Perlindungan Hukum Terhadap Perempuan Dan Anak Dalam Perkara Perceraian Di Pengadilan Agama', *Jurnal Sains, Ekonomi, Manajemen, Akuntansi Dan Hukum*, 2.3 (2025), 166–79 <<https://doi.org/10.60126/sainmikum.v2i3.991>>.

⁸ Salsabillah Nilam Zahra, I Nyoman Sujana, and Ni Made Puspasutari Ujianti, 'Implikasi Yuridis Perceraian Terhadap Hak-Hak Anak Dalam Perspektif Hukum Islam (Studi Kasus Pengadilan Agama Denpasar)', *Jurnal Konstruksi Hukum*, 4.3 (2023), 253–60 <<https://doi.org/10.22225/jkh.4.3.8032.253-260>>.

⁹ Ester Stevany Putri and others, 'Pemenuhan Hak Anak Dalam Konteks Perceraian: Analisis Yuridis Terhadap Penetapan Hak Asuh Anak Melalui Litigasi', *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 2.1 (2024), 16–26 <<https://doi.org/10.61104/alz.v2i1.203>>.

¹⁰ Heristiawan Aryo Wirotomo and others, 'Legal Certainty for Mothers in Child Custody Disputes: Implications of Deficiency of Child Custody in the Indonesian Legal System', *Formosa Journal of Multidisciplinary Research*, 4.1 (2025), 111–20 <<https://doi.org/10.55927/fjmr.v4i1.12532>>.

¹¹ Umul Khair and others, 'Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian', *JCH (Jurnal Cendekia Hukum)*, 5.2 (2020), 291–306 <<https://doi.org/10.33760/jch.v5i2.231>>.



patterns of judicial reasoning. All materials are analyzed qualitatively using doctrinal and content analysis to assess the consistency between legal norms and their interpretation in judicial practice.¹²

Based on these considerations, this study addresses three central questions: how are normative provisions regarding child custody after divorce regulated in Indonesian legislation and jurisprudence, how are these provisions applied in Religious Court decisions in practice, and how do social realities, patriarchal culture, and limited access to legal resources affect women's position and equality in custody disputes?

Method

This study employs a normative juridical (doctrinal) research method based on library research, focusing on the examination of statutory regulations, jurisprudence, and Religious Court decisions concerning child custody after divorce, including Law No. 1 of 1974 on Marriage, Compilation of Islamic Law, Law No. 23 of 2002 on Child Protection, as well as the Convention on the Rights of the Child ratified by Indonesia. The materials are analyzed qualitatively through statutory, conceptual, case, and comparative approaches to assess the consistency between normative provisions and judicial practice, while identifying the influence of gender bias, patriarchal culture, and socio-economic factors on the substantive application of the best interests of the child principle in custody adjudication.

Results and Discussions

The legal framework for child custody in Indonesia is normatively regulated in several laws and regulations. Law No. 1 of 1974 on Marriage states that both mothers and fathers remain obligated to care for their children after divorce. However, this provision is general in nature and does not provide technical guidance on who is most suitable to provide custody. The Compilation of Islamic Law (KHI) through Article 105 provides a more specific provision that children under the age of mumayyiz should be under the care of their mother.¹³ However, this provision is often not the main reference for judges in making decisions in court. Economic factors and social status are more dominant in considering custody rights, especially by religious courts. In fact, the Supreme Court's jurisprudence has emphasized that the mother is the primary party unless proven negligent. Unfortunately, this jurisprudence is not consistently used as a guideline in first-level decisions.¹⁴

The imbalance in implementation in court is evident in the inconsistency of judges' decisions in custody cases. In a number of cases, young children are handed over to their fathers solely on the grounds of economic stability. The fact that the child has been fully cared for by the mother since birth is often ignored. Judges do not adequately apply a psychosocial approach to children. The absence of a professional assessment of the emotional bond between mother and child creates an injustice. The broad discretion of judges without objective evaluation guidelines makes the outcome of decisions highly dependent on personal perceptions. In addition, judges also often do not include detailed provisions regarding child support, only mentioning the father's general responsibilities. As a result, mothers find it difficult to enforce child support because the verdict does not include concrete values or methods of payment.¹⁵

Gender bias is one of the main causes of inequality in child custody cases. Mothers who work nights, for example, are often considered unfit because they are perceived as not having enough time for their children. However, there is no evidence that this condition has a negative impact on the children in their care. Conversely, little attention is paid to the father's capacity to provide affection and emotional closeness. Judges also sometimes judge the mother's morality unilaterally based on

¹² Syukri Saleh and others, 'Perlindungan Hak Asuh Anak Pasca Perceraian (Hadhanah): Perspektif Hukum Islam Dan Psikologi Anak', *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3.3 (2025), 2829–38 <<https://doi.org/10.61104/alz.v3i3.1748>>.

¹³ Sikra Sikra and others, 'Hak Asuh Anak Pasca Perceraian Dalam Perspektif Hukum Keluarga Islam: Studi Di Kabupaten Pangkep', *Al-Abwal Al-Syakhsyiyah: Jurnal Hukum Keluarga Dan Peradilan Islam*, 6.1 (2025), 77–87 <<https://doi.org/10.15575/as.v6i1.44657>>.

¹⁴ Oleh: Tarmizi and others, 'Hak Asuh Anak (Hadhanah) Pasca Perceraian Serta Akibat Hukumnya', *Journal Ilmu Hukum Pengayoman*, 1.1 (2023) <<https://journal.uniasman.ac.id/index.php/JIHP/article/view/38>> [accessed 4 March 2026].

¹⁵ Muhammad Holid, 'Hak Asuh Anak Pasca Perceraian: Studi Kasus Kasus Murtadnya Seorang Ibu Di Lombok Timur Bondowoso', *ASA*, 6.2 (2024), 12–29 <<https://doi.org/10.58293/asa.v6i2.110>>.



the reasons for the divorce.¹⁶ Mothers who file for divorce are often negatively viewed as the party who broke up the family. In fact, the initiative to divorce may be a form of self-protection from violence or injustice. This reflects the patriarchal values that are still strong in judicial considerations.

Not only in its rulings, but the legal system also lacks a post-decision supervision mechanism for custody cases. After a judge decides on custody rights, there is no routine evaluation to assess whether the decision is actually being implemented. In some cases, children experience violence or neglect after living with one of the parties. Mothers who wish to file a new lawsuit or request a re-evaluation of custody rights often lack a quick and effective legal channel. This shows that our judicial system still views custody decisions as final and absolute. In fact, the interests of children are dynamic and can change as circumstances evolve.¹⁷ There needs to be involvement from social workers, child psychologists, and child protection agencies in post- decision supervision. Periodic evaluations are important to ensure the continuity of children's rights and justice for mothers.¹⁸

The lack of legal aid and low legal literacy among women also exacerbates inequality in custody cases. Many women, especially those from lower-middle-class backgrounds, are not fully aware of their rights. As a result, they go through the legal process without assistance and are unable to file for alimony or custody evaluations. Existing legal aid institutions are not yet strong enough to reach all areas, especially in rural areas.¹⁹ The lack of legal and social education causes many mothers to accept unfavorable decisions without resistance. This situation creates a cycle of inequality that repeats itself from generation to generation. State intervention is needed in the form of gender-based legal clinics and women's empowerment programs. That way, the family court system can become more responsive to real social justice.²⁰

Inconsistency in handling custody cases also reveals the weak integration between legal considerations and psychological considerations of the child. In many cases, there is no involvement of child psychologists to assess the emotional and psychosocial readiness of the child for the custody decision that is handed down. In fact, decisions made without considering the psychological aspects of the child can have a negative impact on the child's long-term growth and emotional stability. The absence of a multidisciplinary approach in the trial process shows that decision-making is still purely legalistic. Ideally, the assessment of custody should involve collaboration between judges, psychologists, and social workers to create holistic decisions that are oriented towards the best interests of the child.

In addition, the absence of binding judicial guidelines in custody cases has led to highly subjective practices in court. The Supreme Court has issued several important decisions related to custody principles, but these have not been codified in the form of a Supreme Court Circular Letter (SEMA) or a Supreme Court Regulation (PERMA) that is operational in nature. As a result, first instance judges tend to use personal considerations or local conventions in determining custody eligibility. This difference in approach not only harms mothers, but also threatens the principle of legal equality for all citizens before the courts.²¹

From a regulatory perspective, existing laws and regulations do not provide explicit provisions regarding mechanisms for monitoring and reviewing custody rights. Unlike some other countries that have established periodic evaluations of child custody after divorce, the Indonesian legal system

¹⁶ Luqman Guntur Ridhwani and others, 'Tinjauan Yuridis Terhadap Mekanisme Eksekusi Putusan Hak Asuh Anak Pasca Perceraian Di Indonesia', *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 4.1 (2026), 7242–48 <<https://doi.org/10.61104/alz.v4i1>>.

¹⁷ Michelle Lizen Huang, Ampuan Situmeang, and Emiliya Febriyani, 'Analisis Keadilan Gender Dalam Putusan Pengadilan: Studi Kasus Mengenai Pemberian Hak Asuh Anak Di Batam', *Jurnal Restorative Justice*, 9.1 (2025), 19–38 <<https://doi.org/10.35724/JRJ.V9I1.6578>>.

¹⁸ Wahyu Jati, Ahmad Makki, and Syaikhan Ali, 'Hak Asuh Anak Pada Perkara Perceraian Akibat Kekerasan Dalam Rumah Tangga', *'Aainul Haq: Jurnal Hukum Keluarga Islam*, 5.2 (2025), 76–96 <<https://ejournal.anadwah.ac.id/index.php/ainulhaq/article/view/1206>> [accessed 4 March 2026].

¹⁹ Karina Arsa, Murjani Murjani, and Aulia Rachman, 'Paradigma Pengarusutamaan Gender Dan Anak Bagi Mediator Hakim Terhadap Perceraian', *Mitsaq: Islamic Family Law Journal*, 2.2 (2024), 195–213 <<https://doi.org/10.21093/jm.v2i2.8618>>.

²⁰ Ibnu Akbar Maliki, Qeis Aimar, and Badarudin, 'Rekonsepsi Amicable Divorce (Cerai-Damai) Berbasis Paradigma Mubadalah: Upaya Mewujudkan Keadilan Gender Dalam Hukum Perceraian Indonesia', *Syakhsbiyyah Jurnal Hukum Keluarga Islam*, 5.2 (2025), 191–216 <<https://doi.org/10.32332/n3tg7n90>>.

²¹ Markus Sihombing, 'Analisis Putusan Hukum Tentang Hak Asuh Anak Pasca Perceraian Perspektif Undang – Undang Perkawinan Dan Kompilasi Hukum Islam', *Arus Jurnal Sosial Dan Humaniora*, 5.2 (2025), 1865–76 <<https://doi.org/10.57250/ajsh.v5i2.1453>>.



still treats custody decisions as final unless there is a new lawsuit.²² This contradicts the principle of the dynamic nature of children's needs, which can change over time. Normative provisions should provide space for courts to conduct periodic evaluations based on reports from third parties such as schools, psychologists, or social workers.

Another issue lies in the weak understanding of the judiciary regarding the concept of "best interests of the child" as mandated by the Convention on the Rights of the Child, which Indonesia ratified through Presidential Decree No. 36 of 1990. This concept is often only mentioned in court decisions, but rarely explained conceptually and in terms of its application. Many judges do not have specific training on the standards and indicators of the best interests of the child, resulting in normative and less contextual decisions. Regular training for family judges on the perspectives of children and gender is urgently needed to improve the quality of law enforcement in custody cases.

Inequality is also evident in the enforcement of child support obligations, which are often not complied with by fathers after divorce. Court rulings on child support often do not include payment mechanisms, administrative sanctions, or enforcement guarantees. This causes mothers, as custodial parents, to bear the economic burden alone, even though fathers are still legally obliged to provide for their children. The absence of state instruments to guarantee the enforcement of children's economic rights after divorce weakens the role of the law as an instrument of protection. The state needs to adopt models such as child support agencies in several countries that actively monitor and enforce child support obligations.²³

Socially, there is resistance from some members of society towards mothers who actively demand their rights in custody cases, especially if the mother works or does not live with her parents. Patriarchal mindsets that idealize the domestic role of mothers lead to stigma against women who are economically empowered. In practice, there is even a narrative that working mothers are considered less capable of giving their children maximum attention. Such stereotypes often enter the courtroom and influence judges' considerations. Therefore, family law reform must be accompanied by a transformation of legal culture and public awareness of the importance of equality in caregiving roles.²⁴

One decision that is often cited as an example is Malang District Religious Court Decision Number 1285/Pdt.G/2019/PA.Kab.Mlg, in which the judge awarded custody (hadhanah) to the father even though the mother was normatively more entitled to it based on KHI Article 105. The judge's considerations emphasized the father's economic aspects and responsibilities, as well as the stability of the child's living environment.²⁵ This consideration reflects a materialistic view of custody rights, rather than one based on the parenting relationship. In this context, an evaluation that considers the emotional aspects and psychosocial well-being of the child is neglected. This decision demonstrates the importance of a more comprehensive approach. The legal system needs to give more weight to the quality of the relationship and not solely to financial capacity. Custody is not just about where the child lives, but also about a safe inner space. Therefore, the principle of the child's welfare must be the primary consideration in determining custody. Decisions such as this need to be reviewed so as not to perpetuate systemic injustice against mothers.²⁶

In the ruling, the judge cited the principle of the best interests of the child, but the interpretation was still very partial because it did not take into account the quality of the emotional relationship between the mother and the child. The judge examined social witnesses to determine the mother's social conditions, but did not involve professionals such as child psychologists. The absence of psychological analysis meant that the evaluation of the child's interests was based solely on general " " statements. As a result, the child's interests were not examined in depth using relevant empirical

²² Farida Nurun Nazah, Restia Gustiana, and Tobibatus Saadah, 'Gender Justice in Child Custody Disputes: The Maqāṣid Al-Sharī'ah Approach in Contemporary Judicial Practice', *MILRev: Metro Islamic Law Review*, 4.2 (2025), 1328–58 <<https://doi.org/10.32332/milrev.v4i2.10790>>.

²³ Fitriyani Fitriyani and others, 'The Judges' Legal Consideration on Divorce of Nushūz Cases at the Kupang High Religious Court: Gender Perspective', *Samarah*, 7.3 (2023), 1971–89 <<https://doi.org/10.22373/SJHK.V7I3.14425>>.

²⁴ Ridwan Jamal, Rosdalina Bukido, and Yasin, 'Pertimbangan Perkara Pemeliharaan Anak Di Pengadilan Agama Manado', *Al-Istinbat: Jurnal Hukum Islam*, 6.2 (2021), 205–22 <<https://doi.org/10.29240/jhi.v6i2.2453>>.

²⁵ Nasaruddin Mera and others, 'Child Custody Rights for Mothers of Different Religions: Maqāṣid Al-Sharī'ah Perspective on Islamic Family Law in Indonesia', *Samarah*, 8.3 (2024), 1644–68 <<https://doi.org/10.22373/sjkh.v8i3.23809>>.

²⁶ Abdul Basir Mohamad, Rohanee Machae, and Mutsalim Khareng, 'Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand', *Asian Social Science*, 12.10 (2016), 18–26 <<https://doi.org/10.5539/ass.v12n10p18>>.



data. The application of this principle should be more measurable through instruments that can test the mental and social well-being of children. The court should require psychological assessments as one of the tools to aid in decision-making. This will not only strengthen the decision academically, but also protect the psychological integrity of the child. In the long term, the non-involvement of professionals actually increases the risk of inaccuracy in custody decisions.

Another case is the Padangsidempuan Religious Court Decision Number 42/Pdt.G/2019/PA.PSPK, in which even though the father was proven to be a drug user and perpetrator of domestic violence, the judge still granted custody of the 8-year-old boy to the father. This decision contradicts the Supreme Court's jurisprudence, which affirms that the mother is the primary caregiver unless she is negligent. This reflects the unclear application of the principle of child protection. Such a decision sets a precedent that contradicts the spirit of protecting children and women. In a patriarchal society, the mother's morality is more often used as a basis for consideration than the legal facts about the father. This indicates that structural reform of family law in Indonesia is urgently needed. Affirmative action is needed to ensure that custody rights truly reflect substantive justice. Decisions such as this undermine public confidence in the independence and integrity of the courts in protecting children and women.²⁷

Analysis of both rulings shows a discriminatory tendency for judges to ignore concrete evidence such as the mother's parenting track record and the psychosocial impact on the child. The mother's morality after divorce is also used as a negative indicator without clear relevance to her parenting capacity.²⁸ In addition, social factors such as the mother's economic status and modern lifestyle are often used to justify doubts about the quality of her parenting. When judges lack objective indicators, their decisions are easily influenced by social stereotypes. In practice, personal views on gender roles more often influence decisions than legal principles. Therefore, reforming decision-making in hadhanah custody cases must begin with eliminating structural biases that harm mothers and children. The judge training system also needs to be overhauled to be more sensitive to gender issues and children's rights. Thus, procedural and substantive justice can be more balanced in the family court system.

Judicial discretion in rulings is often very broad without objective evaluation guidelines based on empirical indicators. There are no standard criteria for assessing parental readiness, mental health aspects, and emotional closeness. As a result, decisions are heavily influenced by subjectivity and biased social norms. Legal decisions should be based on data and science, not merely on convention or subjective moral perceptions. A national guideline instrument is needed for judges in assessing custody cases. This measurement tool could take the form of an interdisciplinary checklist. Its application must be mandatory to prevent disparities and discrimination in the field. In addition, the implementation of this instrument must be supervised by an independent institution that is oriented towards the interests of the child. Substantive legal reform must be followed by comprehensive changes to the legal structure and culture.²⁹

Not only are the decisions problematic, but Indonesia's legal system also lacks adequate oversight mechanisms after custody decisions are made. Once custody rights have been decided by the court, there are no legal instruments in place to regulate the routine monitoring of the implementation of these decisions. This allows the party awarded custody rights to commit violations without adequate oversight. In some cases, children actually become victims of violence or neglect after custody decisions are made. This situation shows that the law does not yet fully favor the protection of children. Therefore, the legal system must be equipped with a collaborative monitoring framework between court officials, social workers, and child protection agencies. This monitoring model will ensure that court decisions are carried out in the best interests of the child.³⁰ The government needs to develop legal instruments and policies that allow for periodic evaluation of the conditions after a custody decision.

²⁷ Muhammad Afendi and Imron Choeri, 'Tinjauan KHI Dan Hukum Islam Terhadap Putusan Hakim Tentang Batas Usia Hak Asuh Anak Pasca Perceraian', *Isti'dal: Jurnal Studi Hukum Islam*, 11.1 (2024), 92–107 <<https://doi.org/10.34001/ijshi.v11i1.6296>>.

²⁸ Savvy Dian Faizzati, 'Hak Asuh Anak (Hadhanah) Bagi Ibu Yang Menikah Lagi Perspektif Maqashid Syari'ah', *Afkaruna: International Journal of Islamic Studies (AIJIS)*, 1.2 (2024), 278–93 <<https://doi.org/10.38073/aijis.v1i2.2471>>.

²⁹ Fawzia Hidayatul Ulya, Fashi Hatul Lisaniyah, and Mu'amaroh Mu'amaroh, 'Penguasaan Hak Asuh Anak Di Bawah Umur Kepada Bapak', *The Indonesian Journal of Islamic Law and Civil Law*, 2.1 (2021), 101–17 <<https://doi.org/10.51675/jaksya.v2i1.176>>.

³⁰ Maryati Maryati, 'Dasar Pertimbangan Hakim Menetapkan Hak Asuh Anak Kepada Suami Selaku Pemohon Pada Pengadilan Agama Jambi', *Jurnal Ilmiah Universitas Batanghari Jambi*, 21.3 (2021), 1299 <<https://doi.org/10.33087/jiubj.v21i3.1740>>.



Current normative provisions do not provide sufficient legal space for reviewing custody decisions, except through new lawsuits. In fact, the interests of children are dynamic and can change due to factors such as age, psychological conditions, or changes in the caregiving environment. In many countries, family courts are authorized to conduct periodic evaluations or review custody rights based on reports from third parties such as schools or professionals. Unfortunately, such mechanisms have not been adopted in the Indonesian legal system. In some cases, mothers who experience significant economic or social changes find it difficult to access legal processes for custody revisions. This causes children to remain in less than ideal conditions because the legal system views the judge's decision as final. Legal protection for children should not be limited by the concept of finality, but rather be open to adaptive and corrective possibilities. Reforms in the form of written rules and supporting institutions are crucial in supporting the principle of the sustainability of children's rights.

Strengthening the hadhanah judicial mechanism can be done by developing an objective assessment matrix that covers the psychological, social, and economic dimensions of the party filing for custody. This matrix can include indicators such as parenting history, emotional stability, quality of emotional relationship with the child, and social support from the surrounding environment. With these standards in place, judges have concrete references for assessing parenting suitability and no longer rely on assumptions or social stereotypes. The matrix also allows for audits of decisions issued, especially when there are indications of violations of the best interests of the child principle. This model has been implemented in several jurisdictions, such as Canada and the Netherlands, where custody evaluations are multidisciplinary and standardized. In Indonesia, the adoption of this matrix must be accompanied by technical training for judges, social workers, and legal aid institutions so that its implementation does not add to the administrative burden but rather increases the accuracy and fairness of decisions. Thus, this matrix is not only a technical tool but also a concrete form of the legal commitment to child justice and gender equality in the family.

One important aspect that must be strengthened in the reform of hadhanah cases is the integration of population data and child protection managed across sectors. This data includes records of education, health, and reports of child abuse collected by various agencies such as schools, social services, and the police. The synchronization of this data is very important so that the court has complete and valid information when considering custody rights. Currently, the unavailability of integrated data means that court proceedings often rely on one-sided testimony and documents. The government needs to establish a national system that connects judicial institutions with child protection databases. With this evidence-based approach, judges' decisions will be more accurate and less susceptible to manipulation. This integration system also enables longitudinal evaluation of the impact of custody decisions on children's welfare on an ongoing basis.

It is also necessary to develop a special institution for custody cases under the Indonesian Child Protection Commission (KPAI) or a similar independent institution. This institution is tasked with receiving reports of violations of custody rights, providing psychosocial assistance to children, and advocating for the interests of children in legal proceedings. Until now, there has been no specific channel that the public can access to report issues after a custody decision. The judiciary also does not have a service unit that focuses on monitoring the implementation of custody rights. With the existence of this complaint mechanism, social control over the implementation of custody rights can be improved. In addition, this institution can collaborate with universities and NGOs to conduct empirical research on the effectiveness of the custody system. The findings from this research can be used as a basis for the formation of new, more responsive legal policies. With this approach, family law reform will not only stop at the normative level, but will also address the real needs of the community.

To ensure that the principle of the best interests of the child is truly the main foundation, a child-participation-based approach must be applied in the legal process of hadhanah. Children who have reached a certain age and maturity must be given the space to express their opinions freely and safely. The Convention on the Rights of the Child explicitly states the right of children to be heard in all legal proceedings that concern them. However, in practice in Indonesia, the involvement of children in court proceedings is minimal and often considered irrelevant. This approach ignores the subjectivity and experiences of children themselves as the most affected parties. Courts can adopt structured interview mechanisms with the support of psychologists to ensure that children's participation is ethical and non-traumatic. In this way, the legal process will be more inclusive and reflect the best interests of the child. Child participation is not only a right, but also a legal strategy to produce more accurate and fair decisions.

In addition to internal judicial and institutional reforms, custody reform efforts also need to involve the media and public education. The dominant narrative that has developed in society is often biased against mothers who file for custody. Women are considered ambitious, selfish, or unfit



to be parents if they have certain professional backgrounds or lead modern lifestyles. The mass media must begin to raise the issue of custody from a more fair and educational perspective. On the other hand, the legal education curriculum in universities needs to be expanded to include interdisciplinary studies on family law, child psychology, and gender equality. Law students must be equipped with contextual understanding so that as future legal practitioners, they are able to take an advocacy position in cases involving women and children. Synergy between the media, education, and legal institutions will accelerate the transformation of legal culture in Indonesia.

On the other hand, judicial education and training institutions must also play a central role in improving the quality of hadhanah decisions. Currently, training for religious judges is still very limited to normative aspects of Islamic law and procedural law, while understanding of child development psychology, gender studies, and multidisciplinary approaches is still not part of the mandatory curriculum. This results in judges tending to assess hadhanah cases textually and formalistically. Therefore, the Supreme Court's Research and Development Agency for Legal and Judicial Training needs to design new training modules that comprehensively cover an interdisciplinary approach. This training should involve experts from various disciplines and s of actual case studies.³¹ With this increased capacity, it is hoped that judges will be able to deliver decisions that are more responsive to the real conditions faced by children and women in the context of divorce.

The evaluation of the hadhanah legal system also requires the active involvement of civil society. NGOs, academics, and child-friendly communities have an important role to play in monitoring, providing legal education, and voicing policy reforms. Currently, the role of civil society is still sporadic and not yet organized in the form of a solid national consortium. In fact, public participation is an important component in creating an accountable legal system. The government needs to open up broader opportunities for collaboration with non-state actors to support family law reform. One way to do this is by developing a participatory forum across institutions that can systematically channel criticism and recommendations. By involving various stakeholders, hadhanah reform will not only become the agenda of the legal elite, but also a joint movement for social justice.³²

In addition to domestic actors, international cooperation can also be an instrument for strengthening the hadhanah legal system. Countries with best practices in post-divorce child protection can be used as references for comparative studies and policy exchanges. This cooperation is not only in the form of seminars and training, but also through the adoption of technologies such as online evaluation systems and AI-based data compilation. For example, several Scandinavian countries have used a digital-based evaluation model to periodically assess child care conditions. Indonesia can adapt this model to local characteristics and available resources. International collaboration will enrich insights and encourage the adaptive adoption of best practices. In the long term, this approach will strengthen Indonesia's position in global forums related to child and family protection.³³

Reform of the hadhanah system must also be sensitive to cultural diversity and geographical conditions in Indonesia. In some regions, customary norms still play a strong role in regulating child custody, including in the context of divorce. In some cases, customary norms provide stronger protection for mothers and children, but in other cases they perpetuate gender-based discrimination. Therefore, the strengthening of the custody law system must be able to adapt to this diversity without sacrificing the principles of equality and the interests of children. A contextual approach is needed that can bridge the gap between national law and local practices. This approach can be realized through customary law dialogue, the involvement of community leaders, and policy harmonization through gender- and child-responsive regional regulations.

Another aspect that needs attention is the legal aid system in custody cases. Although free legal aid is regulated in Law No. 16 of 2011, its implementation is still limited due to funding constraints and the uneven distribution of lawyers. Many women, especially in remote areas, do not have access to competent legal counsel in custody cases. In fact, legal assistance is very important so that mothers

³¹ Liaquat Ali Abro, Muhammad Ahmad Munir, and Liaquat Ali Abro Post Doc Research Fellow, 'Balancing Rights and Responsibilities: Child Custody and Guardianship in Pakistan's Legal Landscape', *Pakistan Journal of Social Science Review*, 5.1 (2026), 578–91 <<https://www.pjssjournal.com/index.php/Journal/article/view/521>> [accessed 4 March 2026].

³² Zainal Azwar and others, 'Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey', *Journal of Islamic Law*, 5.1 (2024), 62–85 <<https://doi.org/10.24260/jil.v5i1.2326>>.

³³ Muhammad Azhad Al-Bohari, 'Dynamics of Regulatory and Policy Changes in Child Custody in Indonesia and Malaysia: A Comparative Analysis in Responding to Modern Family Issues', *Journal of Islamic Mubadalah*, 2025, 135–56 <<https://doi.org/10.70992/743j3e88>>.



as custody applicants can fight for the best interests of their children.³⁴ The state needs to expand the scope of legal aid by collaborating with women's organizations and law faculties in various regions. Campus-based legal clinic programs can also be strengthened to reach marginalized groups. With adequate access to assistance, the judicial process will become more fair and inclusive.

One of the biggest challenges in custody cases is enforcing child support decisions. Many fathers avoid their child support obligations after divorce for various reasons, including asset transfers, resignation from work, or relocation. Currently, there is no effective mechanism to punish violations of these child support obligations. Therefore, the state needs to develop a structured child support collection system that is integrated with the population administration and taxation systems. For example, direct deductions from fixed income or account blocking could be a solution. With this system, mothers as primary caregivers would no longer need to undergo additional legal proceedings to claim their children's rights.³⁵ This model has also been implemented in developed countries and has proven effective in guaranteeing the economic rights of children after divorce.

The evaluation of the hadhanah court system must also take into account the psychological dimension of all parties involved, especially children. Court proceedings that are too long, procedural, and formalistic can be a psychological burden for children. Therefore, a child-friendly courtroom design and non-adversarial procedures are needed. Juvenile courts should adopt a mediation and counseling approach as part of the trial process. This will create a more supportive atmosphere for children and parents in resolving custody conflicts. Thus, justice is not only achieved substantively, but also by considering holistic psychological aspects.³⁶

Within the broader framework of national legal development, hadhanah cases are part of the state's strategy to realize a legal system that is fair, inclusive, and human rights-based. Therefore, the evaluation and reform of hadhanah cases must be included in the national agenda for legal reform. The National Medium-Term Development Plan (RPJMN) can include indicators of family justice and child protection as part of the legal reform targets.³⁷ That way, budgetary and political support will be easier to obtain.³⁸ This structural approach will provide strong legitimacy for any efforts to reform the hadhanah system. This reform is not only important for realizing individual justice, but also for strengthening the foundations of social justice in society.

Finally, it is important to remember that reforming custody cases reflects the nation's commitment to the future of its young generation. Protecting children and fulfilling mothers' rights in childcare is not only a legal issue, but also a moral and humanitarian one. A country that neglects justice in the family will create an unstable and unequal society. Therefore, all elements of the nation the government, the judiciary, academics, the media, and civil society must unite in fighting for a custody system that is fair, humane, and in the best interests of children. This is not only a legal duty, but also a collective moral calling as a nation that upholds the values of justice and humanity.³⁹

From these findings, it can be concluded that child custody cases cannot be separated from broader structural dimensions, including gender inequality, patriarchal cultural dominance, and weak legal and social infrastructure. Reform efforts must be directed not only at regulations, but also at improving institutional capacity, strengthening women's legal aid networks, and public education on rights within the family. Reforms to hadhanah law must guarantee the full protection of children's rights and strengthen the position of mothers as primary caregivers, who have been marginalized in the judicial system. The state must step in to close this inequality gap through progressive, inclusive policies based on substantive justice.

³⁴ Kosar Haghani and others, 'Women's Perceptions of Gender Inequality in the Divorce Process in Iran', *The Journal of Public and Professional Sociology*, 17.1 (2025), 3 <<https://doi.org/10.62915/2154-8935.1201>>.

³⁵ Lilis Setiawati and others, 'Penguasaan Kakek Pada Hak Asuh Anak Di Bawah Umur Dalam Perspektif Maqashid Syariah', *Jurnal At-Tahdzib*, 11.2 (2023), 44–51 <<https://doi.org/10.61181/at-tahdzib.v11i2.312>>.

³⁶ Mera and others.

³⁷ Ahmad Masyhadi and Muhammad Aly Mahmudi, 'Hak Asuh Anak Pasca Perceraian Perspektif Hukum Islam Dan Hukum Positif Indonesia', *Al-Faruq: Jurnal Hukum Ekonomi Syariah Dan Hukum Islam*, 3.2 (2024), 99–115 <<https://doi.org/10.58518/al-faruq.v3i2.3011>>.

³⁸ Faisal Fauzan Ilyasa and others, 'Keutamaan Ibu Dalam Hak Asuh Anak Perspektif Pendidikan: Analisis Hadits Tarbawi', *Al-Hikmah: Jurnal Agama Dan Ilmu Pengetahuan*, 22.1 (2025), 90–104 <[https://doi.org/10.25299/ajaip.2025.vol22\(1\).15850](https://doi.org/10.25299/ajaip.2025.vol22(1).15850)>.

³⁹ Adelina Nasution, Pagar, and Asmuni, 'The Disparity of Judge's Verdict on Child Custody Decision in Aceh Sharia Court', *Samarah*, 6.2 (2022), 890–913 <<https://doi.org/10.22373/sjhk.v6i2.12758>>.



Conclusion

This study set out to answer three central questions concerning legal inequality in the determination of child custody (hadhanah) after divorce in Indonesia. First, regarding the normative regulation of custody rights, the analysis demonstrates that Indonesian legislation—particularly the Marriage Law, the Compilation of Islamic Law (KHI), and the Child Protection Law—has formally recognized parental responsibility and the principle of the best interests of the child. However, these legal instruments remain general and lack clear technical standards for assessing caregiving suitability. The absence of measurable criteria results in broad judicial discretion and weak operational guidance, thereby creating normative ambiguity and legal uncertainty in custody adjudication.

Second, regarding the application of these norms in Religious Court practice, documentary analysis of judicial reasoning shows inconsistent implementation. Courts frequently prioritize fathers' economic capacity over mothers' caregiving history and emotional attachment with the child. Psychological and social assessments are rarely incorporated, and child support obligations are often not formulated in concrete or enforceable terms. As a result, similar cases produce divergent outcomes, and the best interests of the child principle is often applied formally rather than substantively. These patterns indicate that judicial practice has not fully translated normative protections into consistent legal outcomes.

Third, regarding the influence of social realities on women's position, this study finds that patriarchal cultural norms, limited legal literacy, and unequal access to legal assistance significantly weaken mothers' bargaining power in custody disputes. Women's caregiving labor is frequently undervalued, while economic and moralistic stereotypes influence judicial considerations. Consequently, custody disputes reflect not only doctrinal shortcomings but also structural gender inequality embedded within the broader socio-legal context.

Based on these findings, substantive reform is necessary at both the normative and institutional levels. Legal provisions should be clarified through technical custody guidelines that incorporate objective indicators such as caregiving history, psychosocial assessments, and enforceable child support mechanisms. In addition, judicial capacity-building through gender-sensitive training and multidisciplinary collaboration is essential to ensure that custody determinations genuinely prioritize children's welfare and equality. Through these reforms, the family law system can better realize substantive justice and provide effective protection for children and mothers after divorce.

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