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Deconstructing Gender Bias in Child Custody Decisions in the Indonesian Legal System

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Original Article

Abstract

This study is motivated by the growing complexity of post-divorce child custody determinations, particularly in cases where the mother declines her custodial responsibilities and the father petitions for custody as the primary caregiver. The objective of this research is to analyze the legal basis and judicial considerations underlying the assignment of custody rights to fathers, to identify the influence of social, psychological, and financial factors on such decisions, and to assess the contribution of these elements to strengthening the best interests of the child principle. Employing a normative legal approach, this study centers on the Cikarang District Court Decision No. 38/Pdt.G/2019/PN Ckr as its case study. The findings reveal that the court's ruling was grounded in legal documentation, the child's emotional condition, environmental stability, and the father's financial capability. The study concludes by underscoring the critical importance of prioritizing the child's best interests over gender-based assumptions and advocates for more responsive, evidence-based, and child-centered custody policies in Indonesia.

Keywords: *Custody, Best Interests of the Child, Post-Divorce*

Abstrak

Penelitian ini dilatarbelakangi oleh meningkatnya persoalan pengambilan keputusan terkait hak asuh anak pasca perceraian, khususnya ketika ibu menolak kewajiban pengasuhan dan ayah mengajukan klaim sebagai pengasuh utama. Tujuan penelitian ini adalah untuk menganalisis dasar yuridis dan pertimbangan hukum hakim dalam menetapkan hak asuh kepada ayah, mengidentifikasi pengaruh faktor sosial, psikologis, dan finansial terhadap keputusan tersebut, serta mengkaji kontribusinya dalam memperkuat prinsip *the best interests of the child*. Penelitian ini menggunakan pendekatan yuridis normatif dengan studi kasus pada Putusan PN Cikarang Nomor 38/Pdt.G/2019/PN Ckr. Hasil menunjukkan bahwa hakim mempertimbangkan bukti hukum, kondisi emosional anak, stabilitas lingkungan, dan kapasitas ekonomi ayah. Kesimpulan penelitian menegaskan pentingnya pendekatan berbasis kepentingan terbaik anak dan menolak generalisasi gender dalam pemberian hak asuh, serta mendorong perubahan kebijakan pengasuhan yang lebih responsif dan objektif.

Kata kunci: *Hak Asuh, Kepentingan Terbaik, Pascaperceraian*

1. INTRODUCTION

Child custody represents one of the most complex and critical aspects of family law, particularly in the aftermath of divorce. It refers to the legal authority and responsibility granted to parents or guardians to care for, guide, and meet the physical and emotional needs of a child.¹ The determination of custody is not merely a legal issue; it is intrinsically linked to the protection of children's rights and the application of the best interests of the child principle as mandated by both international conventions and national legislation. This principle mandates that the child's well-being and interests be the foremost consideration in any decision affecting their life and future, including in divorce proceedings.

Legal developments and social transformation across various jurisdictions indicate a paradigm shift in custody determinations. Whereas historically, custody was often granted to fathers in line with patriarchal norms, contemporary legal systems are moving toward more egalitarian and child-centered approaches. The increasing recognition of gender equality, children's human rights, and the importance of emotional and psychological stability has prompted courts to assess each custody case through a multidimensional lens. In Indonesia, which adheres to a pluralistic legal system, similar patterns are emerging. Laws such as the Marriage Law No. 1 of 1974 and its implementing regulations authorize courts to determine custody based on factors such as the child's psychological well-being, emotional environment, and the parents' ability to meet their needs.

A particularly illustrative case can be found in Decision No. 225/Pdt.G/2013/PN.BKS, where two children—Anthony Christian Destiano and Adrian Natanael Destiano—remained in the custody of their father after divorce because their mother explicitly declined custody due to financial incapacity. This case highlights a socio-legal phenomenon often absent from statutory frameworks but significant in practice: the voluntary relinquishment of custody by the mother, which has profound implications for child care and protection.

Child custody following divorce has been the subject of extensive legal scholarship, focusing on judicial reasoning and the real-world impacts of custody decisions. Rahmadhany and Hidayah, for example, point out that the presumption of maternal custody does not always translate into effective caregiving. Custody can legally be transferred through the courts when the designated guardian fails in their duties. Institutional mechanisms, such as the Indonesian Child Protection Commission (KPAI), play a crucial role in facilitating child protection through mediation and

¹ Vina Yulia and Abdul Salam, "Pengaturan Hukum Hak Asuh Anak Di Bawah Umur Masyarakat Batak Dalam Putusan Perceraian," *Kertha Semaya: Journal Ilmu Hukum* 11, no. 6 (2023): 1265–76, <https://doi.org/10.24843/KS.2023.v11.i06.p04>.

intervention, as outlined in Articles 74 and 76(e) of the Child Protection Act.² Ramadhan explores discrepancies between legal norms—such as Article 41(a) of Law No. 16 of 2019—and actual practice, where court-granted rights are not always enforceable, leading to violations of children’s rights under Article 1365 of the Civil Code.³

Other studies, such as those by Lily et al., adopt a normative-empirical approach to show that judges increasingly consider psychological assessments and emotional well-being in addition to normative standards, indicating a shift toward psychosocial methodologies in custody rulings.⁴ Nabilah et al. highlight cases where custody is transferred to fathers due to maternal behavior that endangers a child’s moral or psychological well-being. Decision No. 601/Pdt.G/2020/PN.Mdn emphasizes morality and parental responsibility as decisive factors in custody allocation.⁵ Sari and Yuliawan map out the distinction between custody rights for mumayyiz and non-mumayyiz children and discuss judicial challenges in balancing statutory norms with the best interests of the child.⁶

Jafar and Tuwondila likewise argue that custody should be based on the factual competence of each parent. When mothers are found to be socially, emotionally, or financially unfit, custody may rightly be granted to fathers. However, enforcement remains an issue, as court-ordered custody transfers may face practical constraints due to non-executability or logistical limitations.⁷ Mansari et al. stress that both fathers and mothers have equal legal standing in seeking custody, provided they can ensure the child’s well-being. Nonetheless, in practice, courts still tend to favor maternal custody for younger children unless compelling reasons suggest otherwise.⁸

² Fikha Dwi Rahmadhany and Astika Nurul Hidayah, “Tinjauan Yuridis Terhadap Peralihan Hak Asuh Anak Pasca Perceraian Karena Pemegang Hak Asuh Anak Tidak Menjalankan Kewajibannya,” *UMPurwokerto Law Review* 4, no. 2 (2024): 257–68, <https://doi.org/10.30595/umplr.v4i2.16357>.

³ Refie Ramadhan, “Tinjauan Hukum Terhadap Putusan Pengadilan Mengenai Hak Asuh Anak Yang Tidak Dilaksanakan Oleh Pihak Mantan Istri Maupun Mantan Suami,” *Unnes Law Review* 7, no. 1 (2024): 529–43, <https://doi.org/10.31933/unesrev.v7i1.2262>.

⁴ Astina Lily, Waspada Waspada, and Juliati Juliati, “Tinjauan Yuridis Terhadap Hak Asuh Anak Berdasarkan Putusan No.359/Pdt.G/2022/PA.MKS,” *Clavia: Journal of Law* 2, no. 1 (2024): 39–50, <https://doi.org/10.56326/clavia.v2i1.4097>.

⁵ Putri Nabilah, Suparman Suparman, and Andi Maysarah, “Tinjauan Yuridis Terhadap Hak Asuh Anak Akibat Perceraian Dikarenakan Peselingkuhan: Studi Kasus Putusan No.601/Pdt.G/2020/PN.Mdn,” *Law Jurnal* 3, no. 1 (2022): 107–20, <https://doi.org/10.46576/lj.v3i1.2300>.

⁶ Devi Nur Sita Sari and Indra Yuliawan, “Tinjauan Yuridis Terhadap Hak Asuh Anak Akibat Perceraian: Studi Putusan Nomor 1034/Pdt.g/2022/Pa.Amb,” *Rampai Jurnal Hukum* 2, no. 2 (2023): 31–42, <https://doi.org/10.35473/rjh.v2i2.2587>.

⁷ Muhammad Jafar, “Tinjauan Yuridis Hak Asuh Anak (Hadhanah) Setelah Perceraian Menurut Kompilasi Hukum Islam: Studi Putusan Nomor 567/Pdt.G/2018/PA.Clg,” *Rechtsnormen: Jurnal Komunikasi Dan Informasi Hukum* 3, no. 1 (2024): 28–54, <https://doi.org/10.56211/rechtsnormen.v3i1.625>; Yerista Frilia Tuwondila, “Tinjauan Hukum Hak Orang Tua Atas Hak Asuh Anak Setelah Perceraian Dilihat Dari Undang-Undang Perlindungan Anak: Undang-Undang Nomor 23 Tahun 2002,” *Lex Et Societatis* 4, no. 21 (2016): 111–17, <https://doi.org/10.35796/les.v4i2.1.11430>.

⁸ Mansari Mansari et al., “Hak Asuh Anak Pasca Terjadinya Perceraian Orang Tua Dalam Putusan Hakim Mahkamah Sya’iyah Banda Aceh,” *Gender Equality: International Journal of Child and Gender Studies* 4, no. 2 (2018): 103–24, <https://doi.org/10.22373/equality.v4i2.4539>.

From the above studies, it is evident that prior research primarily centers on two main areas: first, the legal reasoning employed by judges in determining custody; and second, the legal ramifications of non-implementation of court decisions. Most adopt normative and descriptive-analytical approaches, often neglecting the lived social and cultural realities post-judgment, particularly the role of the non-custodial parent.

This study, in contrast, presents a distinct perspective by examining the real-world dynamics of a custody arrangement in which the children themselves remained with their father, not solely due to judicial decree, but because of the mother's explicit refusal and lack of financial readiness. Decision No. 225/Pdt.G/2013/PN.BKS thus offers a unique vantage point to explore the interplay of socio-economic factors, parental agency, and children's emotional attachments in shaping custody outcomes beyond procedural legalism. This study aims to explore the legal considerations and socio-cultural realities that underpin the granting of child custody to fathers, as exemplified by the Bekasi District Court Decision No. 225/Pdt.G/2013/PN.BKS. Specifically, it seeks to:

- 1) Analyze the legal framework and judicial reasoning used to justify paternal custody in cases where the mother declines custodial responsibility.
- 2) Examine how social, psychological, and financial factors influence post-divorce decisions related to child-rearing, despite not being explicitly mentioned in legal rulings.
- 3) Contribute to the reinforcement of the best interests of the child principle in Indonesian custody practices, particularly concerning the role of fathers as primary caregivers.

2. RESEARCH METHODOLOGY

This study employs a normative legal approach, supported by limited empirical data as a complementary element. The normative method was chosen due to the study's primary focus on analyzing positive legal norms governing child custody following divorce, as articulated in national legislation, legal doctrines, and jurisprudence—particularly in the context of Bekasi District Court Decision No. 225/Pdt.G/2013/PN.BKS. This approach enables the researchers to critically examine the underlying legal principles, judicial authority, and the legitimacy of custody determinations, especially within the framework of the best interests of the child doctrine.

The legal instruments analyzed include the Marriage Law (Law No. 1 of 1974 as amended by Law No. 16 of 2019), Government Regulation No. 9 of 1975, the Compilation of Islamic Law (KHI), Law No. 35 of 2014 on Child Protection, and the United Nations Convention on the Rights of the Child (CRC), alongside a number of

relevant Supreme Court decisions. Data collection was conducted through a comprehensive literature review, encompassing primary legal sources (legislation and court rulings), secondary sources (scholarly literature and legal journals), and tertiary sources (legal dictionaries and encyclopedias).

To enrich the analysis, the study also traces the socio-legal realities surrounding the case, including post-divorce parental relationships and the informal transfer of custody from mother to father. The analysis was carried out qualitatively, focusing on the interpretation of legal norms, evaluation of judicial reasoning, and their alignment with evolving social contexts. Systematic and critical interpretive methods were employed to explore the coherence between normative legal provisions and their practical implementation. Data validity was reinforced through triangulation of normative and empirical components, aiming to present a holistic depiction of family law in Indonesia—one that reflects not only the formal legal framework but also the lived sociological realities.

3. RESEARCH RESULT AND DISCUSSION

3.1. Legal Basis and Judicial Considerations in the Determination of Child Custody

This study seeks to analyze the legal grounds and judicial considerations employed by the panel of judges in awarding child custody to the biological father in a divorce case, particularly in instances where the mother refuses to fulfill her parenting responsibilities. The focal point of this analysis is Cikarang District Court Decision No. 38/Pdt.G/2019/PN Ckr, in which custody was granted to Achriano Toyang, the father of two minor children. The primary objective is to assess how legal reasoning and child protection principles are concretely applied in judicial decision-making and to evaluate the extent to which such rulings align with both national legal standards and universally accepted child protection norms.

Table 1.
Plaintiff's Evidence

Type of Evidence	Facts and Evidence Revealed During the Trial	
	Evidence Details	Relevance to Legal Decision
Child Birth Certificate	Official birth certificate documents of both children (P-5 and P-6), listing Achriano Toyang as the biological father.	Affirms the legitimacy of the legal relationship between the plaintiff and the child.
Divorce Certificate	A copy of the Bekasi District Court Decision Number 225/Pdt.G/2013/PN.BKS (P-3), which declares the divorce status between the plaintiff and the defendant.	Serving as the legal basis for post-divorce status and the urgency of custody determination.
Witness Testimony	Abigail Angeline and Windri Junias provided supporting testimony that the plaintiff is	Supporting the claim that the plaintiff is reasonably capable

Facts and Evidence Revealed During the Trial	
capable of properly caring for and meeting the children's needs.	of fulfilling the parental caregiving function.

The analysis of Decision No. 38/Pdt.G/2019/PN Ckr reveals that the judges based their ruling in favor of the plaintiff (Achriano Toyang) on compelling legal arguments and substantiated evidence. The plaintiff provided credible documentation, including the children's birth certificates verifying his legal paternity, a copy of the divorce decree affirming the legal dissolution of marriage, and sworn testimony from two witnesses—Abigael Angeline and Windri Junias—who attested to his capacity to fulfill the physical, emotional, and developmental needs of the children.

Importantly, the court also considered the children's stated preference to reside with their father. This factor is in line with Supreme Court Jurisprudence No. 126 K/Pdt/2001, which allows for the opinions of children deemed *Mumayyiz* (mature enough to discern) to be taken into account in custody determinations. In this case, the children—aged 13 and 10—were considered sufficiently mature to express their wishes independently and voluntarily.

Another decisive factor was the absence of the defendant (Yustin Paiembongan) during the legal proceedings, despite being duly summoned in accordance with Article 26(3) of Government Regulation No. 9 of 1975. Her failure to appear led the court to issue a default judgment. Furthermore, the defendant explicitly acknowledged her financial incapacity and unpreparedness to undertake the responsibilities of childrearing.

The findings of this study suggest that the decision to award custody to the father was firmly rooted in the best interests of the child principle, as enshrined in Article 26 of Law No. 23 of 2002 on Child Protection and Article 41 of Law No. 1 of 1974 on Marriage, and reinforced by prevailing Supreme Court jurisprudence. The court's reasoning reflects a non-discriminatory stance, focusing not on gender but on factors such as environmental stability, financial capacity, emotional bonds, and the readiness to assume full parental duties. This ruling exemplifies a progressive and socially responsive interpretation of family law.

When compared with earlier studies, similar methodological patterns emerge. These studies commonly adopt a normative legal approach that prioritizes the appropriateness and suitability of each parent in fulfilling custodial responsibilities.⁹ Rahmadhany emphasizes the legal mechanism for transferring custody when the

⁹ Nabilah, Suparman, and Maysarah, "Tinjauan Yuridis Terhadap Hak Asuh Anak Akibat Perceraian Dikarenakan Peselingkuhan: Studi Kasus Putusan No.601/Pdt.G/2020/PN.Mdn"; Rahmadhany and Hidayah, "Tinjauan Yuridis Terhadap Peralihan Hak Asuh Anak Pasca Perceraian Karena Pemegang Hak Asuh Anak Tidak Menjalankan Kewajibannya"; Ramadhan, "Tinjauan Hukum Terhadap Putusan Pengadilan Mengenai Hak Asuh Anak Yang Tidak Dilaksanakan Oleh Pihak Mantan Istri Maupun Mantan Suami."

designated guardian fails in their duty¹⁰, while Ramadhan highlights the gap between legal norms and their practical enforcement in the context of child protection.¹¹

However, this study offers an original contribution by specifically focusing on the in absentia nature of the decision and the father's active role in petitioning for custody—supported by substantive evidence and direct witness testimony. While most prior research has concentrated on the mother as the primary custodian or on the ineffectiveness of custody enforcement, this study highlights the success of the father in securing custody based on demonstrated competence rather than gender. It introduces a new analytical dimension by examining how judges respond to a defendant's absence in custody disputes while still upholding the overarching principle of child protection.

The ruling in this case illustrates a judicial approach that extends beyond formal-normative interpretation, demonstrating sensitivity to the child's social and psychological needs. The judge prioritized the best interests of the child by refusing to grant custody to a mother who was absent during the proceedings and who explicitly declined the responsibility of caregiving.

Importantly, the judge expanded the legal reasoning by incorporating both jurisprudential references and universal child protection principles. This affirms that contemporary judicial reasoning in Indonesia is increasingly multidisciplinary, drawing upon psychosocial assessments and the actual conditions of family life. The child is treated not merely as an object of legal arrangement, but as a subject of rights entitled to be heard, as guaranteed by the Convention on the Rights of the Child (CRC), which Indonesia ratified through Presidential Decree No. 36 of 1990.

The decision also reflects the principle that custody is a function of parental responsibility, not an inherent right.¹² Thus, the mother's absence from the trial and her own acknowledgment of being unprepared to assume parental duties provided legitimate grounds for the court to deny her custody. This case demonstrates that the parameters for custody are flexible and no longer bound by the traditional assumption that mothers are inherently the more suitable caregivers.

The main findings of this study affirm that, within the framework of Indonesian family law, the primary criterion for determining custody is the actual capacity of the parent to fulfill the child's needs—regardless of gender. The assignment of custody to the biological father in this case is both legally valid and consistent with the principle of substantive justice. Furthermore, the decision reinforces the significance of active

¹⁰ Rahmadhany and Hidayah, "Tinjauan Yuridis Terhadap Peralihan Hak Asuh Anak Pasca Perceraian Karena Pemegang Hak Asuh Anak Tidak Menjalankan Kewajibannya."

¹¹ Ramadhan, "Tinjauan Hukum Terhadap Putusan Pengadilan Mengenai Hak Asuh Anak Yang Tidak Dilaksanakan Oleh Pihak Mantan Istri Maupun Mantan Suami."

¹² Assyfa Dina Mutiara, Mohamad Taufik, and Erwin Aditya Pratama, "Hak Asuh Anak Dibawah Umur Akibat Perceraian Studi Putusan Putusan Pengadilan Nomor 2824/Pdt.G/2023/PA," *Pancasakti Law Journal* 2, no. 2 (2024): 255–266, <https://doi.org/10.24905/plj.v2i2.94>.

participation in legal proceedings and the provision of clear, credible evidence as key components in earning judicial trust.¹³

The judge applied the best interests of the child principle in a tangible way, taking into account critical factors such as the emotional bond between the children and their father, the father's financial capability, the provision of a safe and stable living environment, and the mother's explicit unwillingness and absence from the judicial process.¹⁴ This case should be recognized as an important precedent in Indonesian family law, expanding the interpretive scope of custody rights in a more inclusive and context-sensitive manner.

As such, the study contributes not only to the theoretical development of family law but also to its practical application. It serves as a valuable reference for judicial bodies, policymakers, and the broader public in understanding custody as a dynamic and context-driven mechanism for ensuring child protection.

3.2. Obstacles in the Implementation of Land Dispute Resolution Through a Positive Legal Approach

This study aims to examine how social, psychological, and financial factors significantly influence family decision-making in post-divorce child care, even though such considerations are not always explicitly articulated in court rulings or legal reasoning. By analyzing Decision No. 38/Pdt.G/2019/PN Ckr, in which the court granted custody to the father, this study explores the non-legal dimensions that shape legal decisions and investigates how social values and emotional relationships within the family context affect the final outcome of custody arrangements.

Findings from the legal and empirical analysis of Decision No. 38/Pdt.G/2019/PN Ckr indicate that the ruling was grounded not solely in formal legal norms, but also took into account various social and emotional dimensions of family life. While these factors may not be explicitly outlined in the written verdict, they are evident in the judge's evaluation of the evidence and testimony presented during trial.

Social factors emerged from the post-divorce family. The plaintiff, Achriano Toyang, was able to demonstrate his capacity to provide a socially stable and supportive environment for his two children. Testimony from witness Windri Junias affirmed that the children were enrolled in school and resided in a safe and nurturing setting. Moreover, the mother's absence from both the children's day-to-day lives and their

¹³ Lia Oktavia, "Pengenalan Proses Gugatan Dalam Hukum Acara Perdata," *Media Hukum Indonesia* 2, no. 4 (2024): 801–10, <https://ojs.daarulhuda.or.id/index.php/MHI/article/view/982>.

¹⁴ Agus Darwanta, "Penerapan Prinsip Terbaik Untuk Anak (The Best Interest of The Child) Dalam Pemenuhan Hak Anak Di Lembaga Pembinaan Khusus Anak," *Reformasi Hukum* 24, no. 1 (2020): 60–76, <https://doi.org/10.46257/jrh.v24i1.83>; Yazid Nashrullah and Endah Hartati, "Pengaruh Prinsip Best Interest of Child Dalam Penentuan Hak Asuh Anak Pada Kasus Perceraian Menurut Hukum Perdata (Analisis Terhadap Putusan-Putusan Pengadilan)," *Lex Patrimonium* 2, no. 2 (2023): 1–12, <https://scholarhub.ui.ac.id/lexpatri/vol2/iss2/10/>.

administrative affairs following the divorce illustrates a substantial lack of social involvement.

Psychological factors were a central element in the judge's consideration. This was evident in the testimony of Abigael Angeline, who confirmed that the children's preference to live with their father was made independently and without coercion, reflecting a strong emotional bond and sense of security. The children's voluntary choice served as a psychological indicator of the father's emotional reliability and nurturing presence.

Financial factors also played a critical role. The defendant explicitly stated her inability to fulfill the children's needs, whereas the plaintiff provided convincing evidence of financial stability. This included the ability to cover educational expenses and daily living costs, such as housing and healthcare. Although financial capacity was only briefly mentioned in the decision, it had a significant impact on the court's evaluation of parental capability.

While these considerations may not be expressed in conventional legal terminology, their influence is evident and functions as an implicit framework guiding the judge's reasoning. This study concludes that social, psychological, and financial factors are integral to judicial and familial decision-making in post-divorce custody cases—particularly when one parent (in this case, the mother) declines to assume caregiving responsibilities. These three dimensions, though not always explicitly referenced in legal documentation, are crucial determinants in shaping judicial confidence regarding the appropriate custodian for the child.

When compared to the study conducted by Lily et al., which underscores the alignment between judicial decisions and the psychological condition of the child based on interviews and empirical findings, the present study reinforces the conclusion that child psychology is a critical factor in custody determinations. However, this research extends the analytical scope by incorporating social and economic dimensions as integral components of a holistic evaluative framework.¹⁵

While Nabilah et al. emphasize the awarding of custody to fathers due to moral considerations—such as the mother's infidelity—this study reveals that the transfer of custody may also be justified by the functional absence of the mother in the child's life. This offers a novel perspective: that emotional disengagement and financial incapacity by one parent may carry significant legal implications, even in the absence of explicit moral failings.¹⁶

In contrast to Sari and Yuliawan's study, which focuses primarily on the legal categorization of *mumayyiz* and non-*mumayyiz* children, the present study highlights

¹⁵ Lily, Waspada, and Juliati, "Tinjauan Yuridis Terhadap Hak Asuh Anak Berdasarkan Putusan No.359/Pdt.G/2022/PA.MKS."

¹⁶ Nabilah, Suparman, and Maysarah, "Tinjauan Yuridis Terhadap Hak Asuh Anak Akibat Perceraian Dikarenakan Peselingkuhan: Studi Kasus Putusan No.601/Pdt.G/2020/PN.Mdn."

how the expressed wishes of *Mumayyiz* children, when supported by socio-emotional factors, can become a decisive element—even when not explicitly codified in statutory law. These findings suggest that a child's voice, when grounded in emotional and psychological maturity, warrants substantive consideration in custody rulings.¹⁷

The study demonstrates that decision-making in post-divorce custody cases cannot rely solely on written legal norms. A sound and just resolution requires consideration of the child's lived reality—encompassing available social support, stable emotional bonds, and sufficient financial capacity to guarantee the fulfillment of the child's rights and well-being. In the case under examination, the children's choice to reside with their father is indicative of a strong psychological attachment. This underscores the legal significance of emotional factors, which, in practice, may override conventional assumptions favoring maternal custody in cases involving minor children.

Moreover, the mother's absence from the judicial process and her admitted lack of financial readiness further reinforce the notion that effective caregiving is not determined solely by legal entitlement, but by functional capability.¹⁸ In this context, the judge operates as an intermediary between legal norms and social realities, ensuring that the final decision is not only procedurally valid but also substantively fair.

The findings of this study confirm that successful post-divorce child care is fundamentally supported by three key pillars: (1) the parent's active social involvement in the child's daily life; (2) the emotional closeness and psychological health of the parent-child relationship; and (3) financial stability to adequately meet the child's essential needs.¹⁹ While these elements may not always be explicitly cited in judicial decisions, they can be identified through evidence and testimony presented during trial and interpreted substantively by the court. Accordingly, custody rulings must go beyond legal formalism and be rooted in the actual conditions of the child's life—conditions which the law must ultimately serve to protect and uphold.

3.3. The Principle of the Best Interests of the Child in Custody Determination

The primary objective of this study is to contribute scientifically to the reinforcement of the best interests of the child as the foundational principle in the implementation of the child care system in Indonesia. This research specifically underscores the role of the father as a legally and factually appropriate custodian following divorce, as evidenced in Cikarang District Court Decision No. 38/Pdt.G/2019/PN Ckr. The study focuses on how judicial decisions reflect a shifting paradigm in Indonesian family law—from a

¹⁷ Sari and Yuliawan, "Tinjauan Yuridis Terhadap Hak Asuh Anak Akibat Perceraian: Studi Putusan Nomor 1034/Pdt.g/2022/Pa.Amb."

¹⁸ Aguswandi Aguswandi and Adam Sani, "Analisis Putusan Hakim Terhadap Hak Asuh Anak Pada Putusan: Nomor 225/Pdt.G/2022/MS.Mbo," *Jurnal Ilmu Sosial, Politik Dan Hukum* 2, no. 4 (2023): 394–400, <https://doi.org/10.55681/seikat.v2i4.649>.

¹⁹ Eva Khairunisa et al., "Hubungan Pola Asuh Orang Tua Terhadap Perilaku Sosial Anak Usia Dini," *Khirani: Jurnal Pendidikan Anak Usia Dini* 2, no. 2 (2024): 152–163, <https://doi.org/10.47861/khirani.v2i2.1075>.

gender-based model to an ability-based approach that prioritizes the child's holistic welfare.

In the case between Achriano Toyang and Yustin Paiembongan, the Cikarang District Court awarded custody of the couple's two minor children to their biological father. This decision is grounded in substantive legal reasoning and demonstrates the practical application of the best interests of the child principle as codified in Article 26 of Law No. 23 of 2002 on Child Protection and Article 41 of Law No. 1 of 1974 on Marriage. Analysis of court records reveals that the decision was based on several key factors:

- 1) Formal documentation, including birth certificates, confirming the legal relationship between the children and their father;
- 2) The divorce decree, which established the legal necessity for determining post-marital custody arrangements;
- 3) Witness testimonies affirming the father's capacity to care for the children and the children's psychological preference to reside with him;
- 4) The defendant's absence during the legal proceedings, indicating a lack of parental engagement and responsibility.

Additionally, the court took into account the father's financial capacity, the presence of a stable and supportive social environment, and the close emotional bond between the children and their father. These considerations affirm that custody is not an inherent maternal right, but rather a responsibility entrusted to the parent who can most effectively uphold the child's well-being.

This study concludes that the best interests of the child principle has been applied in a tangible and substantive manner in Indonesian judicial practice, surpassing the traditional doctrine that often assigns custodial rights to mothers by default, particularly for children under the age of majority. In the context of Decision No. 38/Pdt.G/2019/PN Ckr, custody was awarded to the father not because of his gender, but because he was demonstrably more capable of ensuring the child's protection—emotionally, socially, and financially.

This case represents a significant shift in the family law paradigm, wherein custody determinations are guided not by parental gender, but by the demonstrated capacity to secure the comprehensive welfare of the child. The father's role as the primary caregiver in this case was legitimized through a careful assessment of empirical evidence and legal standards. In contrast, Jafar observed that the majority of religious courts in Indonesia still tend to automatically award custody to mothers, particularly when the child is under 12 years of age. His study criticizes this jurisprudential tendency for relying excessively on age and presumed maternal roles, often without a thorough evaluation of the actual

caregiving capacity of both parents.²⁰ Similarly, Mutiara et al. noted that the best interests of the child principle has not yet been consistently prioritized in *hadhanah* cases, as many judges continue to adhere to traditional gender-based interpretations rather than conducting context-sensitive and capability-based assessments.²¹

This study reinforces and advances the argument that a parenting approach grounded in the factual capabilities of each parent is far more relevant and progressive in the context of contemporary child custody. By referencing judicial decisions that assign custody to fathers based on demonstrable competence and substantive eligibility, this study advocates for the development of new legal precedents that are more adaptive to the evolving needs of children in modern society.

The findings from this case and study demonstrate that the application of the best interests of the child principle within the Indonesian legal system is characterized by considerable interpretive flexibility. Judges can—and should—employ a multidimensional framework when determining which parent is most capable of fulfilling childcare responsibilities, unbound by rigid gender-based assumptions.

Although statutory norms may implicitly favor mothers in custody determinations, courts are increasingly prioritizing key substantive factors such as emotional stability, a supportive home environment, and the ability to meet the child's material and educational needs. Consequently, a father's capacity to offer psychological security, stable housing, educational support, and emotional engagement has become a decisive element in custody rulings.²² These findings underscore the urgent need for reform within Indonesia's child custody system—one that transcends formalistic interpretations and more fully embraces substantive justice, in alignment with the rights and dynamic needs of children as legal subjects.

This study confirms that academic contributions aimed at reinforcing the best interests of the child principle must encourage legal reformulations that move beyond rigid normative structures and gender biases. Instead, an ideal child custody framework should be:

- 1) Flexible and contextual, tailored to the post-divorce realities of each family;
- 2) Child-centered, prioritizing the child's psychological, social, and economic well-being;
- 3) Inclusive of fathers, recognizing them as potential primary caregivers when objective criteria indicate their suitability.

²⁰ Jafar, "Tinjauan Yuridis Hak Asuh Anak (Hadhanah) Setelah Perceraian Menurut Kompilasi Hukum Islam: Studi Putusan Nomor 567/Pdt.G/2018/PA.Clg."

²¹ Mutiara, Taufik, and Pratama, "Hak Asuh Anak Dibawah Umur Akibat Perceraian Studi Putusan Putusan Pengadilan Nomor 2824/Pdt.G/2023/PA."

²² Risan Pakaya and Asriadi Zainuddin, "Hak Asuh Anak Jatuh Kepada Bapak Perspektif Hukum Islam," *As-Syams* 4, no. 1 (2023): 105–15, <https://ejournal.iaingorontalo.ac.id/index.php/AS-SYAMS/article/view/1409>.

Decision No. 38/Pdt.G/2019/PN Ckr serves as a concrete example of a progressive legal approach that privileges substantive values over formalistic legal norms. It stands as a significant reference in building new legal doctrines and precedents in Indonesian family law—ones that are more equitable for children and more inclusive of fathers' caregiving roles.

4. CONCLUSION

This study set out to examine the legal foundation and judicial reasoning behind the assignment of custody rights to fathers in cases where mothers decline their caregiving responsibilities. It also aimed to explore how social, psychological, and financial factors influence family decision-making in post-divorce childcare, and to contribute to the advancement of the best interests of the child principle within the Indonesian legal system. Employing a normative legal approach, this study focused on the Cikarang District Court Decision No. 38/Pdt.G/2019/PN Ckr as its primary case study.

The findings reveal that the judge's decision was grounded in factual evidence, including the defendant's absence from proceedings and the father's demonstrated ability to ensure the child's emotional, financial, and environmental well-being. While social and psychological dimensions were not explicitly cited in the ruling, qualitative analysis of testimonies and contextual evidence suggests that these factors played a crucial role in guiding the court's judgment. This study asserts that custody decisions should not rely solely on formalistic legal interpretations or gender-based assumptions but must adopt a holistic approach that prioritizes the child's best interests above all else. The principal contribution of this research lies in its potential to serve as an academic foundation for reinforcing the best interests of the child principle in judicial practice and promoting broader recognition of fathers as viable and competent primary caregivers.

However, this study is limited by its focus on a single case and does not encompass diverse social contexts or broader regional perspectives. Future research is encouraged to adopt a socio-legal methodology with comparative, cross-regional analysis to develop a more comprehensive understanding of justice implementation and post-divorce child care dynamics across Indonesia. Additionally, policymakers are advised to consider revising custody-related regulations by incorporating objective assessments of parenting capacity, ensuring that custody outcomes align with the evolving needs and rights of children.

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