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## **Exploring the Causes of Child Custody Disputes (Hadhanah) from an Islamic Perspective**

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**Abstract:** Child custody (hadhanah) constitutes a fundamental aspect of Islamic law, designed to safeguard the welfare, education, and protection of children following divorce. The principle of justice in Islam emphasizes that the rights of the child must take precedence over parental interests, with due consideration given to compassion, capability, and the suitability of the custodian. This study aims to analyze the concept of child custody from an Islamic perspective, identify the underlying causes of custody disputes, and examine their legal implications within the framework of Indonesia's religious courts. The research employs a normative approach by reviewing primary sources of Islamic law (fiqh madhhab). The findings indicate that custody disputes arise not only from divergent interpretations of legal provisions but also from practical challenges. These include: (1) the absence of parental affection, which often triggers disputes; (2) financial capacity in relation to child support; (3) the influence of the living environment on parental conflict; and (4) parental customs or traditions that shape approaches to child-rearing.

**Keywords:** Child Custody Rights, Islamic Law, Disputes, Justice.

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### **Introduction**

Humans in their lives cannot be separated from their relationships with other beings, especially with other humans. Certainly, humans definitely need help or necessities for their survival. Therefore, humans need relationships for the continuity of life, ranging from food, clothing, work to marriage. For Muslims, marriage is a sunnah of Prophet Muhammad Shallallahu alaihi wa sallam, and it even becomes obligatory if a person is capable in all aspects, of course, the marriage must be in accordance with Islamic law. In a marriage, the prospective husband and wife must have mature readiness so that the integrity of the family is guaranteed. Because

a marriage can easily break if both partners still have ego without yielding to each other when there is a mismatch in the family.

However, usually the cracks occur due to several factors, namely economic problems, infidelity, incompatibility, or things that lead to divorce. Of course, these matters must be handled with maturity. If not, then divorce will occur. The failure of a husband and wife to strengthen family resilience can lead to various problems that have the potential to lead to divorce<sup>1</sup>.

If we look at social media today, almost every day we are shown cases of divorce. Thus, divorce today is one of the social phenomena that cannot be avoided in community life. Although Islam places marriage as a sacred bond that must be maintained with full responsibility, in reality, not all households are able to endure the various dynamics of life. Divorce often becomes the last resort when household conflicts cannot be resolved through deliberation, mediation, or other peaceful efforts. In the context of Islamic law, divorce is indeed permitted, but it is greatly disliked by Allah Subhanahu Wata'ala, as emphasized in the hadith of Prophet Muhammad Shallallahu alaihi Wasallam that divorce is the most hated permissible matter. This shows that Islam recognizes emergency conditions that necessitate divorce, but still emphasizes that divorce should not be made the primary choice.

In the country of Indonesia, this marriage is already regulated in Law No. 16 of 2019, which is an update to Law No. 1 of 1974 concerning marriage, originally 16 years changed to 19 years. This change has good intentions and purposes for the common welfare.<sup>2</sup> One of the issues that arises after divorce is regarding child custody, also known as hadhanah. Children are a trust from Allah Subhanahu Wata'ala, which must be cared for and nurtured with love. Therefore, a parental divorce should not reduce in the slightest a child's right to receive goodness, affectionate treatment and attention, education, and even protection. However, what happens is that divorce often leads to a struggle for custody between the parents, namely

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<sup>1</sup> Lauhul Mahfudz, Eka Marita Putri Fauzi, and Rinwanto Rinwanto, "Analysis of the Sakinah Family Service Center Program in Maintaining Family Resilience: A Case Study of the KUA Dlanggu District," *The Indonesian Journal of Islamic Law and Civil Law* 6, no. 1 (2025): 121-37, <https://doi.org/10.51675/ijil and cil.v6i1.1066>.

<sup>2</sup> Mir'atul Firdausi, Tiyan Iswahyuni, and Aufi Imaduddin, "Marriage Age Limits According to Law Number 16 of 2019 on Marriage in Protecting Adolescent Reproductive Health Viewed from Maqashid Sharia," *Islamic Law and Civil Law* 5, no. 2 (2024): 1-17.

the father and mother. If we witness on social media that there is a struggle, it will lead to continuous conflicts which will eventually affect the child. Therefore, for the author, a normative study on the rights of child custody after divorce according to Islamic law becomes very important to provide a clear and fair legal basis, and also to serve as a study material for parents.

The right to child custody from the perspective of Islam has a very broad dimension, including aspects of physical, psychological, social, educational, and even spiritual aspects. Islam cares deeply about the fate of children because children must grow up in a good, conducive, and loving environment, and also receive good and continuous education. Therefore, the question of who has the right to care for or maintain a child after a divorce should not only be viewed in terms of lineage or biological relationship, but also in terms of the parent's ability to provide the best upbringing. Many fuqaha or fiqh scholars have discussed child custody or hadhanah in depth, referring to Islamic legal sources such as the Qur'an, Hadith, and the *ijtihad* of scholars. In addition, the Hadith of Prophet Muhammad Shallallahu alaihi Wasallam also provides guidance regarding the rights of hadhanah or child custody.

This phenomenon can be seen in the case of celebrity divorce between Baim Wong and Paula Verhoeven. Although the custody of their children, Kiano and Kenzo, was awarded to Baim Wong, Paula had previously been actively involved in their upbringing, giving the attention her children needed. During mediation, Paula had proposed a shared custody system, but the court ruling established a two-week rotation system to maintain the children's closeness to both parents. Paula accepted the decision for the psychological stability of the children and affirmed that the emotional bond between her and the children remains intact.

This case came to public attention in October 2024 when Baim filed for divorce in the South Jakarta Religious Court, citing allegations of prolonged marital disputes and the involvement of a third party. The panel of judges declared that Paula had committed adultery and was proven to be *nusyuz* due to negligence of her duties as a wife. In April 2025, the Religious Court granted the divorce, and the appeal ruling in June 2025 awarded child custody to Baim Wong, while Paula did not file a cassation for the sake of the child's psychological stability. Social influence affected the quality of the children's family and social relationships, leading to social problems such as children's behavioral deviations. In this situation, children may feel less

confident and tend to be jealous of friends who come from intact families, as well as various behavioral problems related to the emotional difficulties of parents who are divorced, including anxiety, depression, and decreased self-esteem. They also often experience difficulties in socializing, their academic performance may decline, and they may exhibit problematic behavior.

The case of Baim and Paula shows that the sole custody system is still commonly applied in Indonesia. Different from the practice of shared parenting or joint physical custody in other countries, such as Sweden, where balanced parental involvement can reduce children's psychological symptoms and support the continuity of the child's relationship with both parents. This emphasizes that although the principle of the best interests of the child is implemented in Indonesia, the shared parenting model abroad tends to provide more optimal psychological benefits for children compared to the sole custody system.

Nevertheless, not all children experience negative impacts from divorce. Some children even show better emotional and social development if they receive sufficient attention, protection, and affection from their parents. Therefore, the best interests of the child remain the main principle in determining custody, both in national legal practice and Islamic family law, to minimize psychosocial risks and ensure the child's well-being is maintained.

Thus, this article will explore in depth the rights of children in custody disputes post-divorce according to Islamic law, along with contemporary issues. It is hoped that this study can provide both theoretical and practical contributions for a better understanding of children's rights, as well as provide policy recommendations that can be applied to create more humane and fair solutions in resolving child custody disputes after divorce.

### **Research Methode**

This research uses a normative approach. The normative approach is conducted by examining sources of Islamic law (fiqh books and legislation in Indonesia). The research approach uses analysis of Islamic legal texts and applicable positive regulations, such as the Compilation of Islamic Law (KHI) and the Marriage Law through books, journals, and other Islamic literature.

As for the technique of data analysis through Descriptive-Qualitative analysis, it is by presenting data narratively to describe the concept of

hadlanah according to Islam, as well as by conducting comparative analysis, namely by comparing the views of classical scholars with positive law in Indonesia.

### **Results and Discussion**

Hadhanah is caring for a baby/young child who is not yet able to manage themselves. Hadhanah comes from the word hidnan, which means stomach. This is likened to the phrase ath-thairu baidahu hidnan (which means a bird that broods its eggs under its wings)<sup>3</sup>. Meanwhile, according to Abi Yahya Zakaria Al Ansyhari, Hadlanah is: Taking care of a child who is unable to handle all matters, by providing what is beneficial for them, and protecting them from anything that may harm them, even if they are grown up but not of sound mind, such as bathing them, dressing them, applying kohl, carrying them, and rocking them to help them sleep.<sup>4</sup>

In language, hadhanah is placing something near the ribs/lap because a mother places her child in her lap while breastfeeding. In terms of terminology, hadhanah is guarding and managing all matters concerning the welfare of a child who cannot take care of themselves<sup>5</sup>. The Compilation of Islamic Law states that hadhanah is the activity of nurturing and educating a child until they can stand on their own. Fiqh scholars define hadhanah as taking care of a young child, whether male or female, who is not yet discerning, as well as providing good things for them and avoiding things that have harmful effects on the child.

As for disputes over child rights in divorce, according to scholars and Indonesian positive law, the causes include:

#### **First, the lack of parental affection is the cause of disputes**

Because divorce will create new sources of problems for the children, since the former wife or former husband does not have the right to care for the children. The home environment, which is usually filled with laughter, intimacy, and family harmony, changes into silence and tension when

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<sup>3</sup> Acmad Choeri Muhammad Efendi, "Analysis of Article 105 of the KHI Regarding the Age Limit of Hadhanah Children Post-Divorce," *Ist'dal* 11, no. 1 (2024), <https://ejournal.unisnu.ac.id/JSHI/article/view/6296/2422>.

<sup>4</sup> Kholil Syu'aib, "Fiqh of Imam Zakariya Al-Anshari," *Al-Fikra: Journal of Islamic Studies* 10, no. 2 (2017): 216.

<sup>5</sup> Badruddin and Aditya Prastian Supriyadi, "The Dynamics of Indonesian Islamic Law: The Reactualization of Islamic Norms in Propagating Positive Law to Respond to the Socio-Cultural Contemporary Era," *De Jure: Journal of Law and Sharia* 14, no. 1 (2022): 38-57, <https://doi.org/10.18860/j-fsh.v14i1.15512>.

divorce occurs between the former husband and former wife who promised to maintain a good relationship, but such a thing will be difficult to realize, because there is a possibility that the former husband has remarried, as well as the former wife.

Because there is no term for former parents after a divorce occurs, the relationship between the parents and their child or children still exists, although the feelings are still dominated by the wife due to the divorce, and it is certainly the wife who most hopes to express her desire to obtain the right to care for her child. In Islam, the right of child custody is known as *Hadhanah*, which involves providing protection to children in caring for, nurturing, or similar actions toward children who are still minors, male or female, or children who are already grown but have not yet understood something, known as *tamyiz*.<sup>6</sup> Without asking for the child's permission to do good, one of the child's parents acts with the intention of caring for and nurturing the child for the sake of the child's future, in terms of education, health, and safety, as a form of responsibility of one of the parents.

According to Imam Shafi'i, child custody before the child is discerning (under 7-8 years old or before becoming independent) is in the hands of the mother, regardless of the child's gender. The mother is considered more entitled because of her affection and ability to care, as long as the mother does not remarry another man who is not the child's *mahram*.<sup>7</sup> As for who is entitled to provide for a child or children, it is the responsibility of the father until the child reaches puberty. Imam Shafi'i relied on the report from the companion Abu Bakr, which was stated by Said bin Mansyur in his *Sunan* from Hashim from Mujallad bin Said, from Shuaib, and he said: Then Abu Bakr decided, and he said: You are obliged to provide for him until he reaches puberty.

It should be understood that the child referred to above is certainly not differentiated, whether they are female or male. If it happens that the child wants to be with their father, then it does not mean that they are allowed to try to prevent the mother from visiting or seeing them. In fact, a mother is allowed to come at any time if she wishes to visit. According to Imam

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<sup>6</sup> Maghfirah, "THE CONCEPT OF SHARED PARENTING IN HADHANAH AFTER DIVORCE: A STUDY OF CONTEMPORARY ISLAMIC MARRIAGE LAW," *Hukum Islam* 20, no. 2 (2020): 185-202.

<sup>7</sup> Maulida Syahputri, "Custody Consequences of Divorce from the Perspective of 4 Schools of Thought and the Compilation of Islamic Law," *Judge: Journal of Law* 06, no. 01 (2025): 127-31, <https://journal.cattleyadf.org/index.php/Judge/index>.

Shafi'i, if the child has mental issues, such as being an idiot or even insane, then the mother has the right to them, and the child is not given the right to choose between the father and the mother.

Based on the opinion mentioned above, a mother takes the primary role and has the right to care for a child who is not yet of sound mind (*tamyiz*). Furthermore, according to the Hanafi scholars, the order is as follows: first, the mother. Then, the mother's mother and so on until she passes away, aside from the child's mahram (non-marriageable) relatives. Then, the father's mother, next the full sister, then the paternal half-sister. If none of the female relatives mentioned above exist, the custody of the child shifts to: first, the father. Then, the father's father, and so on, then the full brother, next the paternal half-brother, then the child of the full brother, then the child of the paternal half-brother, then the paternal uncle (from father) full brother, then the paternal uncle (from father) half-brother, then the male child of the paternal uncle (from father) full brother, and then the male child of the paternal uncle (from father) half-brother.

Make sure that all the siblings mentioned above are foster children or male mahdlun, because for female foster children (*mahdlun*), all the siblings above are not her mahram. Meanwhile, according to Maliki, those entitled to take care of a child or *Hadlonah* include the child's siblings consisting of male and female relatives, including: Mother, maternal grandmother and so on, then Aunt (from mother) by blood, Aunt (from mother) by father, Aunt (from mother's mother), Aunt (from father's mother), Father's mother, Father's paternal grandmother, Father's paternal grandmother, Father, Sisters, Aunt (from father's father), Aunt (from mother's father) and her daughters full siblings. Meanwhile, according to Shafi'i scholars, the following apply: Mother, maternal grandmother and so on, Father, paternal grandmother, paternal grandmother and so on, provided that they are heirs who are Mahram, Sisters, Brothers, Aunt from mother and Aunt from father.<sup>8</sup>

According to the opinion of the Hanbali scholars, the people who have a greater right to the custody of a child or *Hadlonah* include the mother, the mother's mother and so on, the father, the father's mother and so on, the

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<sup>8</sup> Khufazo Ilman Putra et al., "Journal of Muhammadiyah Studies and Integration of Knowledge HADHANAH AS A RESULT OF DIVORCE IN FIQH PERSPECTIVE," *Journal of Muhammadiyah Studies and Integration of Knowledge* 1, no. 3 (2023): 1-7, <https://jurnal.umj.ac.id/index.php/JKII/article/view/21253>.

grandfather, the grandfather's mother, full sisters, paternal half-sisters, maternal aunts (from the mother) who are full, maternal aunts (from the mother) who are half-siblings, maternal aunts (from the mother) who are half-siblings from the father, paternal aunts (from the father) who are half-siblings from the mother, paternal aunts (from the father) who are half-siblings from the father, the grand-aunts (from the mother) of the mother, the grand-aunts (from the mother) of the father, and the grand-aunts (from the father) of the father.

If we read above the opinions of the scholars that a mother of a child who is mahdlun is the single one who is most entitled or most prioritized to have rights in the care of her child or children. Because certainly a mother loves more, besides that she breastfeeds, gives birth, carries the child, and is certainly the most patient and most capable of educating, guiding, and providing affection to the child in question. In this case, it causes a mother to very strongly demand the right of custody over her children after a divorce occurs. Certainly, there will later be differences in the desires of a father. One tries to claim custody of the child out of great love, while the other tries to claim custody of the child because they have a primary reason, namely feeling responsible and intending to provide for their child's needs.

Certainly, the reasons above are an important factor that makes it difficult for the Court Judge in making a decision to determine which parent has the right to have custody of the child after the parents' divorce. If we look at the existing Civil Law, the consequences of the dissolution of a marriage are that the former husband or ex-wife is the parent of the children born from the marriage in question. Both remain obligated to care for, provide for, and educate the children. Even if the child or children later live with their mother on a daily basis, the father is still responsible for all maintenance and education costs, except if the father is truly unable to fulfill his obligations for his own livelihood.

Based on the provisions of Article 41 paragraphs 1 and 2 of the Marriage Law, it is stated that the Court Judge can decide who is entitled to custody rights and decide that the Mother also participates in the responsibility for the care and education of the child<sup>9</sup>. Furthermore, the provisions of positive law regarding child custody mentioned in Article 41 of Law Number 1 of

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<sup>9</sup> Maswandi Maswandi, 'Child Custody of a Minor After Divorce,' JPPUMA: Journal of Government and Political Social Science of Medan Area University 5, no. 1 (2017): 21, <https://doi.org/10.31289/jppuma.v5i1.1143>.

1974 concerning Marriage in conjunction with Article 156 of the Compilation of Islamic Law state that child custody resulting from the dissolution of marriage due to divorce is as follows: A child who is not yet discerning (*mumayyiz*) has the right to receive *hadlonah* (care) from the mother, except if the mother has passed away, in which case her position is replaced by, among others, women in the direct ascending line from the mother, the father, women in the direct ascending line from the father, the sisters of the child concerned, female relatives by blood on the lateral line from the mother, female relatives by blood on the lateral line from the father. A child who is already discerning (*mumayyiz*) has the right to choose to receive *hadlonah* from either the father or the mother. If the custodian is unable to guarantee the physical and spiritual safety of the child, even though the expenses for maintenance and custody have been provided, then at the request of the relevant relatives, the Religious Court may transfer custody rights to other relatives who also have custody rights. Furthermore, before the costs of custody and child maintenance become the father's responsibility according to his ability, at minimum, until the child reaches adulthood and can take care of themselves (21 years old). In addition, if there is a dispute regarding custody and child maintenance, the Religious Court shall deliver its decision based on letters (a), (b), and (c). And the Court may also, taking into account the father's ability, determine the amount of expenses for the maintenance and education of the children who are not with him<sup>10</sup>.

***Second, financial capability regarding children***

Imam Shafi'i, as mentioned above, points out three matters to consider regarding disputes caused by the financial ability of parents towards their children, namely first, if both parents divorce and both live in the same area, then the mother has more right to care for the child or children, as long as she does not remarry and as long as the child or children are still young. This situation in point a will lead a post-divorce mother to strive with all her might to obtain the right to care for her child or children, with the main reason being that she lives in the same area as the father of the child, as long as the mother does not remarry and her children are still small. Second, after the child or children reach the age of 7 or 8 and are of sound mind, they are allowed to choose between their father and mother. In this second stage, if the child or children are around 7 to 8 years old, the choice of the custody

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<sup>10</sup>Joko Sriwidodo, *Legal Studies Book*, vol. VIII, 2020.

holder (hadlonah) depends on the child or children. Third, if they choose their mother, then the father is responsible for providing their sustenance, and there is no obstacle for a father to educate his child or children.

Imam Shafi'i emphasizes that if the child chooses the mother, then it is the father who will be responsible for the child's maintenance.<sup>11</sup> The scholars do not mention further, although the provisions of Positive Law clearly state, especially regarding, what happens if the mother is economically capable compared to the father, and the child chooses the mother, whether the father must still be responsible. And what happens if the mother is economically capable, but the child prefers the father, whether the mother must provide child support. As well as what happens if the child wishes to choose both, the father and the mother.

However, if the mother is more capable in terms of livelihood or economic matters, yet the child prefers the father, or conversely the child chooses the mother while the father feels capable of taking care of the child, then this situation can also lead to contention or dispute over who has the most right to hadhanah or child custody.

***Third, the living environment becomes a factor in parental disputes over the child***

According to Islamic law, human rights are limited by the rights of others, *hurriyah al-mar'i mahdud bi hurriyah ghairih*, a person's freedom is limited by the freedom of others. Where there are rights, there are obligations; in order for rights to be realized, there must be another party that fulfills the demands of those rights.<sup>12</sup> However, the ulama, as explained in the description above, stated that there are several lines of preference regarding child custody, among them: First, according to the Hanafi school, the line of preference for those entitled to child custody is the mother, then the mother's mother (maternal grandmother), the father's mother (paternal grandmother), full sister (maternal aunt), then paternal sister (paternal aunt), and so on. The Hanafi scholars state that after the maternal grandmother, the one who can take custody of the child is the paternal grandmother.

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<sup>11</sup> Solehuddin Harahap, "The Opinion of Imam Shafi'i on Family Financial Support When the Husband is Sick," *Journal of Islamic Law El Madani* 2, no. 1 (2024): 23-32, <https://doi.org/10.55438/jile.v2i1.121>.

<sup>12</sup> Rahma Wati and Latif Aswen, "Gender Equality in the Perspective of Islamic Law," *ULIL ALBAB: Multidisciplinary Scientific Journal* 3, no. 1 (2023): 139-48, <https://doi.org/10.56799/jim.v3i1.2471>.

The second group can also compete, especially if both the maternal and paternal grandmothers greatly love the child or children, while in terms of financial means, both also feel capable of taking care of the child. Second, according to the opinion of the Maliki school, the line of priority for child custody rights starts with the mother, the mother's mother (maternal grandmother), aunt (from the mother), paternal aunt (from the mother), the mother's aunt, and so on. According to Maliki scholars, those with primary authority over child custody rights (*hadlonah*) are all relatives on the mother's side, even up to five generations from the mother herself. Therefore, if the grandmother and other relatives from the father's side also deeply care for the grandchild (*Mahdlun*), disputes over child custody can also occur. Third, according to the Shafi'i school, the line of priority for child custody is the mother, the mother's mother (maternal grandmother), the father, the father's mother (paternal grandmother), the father's maternal grandmother (great-grandmother from the father's side), and so on if the child or children are heirs who are *Mahram*.

The line of priority in child custody according to the Shafi'i school (which is widely followed in Indonesia) is also similar to that followed by Hanafi scholars, namely that aside from the mother, the grandmother holds a priority from the mother, then the father, and the father's mother. If a father (who is economically incapable) wishes to have custody over his child or children, he will certainly use his mother's position, which will result in a conflict between the maternal grandmother and the paternal grandmother to obtain custody of the children. Fourth, the Hanbalis state that the order of priority for child custody is Mother, mother's mother (maternal grandmother), Father, father's mother (paternal grandmother), and grandfather. The Hanbali view is the same as the Shafi'i view, so there is a possibility of a dispute between the Mother and Father, or between the maternal grandmother and paternal grandmother.

#### ***Fourth, Parents' habits/traditions towards Children***

In the view of Islamic law, men and women of any race and skin color are equal before the law. In the community, there are certainly customs in regulating family life; some adhere to the Parental system as in the Javanese community, some follow the Matrilineal system as found among the Minangkabau people (West Sumatra), and some also follow the Patrilineal

System, as practiced among the Batak community.<sup>13</sup>

In terms of hadlonah among the Minangkabau community, the mother's side will surely strive to obtain the right to the custody of the mahdlun daughters, because inevitably all descendants of the mahdlun daughter also serve as heirs. For example, in the Batak community, regarding child custody, especially of sons, efforts will certainly be made with all available means, because according to customary law, both male descendants upwards and downwards are heirs of the concerned mahdlun. Similarly, in the Javanese community, the male and female lines are considered the same, so in Java, the struggle for the right to custody of the mahdlun children is likely to occur frequently and is very strong within the family environment.

If a person passes away, and there are no children as heirs, the next in line are the father or mother, so the position of the father and mother is very close in the inheritance of the child. Therefore, disputes over custody of the child are also difficult to resolve if neither party is willing to give in. The solution is to return to family deliberations for the sake of the child's well-being without prioritizing the ego of either the father or the mother.

### **Conclusion**

Custody disputes not only stem from differences in legal interpretation, but in practice, child custody disputes often arise due to, among other things, First, the lack of parental affection causing the dispute. Second, financial ability concerning the child. Third, the living environment becoming a cause of parental disputes over the child. Fourth, parental habits/traditions towards the child. Thus, in resolving custody or child care rights, it depends on who is capable of providing affection and can maintain the child's well-being, safety, and education for the future.

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<sup>13</sup> Kasmawanti & Aprianti, "Customary Law in Indonesia," Refika Aditama, 2016, 1-24.

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