



ISSN 2809-7572 (Online)

YURIS: Journal of Court and Justice

<https://journal.ifpublisher.com/index.php/icj>

Vol. 3 Issue. 4 (2024)

doi.org/10.56943/icj.v3i4.641

An Implementation of Child Custody Decision after Divorce: A Study in Mondoluku Village, Wringinanom, Gresik

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ABSTRACT

Marriage is an internal bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family. However, domestic harmony requires sustained effort and mental and material preparations. When conflicts in marriage are not resolved, divorce is often an option. This research aims to understand the practice of implementing decisions related to child custody after divorce in Mondoluku Village, Wringinanom, Gresik. The method used is qualitative with data collection techniques through interviews, observations, and document studies. The results showed that many divorced couples do not implement court decisions related to child custody, which has a negative impact on children's welfare. The obstacles involved a lack of understanding of the law and economic constraints. Efforts from relevant parties, such as community leaders and local government agencies, in providing legal education and mediation have been implemented, but their effectiveness still needs to be improved. Therefore, this research is able to offer a comprehensive overview of child custody protection after divorce, which requires better coordination and increased resources to ensure children's welfare. The research highlights that determining child custody involves various administrative and procedural steps, requiring cooperation among families, courts, and social institutions to prioritize the child's best interests. It also points out challenges such as inadequate public understanding of custody, limited resources, and the psychological effects on children, which impact the effectiveness of custody implementation after divorce.

Keywords: *Child Custody, Divorce, Marriage*

INTRODUCTION

Divorces not only affect the lives of husband and wife, but also have a significant impact on the extended families of both parties.¹ This impact is even greater if the divorcing couple has children. Children are often the most affected in divorce situations. Divorce can bring about a reduction, or even loss, of communication and interaction between the child and the non-custodial parent. Children who had a close relationship with both parents should adapt to a new situation, where one parent may be rare or no longer exist in their lives. This situation can lead to loss and confusion in the child. In addition, this changed family dynamic can have an impact on children's emotional and psychological development. Children may feel insecure or unloved, which can impact their academic achievements and relationships with peers. The loss of family unity can also make children feel alienated and have difficulty adjusting to their new lives.

Divorce can cause mothers and fathers to struggle to fulfill their roles as parents. As a result, they are less responsible for caring for their children. It can also have a big impact on a child's development, especially after an official divorce. Many cases show that after divorce, both fathers and mothers often abandon children's rights that should be maintained.² The situation becomes more complicated if one or both parents remarry and start a new family. Usually, their attention shifts to the new family, so they often forget their obligation to care for the growth and development of children from the previous marriage. Children's rights, such as emotional, educational and health needs, are often abandoned because parents are busy with their new lives.

Even if divorced, parents should still protect their children's rights. Children need to feel loved and supported, even if the family changes. Custody rights include the responsibility of providing basic needs such as food, shelter, education, and emotional support. Children often experience instability when parents divorce, which can have a negative impact on their development. Parents are obligated to provide consistent care, even if they are no longer together. Although the court establishes custody, enforcement is often hampered by financial issues, conflict, and non-compliance.

The implementation of child custody decisions after divorce is often not in accordance with court decisions, as happened in Mondoluku Village, Wringinanom, Gresik. Although the court has decided on child custody and maintenance, the reality is still far from expectations. Many former couples do not fulfill their obligations according to the court's decision. Only around 30% of divorce cases show compliance with children's rights. This adversely affects the welfare of children, who should be protected. Children become victims, facing

¹ Jamaluddin, Nanda Amalia, *Buku Ajar Hukum Perkawinan*, Unimal Press, Sulawesi, 2016, hal.18.

² Dedy Siswanto, *Anak di Persimpangan Perceraian Menilik Pola Asuh Anak Korban Perceraian*, Airlangga University Press, Surabaya, 2020, hal.13.

instability that affects their development physically, emotionally and psychologically. The causes of non-compliance are diverse, such as financial problems, ongoing conflict, and lack of understanding or respect for court decisions.

In Mondoluku Village, many ex-husbands did not fully fulfill their obligations. Two respondents said that their ex-husbands only partially fulfilled their obligations according to the court decision, two others said that their ex-husbands did so but without compulsion, and four respondents said that their ex-husbands did not fulfill their obligations at all. The reasons for this non-compliance ranged from financial problems, abusive behavior, and bad habits such as gambling. This indicates the need to raise awareness of the importance of complying with court decisions for the welfare of the children involved. This research aims to understand the practice of implementing decisions related to child custody after divorce in Mondoluku Village, Wringinanom, Gresik.

LITERATURE REVIEW

Divorce

According to Great Dictionary of Indonesian Language, divorce means separating or ending the relationship between husband and wife, which is often referred to as divorce. Meanwhile, divorce refers to the process or the circumstance of separation between spouses, which includes all aspects related to the separation. The term divorce specifically describes a situation where a husband and wife are no longer living together or in a relationship as a couple. Divorce does not only mean separation, but also includes important legal aspects and social consequences. The term is often used in a legal context to describe a legal separation between two people who were previously married.

The divorce can involve such steps as filing a lawsuit in court, settling legal rights and obligations, and changes in social and economic status for both parties. Moreover, divorce is more than just a physical or emotional separation; it reflects an occasion that can have psychological and social consequences, both for the divorcing couple and for their families and neighborhoods. In general, divorce indicates that a husband and wife no longer live in the same house. It could be caused by a variety of factors, such as unresolvable conflicts, differences in values or life goals, or deep-seated communication problems. The process often requires significant emotional adjustment and can take time for both parties to recover and adapt.

Children's Rights

Children's rights are a group of internationally and nationally recognized basic rights designed to ensure that every child has protection, education, care and the opportunity to develop optimally. These rights are contained in various legal instruments, including the Convention on the Rights of the Child (CRC) which

was adopted by the United Nations (UN) in 1989 and has been ratified by many countries, including Indonesia. Children's rights are regulated in various regulations at the national level, such as Law No. 23/2002 on Child Protection, which affirms that every child has the right to survival, growth, protection, and participation in various aspects of life.³

The fulfillment of children's rights is a shared responsibility between the state, community, family and parents. The state should develop policies, programs and services that support the fulfillment of children's rights, while the community has an important role in creating a safe and friendly environment for them. Parents and families, as the closest unit, have the primary responsibility to fulfill children's basic needs and educate them with love, care and understanding. However, the fulfillment of children's rights often requires various challenges in practice. Many children have their rights neglected, especially those living in poverty, conflict or unfavorable social conditions. Issues such as domestic violence, child exploitation, and unequal access to education and health services are still major impediments to realize children's rights. Therefore, collaboration from various parties is very important to ensure that every child can fully realize their rights. In the context of divorce, children's rights are a very important issue.⁴

Child Custody Rights

Child custody is the right and responsibility of parents to treat, educate and raise their children. Usually, this right is owned by both parents, but in certain cases, custody can be granted to one parent or another party. Factors considered in determining custody include the best interests of the child, the ability of the parents, the age of the child, the emotional relationship with the parents, economic conditions, and history of misbehavior such as violence or neglect. According to Article 45 Paragraph (1) of the Marriage Law, this obligation does not only apply to one of the parents, but is the joint responsibility of the father and mother. Both are responsible for fulfilling the physical, mental and emotional needs of the child for optimal development.⁵

Article 45 Paragraph (1) of the Marriage Law states that children are a trust that must be guarded with full responsibility by the parents. Although custody of the child may be given to one of the parents after divorce, the obligation to maintain and educate the child remains a shared responsibility. The parent who does not have custody remains obligated to provide financial, emotional and

³ Laurensius Arliman S., *Komnas HAM Dan Perlindungan Anak Pelaku Tindak Pidana* (Deepublish, 2015).

⁴ D.C Tyas, *Hak Dan Kewajiban Anak* (Semarang: Alpirin, 2019).

⁵ Tiara Ananda Rahman and Wardani Rizkianti, "Penyelesaian Sengketa Hak Asuh Anak Setelah Perceraian: Perbandingan Antara Indonesia Dan Inggris," *JURNAL USM LAW REVIEW* 7, no. 1 (March 29, 2024): 248, <https://journals.usm.ac.id/index.php/julr/article/view/8801>.

educational support.⁶ This obligation applies until the child marries or reaches independence, as stipulated in Article 45 Paragraph (2), and continues despite divorce. The custody rights held by parents are not absolute and can be revoked by the court under Article 49 Paragraph (1) to protect the child. Even though the custody power is revoked, parents must still be responsible for the costs of maintaining the child according to Article 49 Paragraph (2).⁷ This aims to prevent neglect of financial obligations and ensure the child gets his or her rights, despite the change in parenting.⁸

In general, the court will award primary custody to the mother, especially if the child is under 12 years old, but the father can apply for custody if the mother is judged incapable. Child custody is divided into several types, such as primary custody, joint custody, and shared custody. Primary custody means that one parent is in full charge, while the other parent has visitation rights. Joint custody requires both parents to share responsibilities and decisions, while shared custody allows children from one family to be cared for by each parent. In addition, custody can also be transferred to a third party such as a relative or an institution, if the parents are considered unfit. The process of transferring custody is conducted through an authorized court by considering the best interests of the child.⁹

The legal process of determining child custody in divorce in Indonesia involves several steps and requirements that must be met. First, the applicant must attach the child's birth certificate as the main document that ensures the validity of the custody application. Secondly, the applicant must have cared for the child for a minimum of six months, demonstrating readiness to care for and raise the child. Furthermore, documents such as the family card (KK) and the original identity card (KTP) of the parents and the applicant must also be included to verify identity and legal family relationships.¹⁰ A recommendation from the Social Affairs Office is another important requirement to ensure the welfare of the child as a top priority. In addition, the applicant must attach a Police Record Certificate (SKCK) to ensure there is no criminal record and a Health Certificate

⁶ Mardalena Hanifah, "Perkawinan Beda Agama Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Soumatara Law Review* 2, no. 2 (November 20, 2019): 297, <http://ejournal.kopertis10.or.id/index.php/soumlaw/article/view/4420>.

⁷ Muhammad Reza Fahlevy, Ramlan Yusuf Rangkuti, and Masnun Masnun, "Tinjauan Yuridis Pencabutan Hak Asuh Anak Terhadap Ibu kandungnya Menurut Hukum Islam (Studi Putusan Nomor : 2568/Pdt.G/2020/PA.Mdn)," *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat* 4, no. 2 (2023).

⁸ Gracela Nggeo, "Perlindungan Hukum Terhadap Pembatalan Hak Asuh Anak Oleh Orang Tua Kandung Menurut Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *Lex Privatum* 8, no. 4 (2020).

⁹ Syahan Nur Muhammad Haiba and Anjar Sri Ciptorukmi Nugraheni, "Penetapan Hak Asuh Anak Pasca Perceraian Berdasarkan Asas Kepentingan Terbaik Anak," *Aliansi: Jurnal Hukum, Pendidikan dan Sosial Humaniora* 1, no. 2 (February 29, 2024): 151–161, <https://journal.appihi.or.id/index.php/Aliansi/article/view/84>.

¹⁰ Pratiwi Setiawan and Wahyu Tris Haryadi, "The Child Custody Status from Unregistered Marriage: An Islamic Law on The Basis of Constitutional Court Decision," *YURIS: Journal of Court and Justice* 1, no. 3 (2022).

that guarantees the health condition of both parents. The applicant must also include a Health Certificate from a doctor to ensure their physical and mental condition is good to care for the child. Finally, income documents or salary slips are required to assess the parents' financial ability to meet the child's needs. All these documents are aimed to ensure that child custody decisions are made with the welfare and the children's own best interests in mind.

RESEARCH METHODOLOGY

This research uses the empirical juridical method, which is a method that examines the application of normative law in real situations in society.¹¹ This type of research is included in field research with a socio-legal approach, which was chosen to find out the implementation of decisions related to child custody after divorce (case study in Mondoluku village, Wringinanom, Gresik). This research is descriptive and aimed to provide an overview of the data collected. Under this approach, the researcher does not accept the situation directly, but seeks to understand and explain the situation based on the data. This socio-legal approach analyzes legal cases, to examine the application of law in a social context, and to assess the impact of social factors on the implementation of law.

RESULT AND DISCUSSION

Implementation of Decisions on Child Custody after Divorce in Mondoluku Village, Wringinanom, Gresik

Over the past four years, Mondoluku Village, Wringinanom, Gresik, has experienced an increase in the number of divorce cases. Based on an interview with Mr. E, a village official in Mondoluku, there were 112 divorce cases between June and July 2024. The main causes include death, infidelity, and domestic violence. However, only around 30% of divorced couples comply with their obligations towards children, such as providing maintenance, education and emotional support.¹² Although the court has issued a decision related to child custody and care, this decision is often not implemented properly in the real situation. However, there is a gap between the applicable law and its implementation in the community, especially in divorce cases in Mondoluku Village.

According to Mr. E, one of the village officials in Mondoluku, financial limitations are often a big constraint in fulfilling children's needs after divorce. If one or both parents have economic problems, they may not be able to provide for children's basic needs, such as food, clothing, shelter and education. This

¹¹ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris*, Cet.2. (Depok: Prenada Media Group, 2018).

¹² Bapak E perangkat Desa Mondoluku, *Hasil Wawancara Dengan Bapak E Perangkat Desa Mondoluku* (Gresik, 2024).

condition not only affects the child's physical life, but can also have an impact on their emotional and psychological welfare. Children living in economic deprivation may be stressed due to the uncertainty of fulfilling their daily needs. They can feel anxious about whether they will have enough food or whether they can continue to attend school. This unpredictability can bring a lot of emotional distress, which makes children feel insecure and unstable in their lives.¹³

Low levels of post-divorce liability compliance is a significant issue. Children affected by divorce in Mondoluku Village are often the main victims, especially in financial and psychological aspects. The lack of fulfillment of basic needs such as maintenance and education can lead to economic instability and disruptions in child development. These conditions have the potential to worsen children's welfare and increase the risk of greater conflict between the two parents, thus impacting on children's welfare in general. This lack of compliance also emphasizes weaknesses in the local justice and law enforcement systems.¹⁴

Decisions on child custody in Mondoluku Village, Wringinanom, Gresik, emphasize the importance of child protection and empowerment. Some of the judges' decisions show progress in handling custody, focusing on the fulfillment of children's rights and ongoing support for them. The Supreme Court Decision Directory records various decisions that ensure adequate fulfillment of children's rights and maintenance. In supporting these efforts, organizations such as Save the Children and the Gresik District KBPPPA Office have held inaugural activities for village children's forums and community-based integrated child protection (PATBM) in Gluranploso Village and Wringinanom Village. These activities aim to protect the rights of children, women, people with disabilities and religious minorities by promoting human rights and equality.

Child custody disputes reflect the gender equality stipulated in the law, particularly in Article 105 Paragraph (a) of the Compilation of Islamic Law, which stipulates that child custody under the age of 12 is given to the mother. Child marriage under the age of 18 is a violation of children's rights, such as the right to education, health, and protection from violence, as well as increasing criminality and hindering child development. Several initiatives have been taken to support child custody rights, such as the inauguration of village children's forums and PATBM in Gluranploso and Wringinanom villages. The local government has also socialized the formation of PATBM to increase public awareness in protecting children. The head of TP PKK Pesawaran, Nanda Indira Dendi, opened the PATBM coordination forum with the aim of encouraging child protection. In Wringinanom Village, a reporting form is used to record social activities and the use of village funds, including children's education. This

¹³ Ibid.

¹⁴ Renita Ivana and Diana Tantri Cahyaningsih, "Dasar Pertimbangan Hakim Terhadap Putusan Perceraian Dengan Pemberian Hak Asuh Anak Kepada Bapak," *Jurnal Privat Law* 8, no. 2 (December 2, 2020): 295, <https://jurnal.uns.ac.id/privatlaw/article/view/48423>.

document records various initiatives related to education and social assistance in the village. The 2023 Gresik District Performance Plan includes a Child Rights Program (PHA) that focuses on empowering and protecting children's rights. The program aims to ensure that children's rights in Gresik district are fulfilled through various initiatives and ongoing support.

The Challenges and Impacts of Implementing Child Custody Decisions in Mondoluku Village, Wringinanom, Gresik

The implementation of child custody decisions in divorce in Indonesia has various challenges that affect children's welfare. One of the main challenges is the excessive lag in the implementation of the judgment, which creates uncertainty for both children and parents. The parties' compliance with the judge's decision is also a serious problem, as many delay its implementation. Limited resources, both cost and manpower, hinder religious courts in executing custody decisions efficiently. Delays in monitoring the implementation of decisions can be detrimental to the welfare of children. The impact of these challenges is significant, disrupting children's emotional stability and development. Children may experience stress and uncertainty that negatively impacts their health and education. In addition, parents may struggle to fulfill their parenting responsibilities if the judgment is not implemented promptly. These implementation challenges require serious attention from various relevant parties. Stronger efforts are needed to accelerate the implementation of decisions and improve compliance so that children's rights can be properly fulfilled.

Child custody settlements in Mondoluku Village, Wringinanom, Gresik, have faced various challenges that need to be overcome to protect the best interests of the child. One of the main challenges is the lack of clear regulations regarding child custody, where there are no explicit provisions in the Indonesian Islamic Law (HIR-R.Bg) or other regulations. This lack of clarity makes it difficult to exercise joint custody, which often results in the custody holder strictly regulating the child's meetings with the other parent, potentially creating conflict. Custody battles, especially in divorce cases, often require lengthy and complicated judicial processes, where in some cases, custody goes to the father because the mother is perceived as not enough attentive.

The Impact of Custody Decisions Mondoluku Village, Wringinanom, Gresik

Child custody decisions in Mondoluku Village, Wringinanom, Gresik, have significant impacts on children, parents and the community. In psychological terms, a well-implemented custody decision can provide stability and certainty for the child, but parental separation or change of residence can be a source of stress that requires psychological support. A clarity of parental roles and responsibilities in care, education and welfare can strengthen the relationship between parents and

children and increase community awareness of the importance of respecting children's rights and the law.

Custody decisions also often consider financial support for the child's needs, such as education, health care and daily necessities, which affects the family's economic welfare and the child's quality of life. Consistent support from both parents as per the custody decision allows the child to develop physically, emotionally and intellectually. Good implementation of custody decisions has the potential to create stable family governance, reduce conflict, and provide a supportive environment for children's development. The community in Mondoluku Village can also experience improved social welfare through respect for children's rights and compliance with legal decisions.

Case Study and Interviews with Related Parties on the Implementation of Child Custody Decisions in Mondoluku Village, Wringinanom, Gresik

The implementation of child custody decisions in Mondoluku Village faces various challenges, but still focuses on the best interests of the child. In the case of Mr. F (35) and Ms. K (27) who divorced three years ago, the court awarded primary custody to Ms. K of their child, Sherly (7), while Mr. F had regular visitation rights. The court worked closely with local social agencies to establish a visitation schedule for Mr. F and ensured Ms. K fulfills her obligations as the primary parent. The implementation of this decision is regularly monitored to ensure both parents comply with their obligations. Ms. K is responsible for Sherly's education, health and daily care, while Mr. F has the right to visit Sherly according to an agreed schedule. If a dispute arises regarding the implementation of the judgment, a mediator or social worker helps to resolve the issue by considering the interests of the child. Sherly may also need psychological support to deal with her parents' separation, and counselors can provide assistance as needed. Public awareness about the importance of supporting child custody and complying with court decisions is crucial in creating a stable environment that supports optimal child development.

Mediation efforts in Mondoluku Village, Wringinanom, Gresik, have shown mixed results in divorce cases. Informant A, who divorced because her husband often played slot gambling and had a low income, stated that the mediation was unsuccessful, although the husband still provided some obligations to his children, although not fully. A similar case was experienced by informant L, who divorced because her husband was unemployed, and therefore the family's needs were not met. Mediation also failed, but the husband continued to fulfill his obligations towards the children in accordance with the court decision.

Meanwhile, informant T, who divorced because her husband was abusive, also experienced a failure in her mediation efforts. The husband continued to provide obligations, but only after being reminded and forced. From these three cases, it can be seen that mediation is often unsuccessful in resolving custody and

parental responsibility issues. However, some ex-husbands still fulfill their obligations, albeit with various obstacles.

CONCLUSION

Research in Mondoluku Village, Wringinanom, Gresik found that the implementation of court decisions regarding child custody after divorce still involves many challenges. Although Articles 45 and 49 of the Marriage Law emphasize the obligation of parents to maintain and educate children until the children are independent or married, the reality is that only around 30% of divorced couples comply with this obligation. Some of the main inhibiting factors are a lack of awareness of the importance of complying with the decision, conflict between former couples, and financial limitations experienced by one or both parents.

The research also found that the legal process of determining child custody involves various administrative and procedural requirements. The implementation of custody decisions emphasizes the importance of cooperation between families, courts, and social institutions to ensure the best interests of the child. However, other challenges such as a lack of public understanding of child custody, limited resources, and the psychological impact on children also affect the effectiveness of post-divorce custody implementation.

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