



Can a Father Get Child Custody in Indonesia? Understanding Your Legal Rights

A father can obtain child custody in Indonesia, including in certain cases where the child is under 12 years old. For Muslim families, Article 105 of the Compilation of Islamic Law (KHI) generally provides that a child who is not yet *mumayyiz* or is under 12 years old is under the mother's care. However, this provision does not mean that the mother automatically receives custody in every case.

Indonesian courts may consider the best interests of the child and the actual circumstances of both parents when determining custody. Recent developments in Supreme Court jurisprudence also demonstrate that custody may be granted to the father or arranged as shared parenting when that arrangement better protects the child's welfare.

What Does Indonesian Law Say About Child Custody?

The basic framework comes from Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019. Article 41 of the Marriage Law provides that after divorce, both the father and mother remain responsible for the child's maintenance and education based on the child's interests. The law therefore does not terminate a father's parental responsibility simply because the marriage ends. For Muslim families, Article 105 KHI provides more specific rules:

- A child who is not yet *mumayyiz* or is under 12 years old is generally under the mother's care.
- A child who has reached *mumayyiz* may choose between the father and mother.
- The child's maintenance remains the father's responsibility.

Therefore, the starting point under KHI may favor the mother for a child under 12, but it is not an absolute prohibition against awarding custody to the father.

When Can a Father Get Custody of a Child Under 12?

A father may be granted custody when the evidence shows that placing the child with him is more consistent with the child's welfare. The court may consider circumstances such as:

1. The Father's Ability to Care for the Child

The court may examine whether the father can provide a stable environment, including appropriate housing, education, healthcare, daily care, and emotional support.

2. The Mother's Ability to Provide Proper Care

The court may consider whether the mother is able to perform her parental responsibilities. Serious neglect, violence, an unsafe environment, or other circumstances affecting the child's welfare may become relevant.

3. The Child's Relationship With Each Parent

The emotional bond between the child and each parent can be relevant, particularly where one parent has been the child's primary caregiver.

4. The Child's Existing Environment

The court may consider whether changing the child's residence would disrupt education, social relationships, health, or daily life.

5. The Best Interests of the Child

The central consideration is increasingly the best interests of the child, rather than simply whether the parent is the mother or father.



The Directorate General of Religious Courts has noted that courts have, in appropriate cases, granted custody to fathers by considering factors such as the mother's circumstances, the child's closeness to the father, and the child's environment.

Does Article 105 KHI Automatically Give Custody to the Mother?

No. Article 105 KHI provides a general rule for Muslim families, but judicial practice shows that courts may examine the actual circumstances of the child. The Supreme Court's jurisprudence has developed toward an approach that emphasizes *maslahah* and the best interests of the child. Accordingly, the court may depart from a rigid application of the general rule when the evidence demonstrates that another arrangement better protects the child's welfare. This means that a father seeking custody should not assume that his claim will automatically fail simply because the child is under 12.

What If the Father Has Been the Primary Caregiver?

This can be an important factor. If the father has actively cared for the child on a daily basis, maintained the child's education, provided healthcare, and established a strong emotional relationship, these circumstances may be relevant to the court's assessment. In Supreme Court Decision No. 171/PK/Ag/2022, the Supreme Court considered the father's active role in caring for the children and the stability of their existing environment. The case ultimately resulted in a joint physical custody arrangement rather than exclusive custody by either parent.

Can the Father and Mother Have Joint Custody?

Yes, Indonesian judicial developments increasingly recognize shared parenting or joint physical custody in appropriate circumstances. The Supreme Court's Decision No. 171/PK/Ag/2022 is particularly important. In that case, the Supreme Court determined that, for the best interests of the children, care could be shared between the father and mother according to an established schedule.

The arrangement in that case included the children staying with the father during school days and with the mother during weekends and public holidays.

This demonstrates that a custody dispute does not necessarily have to result in a simple choice of "father versus mother."

Does the Mother Still Have Rights if the Father Gets Custody?

Yes. Granting physical custody to the father does not automatically eliminate the mother's parental relationship with the child. Indonesian judicial developments emphasize that the parent who does not hold physical custody should generally continue to have reasonable access to the child. The Constitutional Court has highlighted that custody arrangements should not be used to prevent the non-custodial parent from meeting and maintaining a relationship with the child. This is consistent with the principle that divorce ends the marital relationship but does not end the legal relationship between parents and children.

Who Is Responsible for Child Support?

The father may remain responsible for the child's financial needs even when the child lives with the mother. For Muslim families, Article 105(c) KHI expressly provides that child maintenance is the father's responsibility.



More generally, Article 41 of the Marriage Law provides that both parents remain responsible for the child's maintenance and education, with the court able to determine how those obligations are carried out.

Therefore, custody and financial responsibility are separate issues. A father who obtains custody may still have financial obligations toward the child, while a mother without physical custody may also have responsibilities depending on the court's determination and circumstances.

What Factors Can Help a Father in a Custody Case?

A father seeking custody should be prepared to demonstrate his ability and commitment to provide appropriate care. Relevant evidence may include:

- Evidence that the father has been actively caring for the child;
- School and education records;
- Medical and healthcare records;
- Evidence of stable accommodation;
- Financial records demonstrating the ability to meet the child's needs;
- Evidence of a close relationship between father and child;
- Evidence concerning the mother's alleged neglect or inability to provide proper care, where relevant; and
- Witnesses who can explain the child's actual living conditions.

The focus should be on evidence concerning the child's welfare, rather than simply proving that one parent is more deserving than the other.

What If the Mother Prevents the Father From Seeing the Child?

Custody should not automatically be used to prevent the other parent from maintaining contact with the child. The Supreme Court has emphasized that a child's relationship with both parents should be protected. In addition, the Constitutional Court has discussed the importance of maintaining access for the parent who does not hold custody. Where a parent deliberately prevents access despite an existing court arrangement, the affected parent may consider the legal remedies available under the particular circumstances and court order.

Can Child Custody Be Changed After a Court Decision?

A custody arrangement may potentially be reconsidered when circumstances materially change or when the existing arrangement no longer protects the child's best interests. For example, issues such as:

- serious neglect;
- violence or abuse;
- an unsafe living environment;
- failure to provide necessary care;
- significant changes in the child's circumstances; or
- continued obstruction of the child's relationship with the other parent

may become relevant to a subsequent custody dispute, the key question remains whether the existing custody arrangement continues to serve the child's welfare.

Child Custody Regulations in Indonesia

Aspect	Earlier Position	Current Position
Main marriage law	Law No. 1 of 1974	Law No. 1 of 1974 as amended by Law No. 16 of 2019
Parental responsibility after divorce	Article 41, Law No. 1 of 1974	Article 41 remains applicable
Custody of Muslim child under 12	Article 105 KHI generally gives custody to the mother	Article 105 KHI remains the principal reference, but judicial practice considers the child's best interests
Child aged 12 or above	Article 105 KHI allows the child to choose between parents	The provision remains applicable for Muslim families
Father's role	Primarily recognized through parental and financial responsibilities	Father may receive custody where supported by the facts and child's best interests
Single-parent custody	Common framework in practice	Shared parenting/joint physical custody increasingly recognized in jurisprudence
Access of non-custodial parent	Recognized through judicial practice	Access is increasingly emphasized as part of protecting the child's relationship with both parents

The most important development is therefore not that Article 105 KHI has been abolished—it has not. Rather, judicial practice has increasingly interpreted custody provisions through the principle of the best interests of the child.

What About Child Protection Law?

Custody decisions must also be viewed within the broader framework of child protection. Law No. 23 of 2002 on Child Protection, as amended by Law No. 35 of 2014, protects children's rights and recognizes that separation caused by divorce should not eliminate the child's relationship with both parents. The amended framework expressly explains that “separation” can include separation caused by divorce without eliminating the child's relationship with both parents. This reinforces the principle that custody arrangements should be designed around the child's welfare rather than solely around the competing interests of the parents.

Conclusion

A father can get child custody in Indonesia. Although Article 105 KHI generally places children under 12 in the mother's care in Muslim divorce cases, this is not an absolute rule that prevents a father from receiving custody.

The court may consider the best interests of the child, including the child's relationship with each parent, living environment, education, safety, parental capacity, and other relevant circumstances. Indonesian judicial developments also recognize that custody may be granted to the father or structured as joint physical custody when that arrangement better serves the child's welfare.



Ultimately, a custody dispute is not simply a question of whether the father or mother “wins.” The central consideration is which arrangement best protects the child's physical, emotional, educational, and developmental needs.

This article is prepared for general informational purposes only and does not constitute legal advice. If you are facing legal issues related to child custody in Indonesia, including a father's custody rights, custody of children under 12, disputes between parents, child support, parental access, or requests for joint physical custody, it is important to understand the applicable laws, the best interests of the child, and the legal remedies available to protect both the child's welfare and your parental rights. Consult your legal matter strategically and professionally with:

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