



## **Can Parents Get Joint Custody in Indonesia? Understanding Child Custody Rights**

When parents divorce, one of the most important issues is determining who will care for the child. Many parents also ask whether joint custody in Indonesia is legally possible, allowing both parents to remain actively involved in raising their child. Indonesian law does not expressly provide a detailed statutory framework for joint physical custody. However, Indonesian courts have increasingly recognized that child custody should be determined based on the best interests of the child, rather than simply deciding which parent “gets” custody.

Under Article 41 of Law No. 1 of 1974 on Marriage, after divorce, both the father and mother remain responsible for the care and education of their children based on the child's interests. This means that divorce does not automatically terminate either parent's parental responsibilities.

For Muslim families, Article 105 of the Compilation of Islamic Law (KHI) provides that a child who has not reached mumayyiz age, generally under 12 years old, is under the mother's care. Once the child reaches mumayyiz age, the child may choose whether to live with the father or mother. However, these provisions do not necessarily mean that the other parent loses all rights to maintain a relationship with the child.

### **Is Joint Custody Legally Possible in Indonesia?**

Yes, joint custody can be applied in Indonesia in appropriate circumstances. Although the Marriage Law does not specifically regulate the term *joint custody* or *joint physical custody*, the Supreme Court has recognized a shared-parenting approach. In Supreme Court Decision No. 171/PK/Ag/2022, the Supreme Court recognized the concept of joint physical custody, where both parents share responsibility for raising the child according to an agreed schedule, with the child's best interests as the primary consideration. This development is important because custody is increasingly viewed as a form of parental responsibility rather than ownership of the child.

### **Joint Custody vs. Sole Custody**

Joint custody generally means that both parents remain actively involved in the child's daily care and upbringing. Depending on the circumstances, this may include arrangements concerning:

- Where the child lives;
- Parenting schedules;
- Education and healthcare decisions;
- Holidays and special occasions;
- Financial support; and
- Communication and access between the child and both parents.

By contrast, in a sole-custody arrangement, one parent is designated as the primary holder of custody. However, the other parent may still have the right to maintain contact and access to the child. The Supreme Court has emphasized that a custody decision should not be used to completely cut off the child's relationship with the other parent. SEMA No. 1 of 2017 also requires custody orders in relevant cases to include access for the parent who does not hold custody.

### **What Factors Does the Court Consider?**

In determining custody, the court may consider circumstances relevant to the best interests of the child, including:

1. The child's safety and welfare;
2. Each parent's ability to provide care;
3. The child's relationship with each parent;
4. The child's education and living environment;

5. Evidence of neglect, violence, or other risks;
6. The child's wishes where appropriate; and
7. The ability of both parents to cooperate in raising the child.

Therefore, joint custody is not simply granted because both parents request it. The court must consider whether the arrangement is practical and beneficial for the child.

### **What About Children Under 12?**

For Muslim families, Article 105 of the KHI generally places children who have not reached 12 years of age under the mother's care. However, this provision should be considered together with the broader principle under Article 41 of the Marriage Law that both parents remain responsible for the child's welfare. In appropriate circumstances, Indonesian courts have also demonstrated that custody arrangements may be adapted to protect the child's best interests rather than applying a rigid approach.

### **Regulations: What Has Changed?**

The basic framework can be compared as follows:

| <b>Regulation</b>             | <b>Earlier Position</b>                                                                                   | <b>Current Position</b>                                                                                                                                               |
|-------------------------------|-----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Law No. 1 of 1974 on Marriage | Article 41 established continuing parental responsibility after divorce.                                  | Article 41 remains applicable; both parents continue to have responsibilities based on the child's interests.                                                         |
| KHI Article 105               | Mother generally had custody of children under 12; a child who was mumayyiz could choose between parents. | The provision remains an important reference for Muslim families, while judicial practice increasingly considers the child's best interests and parental involvement. |
| SEMA No. 1 of 2017            | Strengthened the obligation to provide access to the parent who does not hold custody.                    | Continues to be relevant in custody decisions.                                                                                                                        |
| Supreme Court jurisprudence   | Custody disputes were commonly framed around which parent would hold primary custody.                     | Supreme Court jurisprudence has recognized joint physical custody/shared parenting in appropriate circumstances.                                                      |

The 2019 amendment through Law No. 16 of 2019 primarily changed the minimum marriage age, making it 19 years for both men and women. It did not substantially change the basic parental-responsibility framework under Article 41 concerning child custody after divorce. The significant development in joint custody therefore comes more from judicial interpretation and jurisprudence, particularly Supreme Court Decision No. 171/PK/Ag/2022, rather than from a new statutory provision expressly regulating joint custody.

### **Can Parents Agree on a Joint Parenting Schedule?**

Parents may agree on practical arrangements for raising their child, including visitation, residence, education, holidays, and financial responsibilities. However, where there is a dispute, the court may determine the appropriate custody arrangement based on the circumstances of the case and the child's best interests. The most important consideration is therefore not simply whether both parents want joint custody, but whether the proposed arrangement provides a stable, safe, and beneficial environment for the child.

### **Conclusion**

Joint custody in Indonesia is possible, although Indonesian legislation does not provide a comprehensive statutory framework specifically regulating joint physical custody. The current legal approach places emphasis on parental responsibility, the child's best



interests, and maintaining the child's relationship with both parents. Supreme Court jurisprudence has also recognized *joint physical custody* as a possible arrangement where appropriate.

Therefore, parents facing a custody dispute should consider not only who will be formally designated as the custody holder, but also how parenting responsibilities, access, education, healthcare, financial support, and the child's daily life will be managed after divorce.

This article is prepared for general informational purposes only and does not constitute legal advice. If you are facing legal issues related to joint custody in Indonesia, including disputes over child custody, parenting arrangements, parental access, child support, or the implementation of joint physical custody, it is important to understand the applicable laws, court practices, and the best interests of the child. Consult your legal matter strategically and professionally with:

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