

# PROTECTION OF CHILDREN'S RIGHTS IN CUSTODY DISPUTES AWARDING GUARDIANSHIP TO GRANDPARENTS FROM THE PERSPECTIVE OF THE CONVENTION ON THE RIGHTS OF THE CHILD

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## Abstract

The protection of children's rights constitutes a fundamental legal and social concern because it directly affects children's future, welfare, and development as vulnerable legal subjects; in custody disputes, the judiciary plays a pivotal role in ensuring that the best interests of the child remain the paramount consideration. Although the international framework, notably the Convention on the Rights of the Child, and national regulations affirm this principle, judicial practice reveals implementation complexities shaped by social, psychological, and economic factors. This study aims to analyze the application of the best interest of the child principle in custody dispute rulings (case study: Decision No. 167/Pdt.G/2021/PN Plk) and its implications for child protection. The research employs a normative-empirical juridical method through statutory and doctrinal review combined with case law analysis as empirical evidence. The findings indicate that judges tend to prioritize the child's holistic welfare by weighing factual evidence concerning caregivers' financial capacity, emotional stability, and any conduct endangering the child; in the examined case, custody was transferred to the grandparents due to substantiated concerns about the biological parent's fitness. Moreover, the study reveals procedural shortcomings such as the sporadic use of systematic child-psychological expert testimony and weak post-decision monitoring mechanisms that leave residual risks to children's rights. The research further highlights the need to harmonize international norms with domestic practice, to incorporate standardized psychosocial assessment tools into adjudicative processes, and to establish regular oversight of enforcement. Consequently, judicial decisions grounded in the best-interest principle must be supported by multidisciplinary procedures and enforceable follow-up measures to ensure effective protection of children's rights.

**Keywords:** Convention on the Rights of the Child, Child Custody, Best Interest of the Child, Child Protection, Court Decision

## INTRODUCTION

The nature of human beings cannot be separated from their inherent characteristics as social creatures who coexist with one another. One of the ways this is manifested is through having a partner and entering into marriage. Marriage constitutes a lawful union intended to establish a prosperous and happy household, based on state law, religious law, Law Number 1 of 1974 concerning Marriage, or the customary laws applicable in the relevant region (Maudina, 2019). The fundamental purpose of this union is to build a stable family founded upon physical and spiritual well-being (Litania Ea Tawa Ajo et al., 2022).

Every married couple aims to establish a harmonious life filled with emotional and spiritual prosperity, reflecting the success of the spouses in building a family life characterized by serenity, affection, and compassion (*sakinah, mawaddah, wa rahmah*). Thus, couples intending to marry must thoughtfully assess their readiness for marriage. Essentially, marriage is not merely a bond between spouses; it also creates a wide range of moral, social, and legal responsibilities. These obligations extend not only to each other but also to fulfilling the rights and needs of prospective children in the future. A family can function harmoniously when both parents maintain a close relationship with their children and work together in nurturing and raising them. Parents bear responsibilities toward their children both during marriage and after the marital relationship is dissolved. In society, marriages do not always run harmoniously—there are times when misfortune occurs, such as the death of one spouse—which inevitably affects the upbringing of the surviving child.

Beyond establishing a harmonious family, married couples often intend to have children to continue their lineage. According to the Child Protection Law, a child is defined as an individual under eighteen years of age, including those still in the womb. Children are perceived as both a trust and a blessing from God, possessing equal dignity and status to every human being. Their presence within a family symbolizes continuity and happiness for the parents. Parents, as the biological creators of the child, bear primary responsibility for their upbringing. In their role as caregivers, parents hold essential responsibilities to guide, educate, and provide moral examples to their children (Putri & Aulia, 2024). Through proper parenting, children are expected to grow, develop, and become individuals with strong character, moral integrity, and social capability.

The dynamics of marriage do not always progress smoothly. Marriage may end due to divorce, death of a spouse, or a final and binding court decision (*inkracht van gewijsde*) that is legally enforceable and no longer open to ordinary legal remedies. Conflicts within marriage may lead to the dissolution of the marital bond. Likewise, the death of a spouse also terminates the marriage. The dissolution of marriage not only impacts the spouses but also affects the children. Nevertheless, even after a marriage ends, the parental relationship with the child remains intact unless ruled otherwise by the court. The bond between parent and child is enduring and cannot be negated under any circumstances (Asnawi, 2022).

Child custody does not solely concern the child's place of residence and supervision but also includes matters relating to the child's survival, development, and decision-making on important aspects of the child's life. Custody disputes are common in Indonesia. In such disputes, it is necessary to ensure that the child receives adequate protection so as not to be disadvantaged. The fulfillment and protection of children's rights constitute essential prerequisites for their dignified growth and development. This responsibility does not rest solely upon the parents but is a collective obligation of the State and society to guarantee comprehensive protection of children's rights.

The principles of child protection at the international level are codified in the Convention on the Rights of the Child, which establishes a set of universal rights for children. Indonesia ratified the Convention through Presidential Decree Number 36 of 1990 as evidence of the State's commitment to ensuring children's rights as a binding international mandate that must be implemented by all national authorities. The Convention on the Rights of the Child seeks to strengthen international cooperation, particularly among State Parties, to create a child-friendly environment, particularly in developing countries, while reaffirming global recognition of the dignity and fundamental rights of children (Nurusshobah, 2019). Under the Child Protection Law and its amendments, children's rights are recognized as integral to human rights that must be safeguarded, guaranteed, and actualized by families, communities, and the State.

Custody disputes may arise between parents or may involve the transfer of care to other family members, such as grandparents. Parental authority over a child inherently exists as a natural civil law relationship legally recognized by the State. This relationship creates reciprocal rights and obligations binding upon both parties. However, parental authority may be revoked when there is misuse of authority or serious neglect of moral and legal obligations toward the child's welfare. Such revocation

by the court is carried out to secure the child's best interests. Within judicial proceedings, the court has the authority to grant custody to other family members if deemed necessary to ensure the child's welfare, particularly if the parents are deceased or unfit to care for the child. Ensuring the child's well-being and the fulfillment of their essential rights is a foundational requirement for the creation of a dignified future, where the continuity of children's welfare sustains the social and moral development of future generations.

The best interests of the child principle must be enforced particularly in judicial decisions. Judges bear the responsibility to ensure that any ruling concerning children is not only legally fair but also serves to protect and promote the child's welfare. This research examines the protection of children's rights in custody disputes from the perspective of the Convention on the Rights of the Child and the implementation of children's rights under the Convention on the Rights of the Child as reflected in Court Decision Number 167/Pdt.G/2021/PN Plk.

## RESEARCH METHOD

The method employed in this research is a normative–empirical legal approach, namely a method that combines the analysis of written legal norms with the examination of empirical realities, particularly court decisions. This approach falls under the category of a judicial case study, as it scrutinizes the application of law through concrete cases related to the protection of children's rights in custody disputes, involving judicial authorities in delivering dispute resolutions (Syahrum, 2022). The nature of this research is descriptive, integrating a normative approach through an examination of statutory regulations and an empirical approach through the analysis of judicial decisions.

The data used in this study are secondary in nature, obtained from primary, secondary, and tertiary legal materials relevant to the focus of the study as supporting evidence aligned with the legal issues presented (Matheus & Gunadi, 2024). Secondary data were collected through literature review and court judgments. All collected data were then analyzed using a qualitative method emphasizing the interpretation of meaning and normative relevance rather than quantitative measurement. This approach enables the researcher to construct a comprehensive understanding of the legal context under study, prioritizing the quality of the gathered data to effectively address the research problems (Soekanto & Mamudji, 2006).

## RESULTS AND DISCUSSION

### Protection of Children's Rights in Child Custody Disputes from the Perspective of the Convention on the Rights of the Child

A child is a legal subject who possesses the right to be heard, the right to receive proper care and upbringing, as well as the right to survive, grow, and develop within a supportive environment free from violence, discrimination, and psychological pressure, as an integral manifestation of human rights. Custody conflicts commonly arise due to differences in perception or conflicting claims between both parents or extended family regarding who is most capable and authorized to provide future care and guidance for the child following divorce, death of a parent, or other legally recognized grounds as regulated under national laws governing child custody. Each child custody dispute must be based on the principle of the best interests of the child, which serves as the highest legal consideration.

The fundamental principles contained in the international legal instrument, the Convention on the Rights of the Child, affirm that the implementation of child protection and fulfilment of children's rights must be carried out holistically and systematically. The Convention on the Rights of the Child serves as a universal normative reference that directs legal rulings to prioritize child welfare. Normatively, the Convention on the Rights of the Child does not regard children as mere objects of dispute but as legal subjects who possess inherent dignity and individual rights. Thus, a child is viewed as a morally and legally autonomous entity — not merely an extension of parental authority — entitled to care, protection, and the fulfilment of all basic needs without conditions by those capable of carrying out such responsibility. Indonesia's ratification through Presidential Decree Number 36 of 1990 underscores the State's commitment to advancing children's rights, further reinforced under the Child Protection Law and its amendments.

The Convention on the Rights of the Child is an international legal instrument that comprehensively regulates the respect, protection, and fulfilment of children's rights throughout the world. The Convention asserts four fundamental principles that must guide all policies and actions concerning children by State Parties (Tang, 2020):

1. The principle of non-discrimination mandates that all children receive equal treatment regardless of ethnicity, religion, race, gender, language, cultural background, disability, or socio-economic

status. Any form of restriction or differentiation that prevents children from enjoying their rights is deemed contrary to human dignity and substantive equality.

2. The best interests of the child principle requires that every decision, public policy, and judicial process concerning children must prioritize their survival, welfare, and development as the highest concern. No other interests — whether those of the State, society, or individuals — may override the protection of children's rights.
3. The Convention guarantees every child's inherent right to life, survival, and development. This right is absolute and must not be diminished under any circumstance. States are responsible for ensuring that each child lives in a safe, protected environment that provides adequate access for their optimal growth in all aspects of life.
4. The principle of child participation recognizes children as legal subjects who have the right to express their views in all matters affecting them. States and all custodial authorities must provide effective mechanisms to ensure that the views of children are heard, considered, and given due weight in accordance with their age and maturity.

In the context of a child who is not yet capable of forming or expressing his or her own views—such as infants or toddlers under the age of five, including the five-month-old child in the present case study—the principle of the child's right to participation (Article 12 of the CRC) must still be fulfilled through indirect forms of representation. According to General Comment No. 12 of the Committee on the Rights of the Child (2009), the right to be heard does not depend on the child's verbal abilities; rather, it may be represented through observations of the child's behavior, assessments provided by child-psychology experts, or testimony from representative guardians (such as close family members or a guardian ad litem). In custody disputes, courts may rely on empirical evidence such as psychosocial evaluations, interviews with caregivers, or observations of the child's interactions with prospective guardians to “hear” the child's needs implicitly. This approach ensures that the child's voice—although non-verbal—remains a primary consideration in determining the best interests of the child, in accordance with the principles of non-discrimination and holistic protection under the CRC. Within Indonesian judicial practice, this requirement may be operationalized through the involvement of forensic psychologists or child-protection institutions to avoid subjective assumptions and to ensure evidence-based decision-making, thereby preventing the child's right to participation from being disregarded solely due to the child's very young age.

The Convention on the Rights of the Child contains a comprehensive set of human rights specifically aimed at ensuring the fulfillment of basic needs and full protection for every child. These rights are built upon four interrelated conceptual categories, which cannot be separated from one another (Rofiki, 2021). First, the right to survival includes the fulfillment of basic needs that enable children to live decently, including access to adequate health care and nutrition. Second, the right to protection obligates States to safeguard children from every form of violence, exploitation, neglect, discrimination, or any action that threatens their dignity and security. Third, the right to development includes providing opportunities for children to enhance their physical, intellectual, emotional, spiritual, and social capacities through access to quality education, cultural activities, and an environment conducive to personal growth and character development. Finally, the right to participation legitimizes children's involvement in decision-making processes concerning their future, ensuring that they are recognized not merely as objects of policy but as subjects with independent status and will that must be respected.

Child custody disputes constitute a legal issue of high complexity, as they simultaneously involve emotional, psychological, and juridical dimensions. Such disputes concern not only the interests of the disputing parents or families but, more importantly, the child. In custody disputes, the principle of the best interests of the child serves as the most fundamental principle, mandating that every legal decision involving children must prioritize their best interests, as stipulated under Article 3 paragraph (1) of the Convention on the Rights of the Child. This provision calls upon both public and private authorities to ensure that every decision made in the process of resolving custody disputes places the best interests of the child at the center of judicial consideration, thereby guaranteeing that legal outcomes are genuinely oriented toward the welfare and future of the child as the successor generation (Hans et al., 2024). The protection of children's rights in custody disputes must be applied comprehensively. The State, through its judicial apparatus, bears responsibility in ensuring that every ruling concerning child custody has taken into account all aspects relating to the child's well-being, including the right to receive love and affection, the right to grow and develop in a safe and appropriate environment, the right to be heard and express views relating to their future, as well as the right to be protected from any harmful acts such as violence or discrimination.

Child protection in custody disputes must be understood as a holistic effort that does not solely focus on formal legal aspects but also on the social and psychological dimensions affecting the child. Custody disputes frequently cause deep emotional conflict for children, particularly when they are positioned merely as objects of contention between parents or family members without due regard to their own views and interests. In this context, law must function to shield children from the negative consequences of parental separation or conflict by placing children's rights as the primary consideration in every court judgment. Protection in this regard must encompass both preventive and curative measures to ensure that the child continues to grow in a secure and nurturing environment despite the breakdown of the family structure (Zahira, 2025).

The Child Protection Law and its amendments emphasize that the existence of children cannot be separated from the continuity of human civilization. Children represent the continuation of future generations and serve as determinants of the social and moral quality of society in the years ahead. Therefore, based on human rights principles, every child inherently holds the right to life, optimal growth, and development, in accordance with their human dignity. In custody disputes, this protective principle must be the primary judicial consideration, ensuring that legal decisions not only satisfy formal legal aspects but also guarantee the sustainable development of the child's welfare. Judges, along with the State, society, and parents, thus bear both moral and legal obligations to ensure that every child's rights are protected, fulfilled, and respected without exception, and never diminished by the conflicting interests of disputing parties.

Child protection also possesses a strong social dimension. Society plays an essential role in ensuring that children involved in custody disputes continue to receive emotional, moral, and spiritual support from their surrounding environment. Children who lose one parent due to death or divorce are particularly vulnerable to psychological trauma, loneliness, and loss of direction. In such circumstances, the presence of extended family members such as grandparents may serve as a stabilizing factor in providing emotional security and continuity for the child. Law should accommodate this social reality by allowing extended family members to participate in childcare, provided that such arrangements are proven to be in the child's best interests (Lestari, 2017). In addition, within the framework of international law, the principle of child protection obtains international legitimacy through the Convention on the Rights of the Child, which was ratified in Indonesia under Presidential Decree Number 36 of 1990. This international legal instrument affirms that every child is entitled to effective legal protection from any form of violence, neglect, or inhumane treatment committed by parents, guardians, or other parties responsible for their well-being.

The protection of children's rights in custody disputes often encounters significant challenges in practice, particularly when there is an imbalance of power between the disputing parties. Such relational dynamics frequently give rise to complex legal issues. For instance, there are situations in which one party asserts custodial rights based solely on emotional or economic grounds that do not necessarily align with the best interests of the child, or where one party possesses stronger economic or social influence, resulting in a legal process that becomes disproportionate to the child's welfare. To prevent such circumstances, the legal system must implement effective monitoring and evaluation mechanisms over the enforcement of custody decisions issued by the court. These measures are intended to ensure that children's rights are fully realized—not merely within the normative legal framework or limited to written legal documents—but also through tangible implementation reflected in social practices, institutional mechanisms, and consistent law enforcement (Nuraini & Alfiana, 2025).

In addition to supervision, a child-friendly mediation mechanism is crucial in resolving custody disputes. Mediation serves as a means for parents and family members to reach an agreement without causing psychological harm to the child. Within the Indonesian legal system, mediation is prioritized as an initial step before court hearings commence. Through mediation that is sensitive to the specific needs of the child, it is expected that a mutually acceptable resolution can be achieved, prioritizing the child's emotional stability and overall well-being. This approach aligns with the spirit of the Convention on the Rights of the Child, which emphasizes the importance of hearing the child's voice in all decisions affecting their life (Muchlis, 2020).

Legal protection for children must not be limited to safeguarding their physical well-being but must also encompass their fundamental rights, including the right to love, proper care, education, safety, and access to adequate health and educational services. Following the separation of parents or the loss of one parent, economic barriers often arise as a primary concern in fulfilling children's basic needs. The court therefore has both a moral and legal obligation to ensure that custody determinations not only define who is responsible for childcare but also consider the custodian's capability to guarantee the child's holistic welfare. Financial capability is indeed an important factor, but moral integrity, affection,

and the emotional bond between the custodian and the child have far greater long-term influence on the child's psychological well-being (Wahyudi & Kushartono, 2020).

The implementation of child protection must uphold the principle of non-discrimination as stipulated under Article 2 of the Convention on the Rights of the Child. This principle confirms that every child, regardless of social, economic, cultural, religious, or family background, is entitled to equal protection, care, and opportunities for optimal development. In custody disputes, courts must not base their decisions on discriminatory considerations such as religion, marital status, or gender, but solely on what objectively constitutes the best interests of the child. This principle ensures that the law operates under the ideals of justice and humanity, which form the primary foundation of child protection in Indonesia (Roza & S, 2018).

Moreover, the protection of children in custody disputes requires strong collaboration between judicial institutions, social agencies, and government bodies. Such synergy is essential to ensure consistent and humane execution of custody rulings, enabling the child's right to life, growth, and development to be effectively protected. Social institutions, including the Office of Women's Empowerment and Child Protection and local child protection agencies, must actively monitor a child's condition after a custody determination. This is vital to guarantee that child protection principles are not merely normative but are genuinely realized in the child's day-to-day life.

Accordingly, the protection of children's rights in custody disputes reflects a shared responsibility for the fulfillment of children's rights—one that does not rest solely on the parents but also involves the extended family, the community, and the State as the primary protector of the rights of its most vulnerable citizens. A child is not merely a passive object subjected to legal decisions, but an individual whose inherent rights must be respected and fulfilled. The success of a legal system in protecting children is not measured solely by the completeness of its regulations, but by the consistency with which child protection principles are applied in all decision-making processes, especially in custody disputes that determine a child's future and overall welfare (Angela et al., 2022).

The principle of the best interests of the child holds a fundamental role in all policies, measures, and legal decisions concerning children. This principle serves as both a moral and legal compass directing every process of decision-making to be fully oriented toward the child's welfare. It mandates that any decisions adopted by the judiciary, the government, or private individuals responsible for the custody of a child must give paramount consideration to the child's holistic development, safety, and emotional well-being (Asnawi, 2022). In the context of custody disputes, this principle guides judges in ensuring that custody determinations cannot be based solely on biological ties. Instead, moral readiness, emotional stability, and the material and non-material capabilities of the caregiver must be the primary benchmarks to guarantee that the child's needs are fully met.

The best interests of the child principle is not a static concept; rather, it is a dynamic doctrine that adapts to the child's social, cultural, and psychological circumstances. In Indonesian judicial practice, the implementation of this principle frequently becomes challenging, as not all parties involved possess a holistic understanding of what constitutes the child's best interests. Many custody cases are decided merely based on the legal status of the parents, without sufficient consideration of the child's actual circumstances, such as their living environment, caregiving patterns, emotional attachment to their caretaker, and emotional stability (Wahyudi & Kushartono, 2020).

Judges as representatives of the judicial authority, hold a strategic role in ensuring that the best interests of the child are reflected in every case involving children. This principle guides judges and law enforcement authorities in issuing decisions that are fair and humane. Accordingly, judges are obligated to examine and assess all aspects related to the child's welfare, including their psychological relationship with each parent, the parties' economic capability, and their moral character (Nuraini & Alfiana, 2025). Such assessment must not rely solely on formal evidence, but must also incorporate sociological, emotional, and psychological considerations due to their significant impact on the child's development. Therefore, before rendering a decision, judges should seek expert testimony from child psychologists or qualified professionals to ensure that the judgment prioritizes the child's interests rather than the interests of disputing adults.

The best interests of the child principle is closely aligned with the spirit of the Convention on the Rights of the Child, which explicitly mandates in Article 3 paragraph (1) that social institutions, courts, administrative authorities, and legislative bodies must treat the child's best interests as a primary consideration in all actions concerning children. This principle requires that decisions must not sacrifice the rights of the child for the benefit of adults. In custody matters, this means that the decision concerning who shall care for the child must be based on which party is most capable of providing protection, affection, and stability.

The application of the best interests principle also demands moral sensitivity and social empathy from all parties involved. A child experiencing the death or separation of parents is often subjected to intense emotional pressure. In such conditions, a rigid and formalistic legal approach may exacerbate the child's distress. Thus, a humanistic and contextual judicial approach is needed—one that not only focuses on written law but also assesses the emotional and social consequences for the child's future well-being (Lestari, 2017). This principle serves as a bridge between legal justice and humanitarian justice.

Beyond legal and psychological dimensions, the principle of the best interests of the child also encompasses moral and cultural considerations. Within Indonesian society, which upholds strong kinship values, the responsibility toward children does not rest solely on parents but also extends to the extended family. Grandparents frequently serve as substitute caregivers who provide affection and moral guidance when parents are unable to perform their duties. Therefore, courts must take into account local cultural values and familial structures when applying the best interests principle. A culturally aligned approach will enhance public acceptance and ensure the effective implementation of custody decisions (Saleh, 1980).

Moreover, the best interests principle must be enforced continuously and should not cease upon the issuance of a custody ruling. The State, through relevant agencies such as the Social Affairs Office and child protection institutions, must conduct periodic monitoring of the child's condition after a custodial decision is rendered. Such monitoring aims to ensure that the child truly receives a decent standard of living, affection, and protection from violence or neglect. Where violations or harmful circumstances are identified, social authorities must promptly take legal measures to safeguard the child in accordance with applicable regulations.

In conclusion, the best interests of the child principle is a universal standard that places the child at the center of all legal policies and decisions. This principle not only guides judges in determining custody but also directs society to treat children with fairness and humanity. Proper and consistent implementation of this principle will strengthen Indonesia's child protection framework and fulfill the ultimate purpose of child legal protection: ensuring that every child grows and develops in a safe, loving, and nurturing environment that supports their ability to become empowered individuals with strong character, empathy, and respect for human dignity (Muchlis, 2020).

#### **Application of the Fulfillment of Children's Rights under the Convention on the Rights of the Child in Relation to Judgment Number 167/Pdt.G/2021/PN PIK**

Judgment Number 167/Pdt.G/2021/PN PIK concerns a child custody dispute filed by the maternal grandparents as Plaintiffs against the child's father as Defendant. The case arose after the death of the child's mother, leaving behind an infant aged five months. In this case, the Plaintiffs sought custody of the child from the Defendant, who is the child's biological father. The Plaintiffs argued that the Defendant was unfit to properly care for the child in the future. In their statement of claim, the Plaintiffs asserted that during the marriage, the late wife of the Defendant had frequently suffered inappropriate treatment, including acts of physical violence by the Defendant whenever disputes occurred. Furthermore, WhatsApp messages sent by the Defendant to his late wife clearly contained threats and abusive language, confirming that the Defendant did not reflect the conduct of a responsible husband or father.

Prior to her passing, the relationship between the deceased and the Defendant had already become strained and divorce had been contemplated. The deceased entrusted the Plaintiffs to care for, educate, nurture, provide for, protect, and raise her child. Following the death of the deceased, the child remained under the care of the Plaintiffs. The Defendant and his parents occasionally visited the child but demonstrated hostile attitude and repeatedly expressed intentions to take the child after forty days from the deceased mother's passing. In its judicial consideration, the court acknowledged that the Defendant and his late wife had been blessed with a daughter aged five months. After the passing of the deceased, as evidenced by the official death certificate, the infant remained under the care of the Plaintiffs at the time the action was filed. During the marital relationship, the deceased had often been subjected to physical abuse and harsh behavior by the Defendant whenever disputes occurred. Moreover, the WhatsApp messages presented as evidence contained abusive and threatening remarks directed at the deceased.

The Defendant was also found to have no fixed income, thereby creating the risk that the child's welfare could be jeopardized should custody be granted to him while his economic condition remained unstable — especially as he relied solely on occasional professional work in technical fields without stable earnings. In such circumstances, judicial consideration is generally given to the party demonstrating a more stable financial and emotional capacity to ensure the child's continued welfare.

Meanwhile, both Plaintiffs were employed as civil servants, receiving fixed monthly income sufficient to provide for the child's needs. The Court further considered that under the law, custody rights principally lie with the biological parents until the child reaches 18 years old. However, such authority may be revoked or transferred to other family members if a violation of parenting obligations is established. This is in accordance with Article 47 paragraph (1) and Article 49 paragraph (1) of the Marriage Law, which stipulate that parental authority may be temporarily revoked by a court decision should a parent be proven negligent in fulfilling responsibilities or engage in disgraceful conduct.

The revocation of parental authority may only be petitioned by certain legally authorized parties, including the other parent, relatives by blood or marriage up to the fourth degree, a guardianship council, or the public prosecutor. Even if parental authority is revoked, the financial responsibility to provide maintenance does not lapse, as the obligation to support the child must continue — to be paid to the guardian or guardianship council monthly or quarterly pursuant to the court's determination (Angela et al., 2022). Article 14 of the Child Protection Law affirms that every child has the right to be raised by their parents except where there are lawful reasons to separate the child in the best interests of the child. Furthermore, Article 26 paragraph (2) of the Child Protection Law provides that when parents are deceased, whereabouts unknown, or unable to fulfill parental obligations, caregiving responsibility is transferred to other family members in accordance with legal procedures.

In the judgment concerning the custody dispute, the Panel of Judges affirmed that the custodial authority previously vested in the Defendant as the biological parent is legally revoked based on specific considerations relating to the best interests of the child. Nevertheless, such revocation of custodial rights does not eliminate the civil legal relationship between the child and the Defendant as the biological father. In other words, the blood relationship remains intact, including the Defendant's legal obligation to provide maintenance and ensure the fulfillment of the child's basic needs, which continues to apply notwithstanding the court's decision.

Furthermore, the Panel of Judges determined that custodial responsibility over the child is transferred to Plaintiff I and Plaintiff II, who in this case are the child's grandparents. This custodial arrangement shall remain in effect until the child reaches adulthood and is capable of living independently, thereby ensuring that the child's best interests are safeguarded within a family environment deemed more stable, secure, and supportive of the child's growth and development. This determination reflects the court's application of the principle of protection and the paramount welfare of the child as the primary consideration in adjudicating the custody matter.

Pursuant to Article 19 paragraph (1) of the Convention on the Rights of the Child, every child has the right to be protected from violence and neglect. The State as well as legal guardians are obligated to ensure comprehensive protection of children from all forms of physical and psychological violence, neglect, exploitation, and mistreatment by any individual responsible for their care. Where violations of custodial rights occur or actions result in harm to the child, civil legal proceedings serve as the appropriate mechanism for recovery of rights and protection under the law. In the case reflected in Decision Number 167/Pdt.G/2021/PN Plk, the Plaintiffs, who are the grandparents from the mother's side, filed a custody claim against the child's biological father on the basis that he was incapable of properly caring for and raising the infant.

This custody dispute demonstrates that custodial rights do not exclusively belong to biological parents but may be transferred to other relatives. Article 9 paragraph (1) of the Convention on the Rights of the Child affirms the right of a child not to be separated from his or her parents except through lawful judicial proceedings and only when necessary for the child's best interests (Mansari et al., 2018). Accordingly, the judge must rationally and comprehensively assess the objective conditions surrounding the child before making a decision, including determining whether such separation is genuinely required to safeguard the child's welfare. In this case, the judge granted custody to Plaintiff I and Plaintiff II based on evidence presented during trial demonstrating that the Defendant exhibited highly inappropriate conduct that posed a threat to the child's development. Thus, the primary judicial consideration was the continuity of the child's growth within a conducive environment. The court therefore awarded custody to the party deemed most capable of providing optimal support for the child's moral, social, and psychological development.

Separating a child from one or both parents constitutes a measure of last resort, as such a decision inherently affects the emotional and psychological relationship between the child and parents. Judicial decisions in custody matters must therefore focus on the holistic protection and welfare of the child. The judgment in this case emphasizes child protection, recognizing that four key dimensions of child development must be considered in every custody decision: physical, mental, social, psychological, and



spiritual well-being — all of which serve as indicators of the child's welfare. These fundamental rights must be preserved at all times (Yahya et al., 2024).

The best interests of the child principle contained in Article 3 of the Convention on the Rights of the Child must serve as a guiding consideration in every judicial decision affecting the child. This principle ensures that any ruling made by the court prioritizes the child's survival, growth, and emotional balance in the long term (Bagenda & Carbonilla, 2024). In the present case, the judge clearly applied this principle by awarding custody to the grandparents, as they were assessed to be capable of caring for the infant. The judge determined that awarding custody to the Defendant, the biological father, would jeopardize the child's future welfare. Accordingly, the principle requires courts to consider not only formal aspects such as biological ties, but also psychological, emotional, social, and moral factors that significantly affect a child's development.

Children also possess the right to grow within a supportive environment conducive to their development. Article 27 of the Convention on the Rights of the Child provides that children have an inherent right to an adequate standard of living for their physical, mental, spiritual, moral, and social development. In this case, the court-appointed custodians — the grandparents — are legally obligated to guarantee the child's needs in accordance with their financial capacity and moral responsibilities, ensuring the child's well-being and developmental needs into the future. Additionally, Article 19 paragraph (1) the Convention on the Rights of the Child reaffirms that child protection from violence and neglect constitutes a mandatory obligation of the State. Where a violation of custodial rights results in harm, judicial civil proceedings must be undertaken to secure the child's protection.

From this decision, it can be concluded that the judge applied the best interests of the child principle, as evidenced by the ruling assigning custody to the grandparents. This serves as a manifestation of legal protection that prioritizes the child's welfare above all else when biological parents are unable to fulfill their responsibilities. The ruling highlights that custody may be granted to other family members and is not exclusively limited to parents. The revocation of parental authority is permissible when parents are proven negligent, incompetent, or otherwise fail in their duties, resulting in risks to the child's well-being. The court's decision seeks to preserve the child's rights and ensure future welfare and development as a future citizen of the nation.

Although this judgment has substantively applied the principle of the best interests of the child, there are procedural deficiencies evident in the case, as commonly occurs in Indonesian judicial practice.

1. The infrequent and unsystematic use of expert testimony from child psychologists.

In Decision No. 167/Pdt.G/2021/PN Plk, the panel of judges did not explicitly refer to or rely on testimony from a child-psychology expert to assess the emotional and psychological impact of transferring custody to the grandparents. The court's considerations focused more on factual evidence, such as the inappropriate conduct of the biological father (Defendant) and the financial capacity and emotional stability of the grandparents (Plaintiffs I and II), without any in-depth analysis grounded in child psychology. This demonstrates that the procedural weakness indeed occurred in this case and has not yet been adequately addressed. In the absence of expert testimony, the judgment risks being less accurate in predicting the long-term psychological consequences for the child, such as the potential trauma of separation from biological parents or adjustment issues in a new environment. Yet the Convention on the Rights of the Child (Articles 3 and 19) emphasizes that decisions must be based on a holistic assessment, including psychological aspects, to ensure optimal protection from emotional harm or neglect.

2. The weakness of post-judgment monitoring mechanisms was likewise left unaddressed in this case.

The judgment merely transfers custody to the grandparents until the child reaches adulthood, without specifying any post-judgment monitoring measures such as periodic reports from the Social Affairs Office, supervised child-welfare visits, or regular judicial evaluations. This reflects a systemic weakness in Indonesia, where courts often end their involvement at the point of issuing a judgment without ensuring its effective implementation. In the context of this case, the absence of monitoring creates a risk that the child's rights to optimal care (including education, health, and protection from violence) may go unobserved, particularly if the grandparents' circumstances change (e.g., advanced age or financial difficulties). This runs contrary to Article 9 of the Convention on the Rights of the Child, which requires that separation of a child from parents be undertaken only when necessary and with guarantees of continuous protection.

These procedural shortcomings, although not invalidating the legality of the judgment, indicate that the implementation of the Convention on the Rights of the Child within the judicial process remains

suboptimal. To address such issues in similar cases, courts should require expert testimony from child psychologists as standard evidence (as regulated under Minister of Health Regulation No. 290/Menkes/Per/III/2008 on Forensic Psychological Examinations) and design post-judgment monitoring mechanisms in collaboration with institutions such as the National Commission for Child Protection or the Regional Social Affairs Office. By doing so, judicial decisions become not only formally just but also substantively effective in protecting the rights of the child.

Judges adjudicating custody cases are required to consider all dimensions — legal, moral, social, and psychological — to ensure decisions are genuinely in favor of the child. Judicial rulings must not only be grounded in statutory regulations but also reflect substantive justice values recognized within society. Accordingly, custody judgments must go beyond legal formalities and incorporate ethical and humanistic considerations to promote a true sense of justice within the community (Sari & Yuliawan, 2023). As the executor of judicial authority, judges play a key role in integrating international legal principles of the Convention on the Rights of the Child into national judicial practice, ensuring that every custody decision faithfully adheres to the best interests of the child principle, and guarantees comprehensive legal protection and welfare — not merely dispute resolution.

To address these procedural shortcomings and achieve a more effective harmonization between the international norms of the Convention on the Rights of the Child and domestic practices in Indonesia, the judiciary should incorporate standardized psychosocial assessment tools into the adjudicative process. For instance, tools such as the Child Behavior Checklist—a validated questionnaire that evaluates a child's emotional and behavioral problems through reports from parents, teachers, and the child themselves—could be mandated as part of expert testimony in custody hearings. This tool, widely used in forensic psychology globally and adaptable to Indonesian contexts (as recommended by the Indonesian Psychological Association), would provide judges with quantifiable data on the child's psychological needs, potential trauma from parental conflict, and suitability of caregivers. Additionally, the Parenting Stress Index could be applied to assess the stress levels and parenting capabilities of biological parents or grandparents, ensuring that decisions are evidence-based rather than reliant solely on anecdotal testimonies. These tools align with Article 3 of the Convention on the Rights of the Child by operationalizing the "best interests" principle through systematic, culturally sensitive evaluations, potentially integrated into guidelines under the Child Protection Law via collaboration with the Ministry of Social Affairs.

Furthermore, establishing regular oversight mechanisms for post-decision enforcement is essential to mitigate residual risks to children's rights. A concrete example is the implementation of a supervised visitation and monitoring program managed by the Indonesian Child Protection Commission or local social workers from the Ministry of Social Affairs, where guardians are required to submit tri-monthly reports on the child's well-being, including school attendance, health check-ups, and emotional development. This could be enforced through court-mandated follow-up hearings every six months, similar to practices in family courts in Australia or the UK, but adapted to Indonesia's context under Supreme Court Regulation on child-friendly judicial procedures. Such mechanisms would ensure compliance with custody rulings, detect early signs of neglect or abuse (as per Article 19 of the Convention), and provide avenues for modification if the child's circumstances change. By institutionalizing these tools and oversight processes, Indonesia can bridge the gap between international standards and domestic implementation, ultimately enhancing substantive justice in child custody disputes.

## CONCLUSION

Child custody disputes represent a complex intersection of legal and social issues, as they concern the existential continuity and long-term welfare of the child. Throughout the entire dispute resolution process, the best interests of the child principle must serve as both an ethical and juridical foundation, as the child is not an object of dispute but a legal subject endowed with inherent rights that must be protected. The Convention on the Rights of the Child asserts that children are legal subjects entitled to live, grow, and develop in a safe, stable, civilized, and dignified environment, to receive protection, and to have their voices heard in every decision affecting their lives.

Based on the foregoing discussion, the transfer of custodial rights to grandparents through court decisions constitutes a concrete form of legal protection for children grounded in the best interests principle. Through such judicial measures, the State ensures that the child's right to grow within an environment full of affection and emotional stability remains guaranteed even when the biological parents are unable to fulfill their parental responsibilities. In determining custody, judges must consider all relevant aspects, as the decision directly affects the child's future. The principles enshrined in the

Convention on the Rights of the Child and the rights of the child must therefore be duly considered and protected.

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