

Beyond Parental Conflicts: Reconstructing Child Custody Decisions Through *Maslahah Mursalah*

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|| Submitted: November 22, 2025 || Accepted: January 12, 2026 || Published: March 27, 2026 ||

Abstract: This study aims to reconstruct child custody decisions in Indonesia through the perspective of *Maslahah Mursalah* by examining the extent to which parental conflicts influence judicial determinations and affect the realization of the best interests of the child. Child custody disputes often arise from competing parental claims following divorce, creating legal and practical challenges for judges in determining custody arrangements that genuinely prioritize child welfare. The research employs a normative juridical methodology using statutory, conceptual, and case approaches. Primary legal materials consist of Indonesian family law regulations, judicial decisions concerning child custody, and classical and contemporary Islamic legal sources discussing *Maslahah Mursalah*. Secondary materials include scholarly articles, books, and legal commentaries relevant to child welfare and Islamic family law. The findings demonstrate that child custody decisions in Indonesia are frequently influenced by formal legal considerations and parental rights claims, while the child's long-term physical, emotional, educational, and social interests may receive insufficient attention. The analysis further reveals that *Maslahah Mursalah* offers a comprehensive framework that enables judges to move beyond rigid legal formalism and parental conflicts by focusing on the protection and welfare of children as the primary objective of custody determinations. This approach emphasizes the prevention of harm (*mafsadah*) and the realization of benefit (*maslahah*) in accordance with the broader objectives of Islamic law. The study concludes that *Maslahah Mursalah* can serve as a normative foundation for reconstructing child custody decisions in Indonesia toward a more child-centered and welfare-oriented model. Academically, this research contributes to the development of contemporary Islamic family law by integrating the principle of the best interests of the child with Islamic legal reasoning, thereby providing an alternative framework for judicial decision-making and future reforms in child custody law and practice.

Keywords: Child Custody, Custody Decisions, Islamic Law, *Maslahah Mursalah*, Parental Conflicts

1. Introduction

Child custody disputes have become one of the most complex issues in contemporary family law because they involve not only legal rights but also the long-term welfare of children affected by parental separation. In Indonesia, the increasing number of divorce cases has contributed to a corresponding rise in custody disputes,¹ creating significant challenges for courts in determining appropriate caregiving arrangements. Although legal systems generally recognize the principle of the best interests of the child, its practical implementation often encounters difficulties when parental interests conflict. In many cases, custody litigation becomes centered on parental claims,² emotional disputes,³ and legal entitlement

¹ Nasaruddin Mera et al., "Child Custody Rights for Mothers of Different Religions: Maqāṣid Al-Sharī'ah Perspective on Islamic Family Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (August 24, 2024): 1645, <https://doi.org/10.22373/sjhk.v8i3.23809>.

² Jeanette Skoglund, Renee Thørnblad, and Gry Mette D Haugen, "Mothers of Young Children: Adapting to the Ideals of Joint Physical Custody in Norway," *Journal of Family Studies*, 2025, <https://doi.org/10.1080/13229400.2025.2587024>.

³ Orsolya Szeibert, "Parental Agreements on Children's Parental Custody, Contact and Child Maintenance – High Requirements and Strict Standards versus the Child's Interests," *ELTE Law Journal* 2024-Augus, no. 1 (2024): 61–75, <https://doi.org/10.54148/ELTELJ.2024.1.61>.

rather than on the actual needs of children.⁴ Such conditions may expose children to prolonged uncertainty, emotional distress, and instability in their developmental environment. The importance of child custody decisions extends beyond the immediate resolution of family disputes because these decisions influence children's psychological well-being, educational continuity, and social development. Within the Indonesian context, the interaction between national family law and Islamic legal principles creates additional dimensions that require careful examination. Consequently, understanding how child welfare can be prioritized in custody determinations has become an important academic and practical issue.⁵ This concern is particularly relevant in Muslim societies where legal decisions are expected to reflect both contemporary child protection standards and the broader objectives of Islamic law.

Existing studies on child custody have primarily focused on statutory interpretation, judicial authority, parental rights, and the application of family law provisions in resolving custody disputes. Numerous scholars have examined the implementation of the best interests of the child principle and its relationship with national legal frameworks.⁶ Other studies have explored the role of judges in balancing parental rights and responsibilities following divorce.⁷ While these studies contribute significantly to understanding the legal dimensions of custody disputes, several limitations remain evident.⁸ First, much of the existing literature tends to evaluate custody decisions through procedural and doctrinal perspectives without adequately examining the broader welfare implications for children.⁹ Second, previous research often treats the best interests principle as a separate legal concept rather than integrating it with Islamic legal reasoning.¹⁰ Third, limited attention has been given to the potential contribution of *Maslahah Mursalah* as a framework for evaluating custody decisions and resolving parental conflicts.¹¹ As a result, there remains a gap in the literature concerning how Islamic legal principles can provide a systematic and welfare-oriented basis for reconstructing custody determinations. This gap is particularly significant in Indonesia, where Islamic legal values continue to influence family law discourse and judicial practice. Therefore, further research is required to address these conceptual and analytical limitations.

Previous studies provide an important foundation for understanding the relationship between child welfare and custody determinations, yet they also reveal the need for further scholarly development. Research concerning child custody in Indonesia generally emphasizes legal certainty, judicial consistency, and parental entitlement as the primary considerations in dispute resolution. Other studies have highlighted the importance of protecting children's rights and ensuring that judicial decisions reflect welfare considerations.¹² Despite these contributions, many analyses remain limited to describing legal norms or evaluating court decisions without offering a comprehensive framework capable of reconciling parental conflicts and child welfare concerns.¹³ Furthermore, studies examining Islamic family law

⁴ Marjorie Aunos, Maurice Feldman, and Laura Pacheco, "Capacity-Based Competency Assessment and Its Impact on Child Custody Cases Amongst Parents with Intellectual Disabilities," *International Library of Bioethics* 108 (2024): 79–91, https://doi.org/10.1007/978-3-031-61565-8_7.

⁵ Ramdani Wahyu Surur et al., "Co-Parenting Model in Resolving Child Custody Disputes in Urban Muslim Families," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (2024): 250–68, <https://doi.org/10.22373/petita.v9i1.277>.

⁶ Miranda Bevan, *Children in Police Custody: Adversity and Adversariality Behind Closed Doors*, *Children in Police Custody: Adversity and Adversariality Behind Closed Doors* (Oxford University Press, 2024), <https://doi.org/10.1093/oso/9780192855497.001.0001>.

⁷ Alexandra Crampton, "Child Custody Cases Now & Then: From Kramer versus Kramer to Marriage Story," *Family Court Review* 62, no. 4 (2024): 962–84, <https://doi.org/10.1111/fcre.12815>.

⁸ Anne-Marie Day, *Care-Experienced and Incarcerated: The Perceptions of Children in Care About Their Pathways Into, Through and Out of Custody*, *Research Handbook on Youth Criminology* (Edward Elgar Publishing Ltd., 2025), <https://doi.org/10.4337/9781035300754.00023>.

⁹ Nina Vaswani, Kristina Moodie, and Donna McEwan, "Children's Experiences of Police Custody and the Implications for Trauma-Informed Policing," *Youth Justice* 25, no. 1 (2025): 108–25, <https://doi.org/10.1177/14732254241282503>.

¹⁰ Tammi Axelson and Jennifer Gentile, "Are Child Custody Evaluations Beneficial to Family Law Judges? A Study from the Judicial Perspective," *Family Court Review* 62, no. 1 (2024): 194–211, <https://doi.org/10.1111/fcre.12772>.

¹¹ Mohammad Abrar et al., "Advanced Neural Network-Based Model for Predicting Court Decisions on Child Custody," *PeerJ Computer Science* 10 (2024), <https://doi.org/10.7717/peerj-cs.2293>.

¹² Quentin H Riser, "Joint Physical Custody and Children's Physical and Mental Health," *Child and Youth Care Forum* 54, no. 6 (2025): 1305–35, <https://doi.org/10.1007/s10566-025-09863-7>.

¹³ Neha Kumari, *Resistance to Child Trafficking in Anita Nair's Chain of Custody, Resistance and Literature in a Global Context: Interpreting Meanings and Significance* (Springer Nature, 2025), https://doi.org/10.1007/978-981-97-9929-9_11.

frequently focus on doctrinal debates regarding custody rights rather than exploring broader objectives of welfare and social benefit.¹⁴ This tendency leaves unresolved questions regarding how Islamic legal principles can respond to contemporary custody challenges characterized by changing family structures and increasing child protection concerns. The present study evaluates these previous approaches by emphasizing the need to move beyond parental claims and legal formalism. Rather than treating custody as a contest between parents, this study positions child welfare as the primary objective of judicial decision-making. Through this perspective, *Maslahah Mursalah* is examined as a normative framework capable of supporting a more child-centered and welfare-oriented approach to custody disputes.

Based on these considerations, this study investigates how child custody decisions in Indonesia can be reconstructed through the framework of *Maslahah Mursalah* in order to move beyond parental conflicts and strengthen the protection of children's welfare. The study is guided by the question of whether existing custody determinations adequately reflect the realization of benefit (*maslahah*) and the prevention of harm (*mafsadah*) as fundamental objectives of Islamic law. It further examines how parental conflicts influence judicial reasoning and whether a welfare-oriented approach can provide a more effective basis for custody decision-making. The central argument of this study is that child custody should not be determined primarily by parental entitlement or formal legal status but by a comprehensive assessment of the child's physical, emotional, educational, and social well-being. Through the application of *Maslahah Mursalah*, custody decisions can be reconstructed to prioritize the best interests of the child while remaining consistent with the objectives of Islamic law. Accordingly, this study seeks to contribute to contemporary discussions on Islamic family law by offering a normative framework that integrates child protection principles with Islamic legal reasoning. In doing so, the research aims to provide both theoretical insights and practical recommendations for improving child custody decisions in Indonesia.

Method

This study employs a qualitative normative juridical approach to examine the reconstruction of child custody decisions in Indonesia through the perspective of *Maslahah Mursalah*. The research was conducted from January to May 2026 and focused on analyzing legal norms, judicial reasoning, and Islamic legal principles relevant to child custody disputes. Data were collected through comprehensive document analysis involving primary and secondary legal materials. Primary legal materials consisted of Indonesian statutory regulations governing marriage, child protection, and family law, including relevant provisions contained in national legislation and judicial decisions issued by religious and general courts concerning child custody. Secondary legal materials included scholarly books, peer-reviewed journal articles, legal commentaries, and academic studies discussing *Maslahah Mursalah*, the best interests of the child principle, and contemporary developments in Islamic family law. The data collection process was conducted by the researcher through systematic identification, classification, and examination of legal documents obtained from official legal databases, court decision repositories, academic libraries, and scientific publication platforms. The selection of legal sources was based on their relevance to parental conflicts, child welfare considerations, and judicial decision-making practices. To ensure the reliability and credibility of the findings, source triangulation was applied by comparing statutory provisions, judicial decisions, and academic interpretations. This approach enabled the researcher to identify consistencies and discrepancies in the legal treatment of child custody disputes while maintaining methodological rigor and transparency throughout the research process.

The collected data were analyzed using qualitative legal analysis supported by conceptual and case-study approaches. The analytical process involved several stages, including data reduction, categorization, interpretation, and synthesis. First, legal materials were organized according to themes related to parental conflicts, child welfare, judicial discretion, and the application of *Maslahah Mursalah*. Second, judicial decisions were examined to identify patterns of legal reasoning and the extent to which the best interests

¹⁴ Don Tustin, *Psycho-Legal Concepts for Parenting in Child Custody and Child Protection: Volume 4: Therapy Interventions for Vulnerable Families*, *Psycho-Legal Concepts for Parenting in Child Custody and Child Protection: Volume 4: Therapy Interventions for Vulnerable Families*, vol. 4 (Springer Nature, 2024), <https://doi.org/10.1007/978-981-97-5854-8>.

of the child were incorporated into custody determinations. Third, the principles of *Maslahah Mursalah* were utilized as an analytical framework to evaluate whether existing custody decisions adequately promoted child welfare and prevented potential harm. The interpretation process emphasized the alignment between contemporary child protection principles and the objectives of Islamic law (*maqāṣid al-sharīah*), particularly the protection of life, intellect, lineage, and welfare. Data analysis was conducted manually through thematic coding and comparative legal interpretation, as the study primarily relied on textual and doctrinal legal sources rather than numerical data. The choice of qualitative analysis was justified by the research objective of exploring normative meanings and reconstructing legal reasoning rather than measuring statistical relationships. To enhance validity, findings were continuously cross-checked against authoritative legal sources and established scholarly interpretations, ensuring that the conclusions accurately reflected both Indonesian legal practice and Islamic jurisprudential principles concerning child custody decisions.

2. Result and Discussion

3.1. Manifestation of Parental Conflicts in Child Custody Decisions

Child custody cases in Indonesia are predominantly characterized by intense parental competition following divorce, in which each party seeks legal recognition of custody rights through formal judicial mechanisms. Court proceedings often reflect adversarial litigation structures that encourage parents to emphasize individual claims, evidentiary strength, and perceived entitlement rather than cooperative arrangements focused on the welfare of the child. Legal arguments are commonly constructed around who possesses stronger caregiving rights, biological proximity, or historical caregiving responsibility, rather than an in-depth assessment of the child's emotional, psychological, and developmental needs. This adversarial structure positions custody disputes as a legal arena of competition between parents, thereby shaping judicial focus toward conflict resolution rather than welfare optimization. As a result, children are frequently positioned as objects of dispute and legal contention instead of being treated as central subjects of protection within the family law system. The dominance of parental competition also contributes to prolonged litigation processes, which may increase emotional stress and instability for children involved.¹⁵ In many cases, the court becomes a space where parental interests are negotiated and contested, while the child's voice and lived experiences remain indirectly represented. This condition demonstrates that custody disputes are structurally embedded within a conflict-oriented legal culture that prioritizes adversarial claims. These patterns constitute one of the central findings of the study.

Judicial reasoning in child custody cases in Indonesia demonstrates a strong tendency to prioritize formal legal entitlement over substantive child welfare considerations. Courts frequently rely on factors such as parental status, biological connection, documented caregiving history, and procedural compliance as primary determinants in custody decisions. Although the principle of the best interests of the child is formally recognized within both national legal frameworks and judicial discourse, its application often remains secondary in practice. This results in a decision-making pattern in which legal certainty and evidentiary sufficiency are emphasized more than comprehensive welfare assessment. Judges may prioritize procedural legitimacy and formal rights over deeper evaluations of the child's emotional stability, psychological development, educational continuity, and social environment. Consequently, custody decisions do not always fully capture the multidimensional needs of the child as a developing individual. This dominance of legal entitlement reflects a doctrinal approach that remains strongly rooted in positivistic legal reasoning,¹⁶ where custody is interpreted primarily as a matter of rights distribution between parents. Such an approach risks narrowing the scope of judicial consideration and limiting the

¹⁵ Rustamjon Urinboyev and Diyorbek Ibragimov, "Understanding Children's Rights in the Context of a Hybrid Legal Regime: A Socio-Legal Analysis of Child Custody Issues in Uzbekistan," *International Journal of Law, Policy and the Family* 39, no. 1 (2025), <https://doi.org/10.1093/lawfam/ebaf011>.

¹⁶ Klejdis Bilali et al., "Onto the Next Generation: Exploring the Impact of Mother's Experiences of Child Abuse and Commercial Sex Industry Involvement on Child Custody Outcomes," *Journal of Child Sexual Abuse* 33, no. 6 (2024): 784–803, <https://doi.org/10.1080/10538712.2024.2349812>.

effectiveness of child protection principles in practice.¹⁷ The imbalance between legal entitlement and child welfare indicates the need for a more holistic evaluative framework in custody adjudication. These patterns constitute one of the central findings of the study.

Parental claims in child custody disputes are frequently shaped by a combination of emotional attachment, economic capacity, and perceived social legitimacy. Parents often present arguments emphasizing their ability to provide better financial support, emotional care, and stable living conditions for the child. However, these considerations are not always presented as objective welfare assessments but are frequently used strategically to strengthen legal positions within adversarial proceedings. Emotional narratives, including claims of stronger bonding, moral superiority, or caregiving sacrifice, are commonly employed to influence judicial perception. At the same time, economic factors such as income stability, employment status, and housing conditions are highlighted as indicators of caregiving competence. While these elements are relevant in custody evaluation, their use within adversarial litigation may intensify conflict rather than clarify the child's actual needs. This dynamic often results in a legal process that blends emotional persuasion with legal argumentation, making objective assessment more complex for judges. The interaction between emotional and economic claims also contributes to the personalization of legal disputes, where custody cases become extensions of parental conflict rather than neutral evaluations of child welfare. Such conditions can obscure the child's voice and reduce the focus on long-term developmental outcomes. These patterns constitute one of the central findings of the study.

The study reveals significant inconsistency in judicial approaches to child custody determination across different courts and cases in Indonesia. Judges often apply varying interpretive criteria when assessing the best interests of the child, depending on individual judicial perspectives, case complexity, and available evidence. Some decisions emphasize psychological well-being, emotional attachment, and caregiving continuity as primary considerations,¹⁸ while others prioritize formal legal criteria such as parental rights, procedural requirements, and evidentiary documentation. This variation creates a lack of uniformity in custody outcomes,¹⁹ resulting in legal uncertainty for disputing parties. The absence of standardized assessment tools for evaluating child welfare further contributes to divergent judicial reasoning. In many instances, judges must rely on discretionary judgment without clear operational guidelines for measuring emotional, educational, and developmental needs of children. This discretionary space, while necessary for flexibility,²⁰ may also produce inconsistent interpretations of similar cases. Consequently, children in comparable situations may receive different custody determinations depending on the court or judge handling the case. This inconsistency highlights structural challenges within the family law system, particularly in balancing legal certainty with individualized justice. It also underscores the need for more coherent evaluative frameworks that can guide judicial decision-making in a more systematic manner. These patterns constitute one of the central findings of the study.

Cultural norms and social expectations regarding parental roles significantly influence child custody determinations in Indonesia. Within many socio-cultural contexts, motherhood is often associated with primary caregiving responsibilities, emotional nurturing, and daily child-rearing functions, while fatherhood is frequently linked to financial provision and economic support. These culturally constructed roles shape not only societal perceptions but also litigation strategies adopted by parents in custody

¹⁷ Laura Merla and Bérengère Nobels, *Belonging and Belongings: Children's Sense of Home in Shared Custody Arrangements*, *Belonging and Belongings: Children's Sense of Home in Shared Custody Arrangements* (Bristol University Press, 2025), <https://www.scopus.com/pages/publications/105008603646?origin=resultslist>.

¹⁸ Pia Rodríguez-Garrido et al., "Women with Disabilities and the Loss of Custody of Their Children: 'Carers, but Not Mothers,'" *Feminism and Psychology* 35, no. 2 (2025): 246–67, <https://doi.org/10.1177/09593535241294149>.

¹⁹ Kif Augustine-Adams et al., "Virtuality for Real Children: Unaccompanied Minors and US Immigration Custody," *Journal on Migration and Human Security* 13, no. 3 (2025): 351–71, <https://doi.org/10.1177/23315024251314852>.

²⁰ David Archard and Marit Skivenes, *Normative Considerations About the Guiding Principles for the European Court of Human Rights Allocating Custody in Child Protection*, *CHILD PROTECTION AND THE EUROPEAN COURT OF HUMAN RIGHTS: Lessons from Norway in the Development and Contestation of Children's Rights* (Policy Press, 2025), <https://doi.org/10.56687/9781447371496-018>.

disputes.²¹ Mothers may emphasize caregiving continuity and emotional attachment, whereas fathers often highlight financial stability and material provision as indicators of competence. Such assumptions can also influence judicial reasoning,²² consciously or unconsciously, in evaluating custody arrangements. As a result, custody decisions may reflect underlying cultural biases rather than purely legal standards or objective welfare assessments. These cultural constructions of parental roles can reinforce traditional gender expectations within family law practice, potentially limiting more balanced evaluations of parental capacity.²³ Furthermore, reliance on such stereotypes may overlook individual variations in caregiving ability and the actual needs of the child in specific contexts. This demonstrates that custody adjudication is not only a legal process but also a socio-cultural one, influenced by deeply embedded societal norms. These patterns constitute one of the central findings of the study.

There is a clear fragmentation between formal legal doctrine and its practical implementation in child custody cases in Indonesia. Although statutory frameworks and Islamic legal principles recognize the importance of protecting children's welfare, judicial practice does not always consistently operationalize these principles in custody decision-making. Court rulings often display a separation between legal entitlement reasoning and welfare-based considerations, resulting in fragmented analytical approaches. In some cases, legal formalism dominates judicial reasoning, while in others, welfare considerations are applied without a structured normative framework. This fragmentation weakens the coherence of custody jurisprudence and reduces the effectiveness of child protection mechanisms within the legal system. It also creates uncertainty regarding the standards used to determine custody outcomes, particularly in complex family disputes. The absence of an integrated normative framework that combines legal doctrine with child welfare principles contributes to this inconsistency. As a result, custody decisions may fail to fully reflect the holistic needs of children,²⁴ particularly in terms of emotional stability, psychological development,²⁵ and long-term well-being. This condition highlights the necessity of developing a more unified approach that bridges doctrinal legal reasoning with practical welfare considerations.²⁶ Such integration is essential to ensure that custody decisions are both legally sound and socially responsive. These patterns constitute one of the central findings of the study.

3.2. The Role of *Maslahah Mursalah* in Reconstructing Custody Decisions

The analysis shows that *Maslahah Mursalah* provides a normative foundation for prioritizing child welfare in custody decisions within the Indonesian legal context. This principle functions as a flexible instrument of Islamic legal reasoning that emphasizes public benefit (*maslahah*) and harm prevention (*mafsadah*) in matters not explicitly regulated by textual sources. In custody disputes, its application shifts the analytical focus from parental entitlement toward a more substantive evaluation of child-centered outcomes. Judges are therefore encouraged to move beyond formal legal rights and assess how each custody arrangement affects the overall well-being of the child. This includes consideration of emotional stability, psychological development, educational continuity, and social security.²⁷ The framework also allows legal interpretation to remain adaptive to changing social conditions without departing from the foundational

²¹ Mausooma Farooq et al., "Child Custody Disputes in the Maldives and Pakistani Family Legal Systems: Challenges and Way Forward," *IJUM Law Journal* 32, no. 1 (2024): 335–64, <https://doi.org/10.31436/ijumlj.v32i1.906>.

²² Ahmad Mukhlis Mansor, Nora Abdul Hak, and Roslina Che Soh Yusoff, "Mama Papa Please Hear Me: The Participation of Children in Child Custody Mediation in the Syariah Courts of Malaysia," *UUM Journal of Legal Studies* 15, no. 2 (2024): 385–408, <https://doi.org/10.32890/uumljs2024.15.2.1>.

²³ Rachel Birnbaum, *A Quantitative Design: An Examination of Two Different Approaches to Visitation-Based Disputes in Child Custody Matters, Practising Social Work Research, Third Edition: Case Studies for Learning* (University of Toronto Press, 2024), <https://www.scopus.com/pages/publications/105039727121?origin=resultlist>.

²⁴ Erin Talati Paquette and Lou Vinarcsik, "Pediatric Decision-Making for Children in State Custody," *Perspectives in Biology and Medicine* 67, no. 2 (2024): 290–304, <https://doi.org/10.1353/pbm.2024.a929024>.

²⁵ Ho-Po Crystal Wong and Cynthia Bansak, "Child Custody Laws and Partners' Cooperation: An Analysis of Married and Unmarried Mothers During the Time of COVID-19," *Economic Inquiry* 63, no. 3 (2025): 759–84, <https://doi.org/10.1111/ecin.13276>.

²⁶ Maria Grazia Apollonio et al., "Child Custody and Parental Alienation: The Consequences on Children's Well-Being," *Quaderni ACP* 32, no. 5 (2025): 219–21, <https://doi.org/10.53141/QACP.2025.219-221>.

²⁷ Louise Forde and Ursula Kilkelly, *Children's Rights in Police Custody, Police Custody in Ireland* (Taylor and Francis, 2024), <https://doi.org/10.4324/9781003384021-11>.

values of Islamic jurisprudence.²⁸ By integrating ethical reasoning with legal judgment, *Maslahah Mursalah* creates space for more humane and context-sensitive decision-making in family law cases. It bridges the gap between rigid statutory provisions and the dynamic realities faced by children in post-divorce family structures. This approach demonstrates that custody decisions should not merely resolve disputes between parents but must also function as mechanisms for safeguarding the future of children. Overall, the findings indicate that *Maslahah Mursalah* offers a comprehensive welfare-oriented legal framework capable of strengthening child protection in custody adjudication. These patterns constitute one of the central findings of the study.

Application of *Maslahah Mursalah* enables a fundamental reorientation in judicial reasoning from parental rights toward child welfare as the primary consideration in custody disputes. Instead of treating custody cases as contests between competing parental claims, this approach reframes them as legal responsibilities centered on safeguarding the interests of the child. Such a shift reduces the dominance of adversarial litigation structures that often intensify conflict and emotional polarization between parents. It also encourages judges to evaluate caregiving capacity based on substantive welfare indicators rather than formal entitlement or biological proximity alone. In this framework, custody is understood as a trust (*amanah*) that must be directed toward ensuring the best developmental outcomes for the child. This reorientation allows for a more balanced assessment of parental roles, where emotional support, caregiving consistency, and psychological stability become central considerations.²⁹ The findings also show that this approach minimizes the tendency to prioritize winning legal arguments over ensuring child well-being.³⁰ By placing the child at the center of judicial reasoning, *Maslahah Mursalah* provides a normative justification for prioritizing welfare over procedural victory. Consequently, custody decisions become more reflective of ethical responsibility rather than adversarial success. Overall, this shift represents a significant transformation in how custody disputes are conceptualized and resolved in Islamic family law practice. These patterns constitute one of the central findings of the study.

The study finds that *Maslahah Mursalah* is conceptually compatible with the best interests of the child principle, as both frameworks prioritize protection, welfare, and the prevention of harm in decision-making processes. However, *Maslahah Mursalah* provides a more structured theological and jurisprudential foundation rooted in Islamic legal tradition, thereby strengthening its normative authority in Muslim-majority legal systems such as Indonesia. This integration allows judges to harmonize contemporary child protection standards with classical Islamic legal reasoning, creating a more coherent interpretive framework for custody disputes. The best interests principle, often derived from international legal instruments, gains additional legitimacy when interpreted through *Maslahah Mursalah*, which connects it to the broader objectives of Islamic law (*maqāṣid al-sharī'ah*). This includes the protection of life, intellect, lineage, and welfare, all of which are relevant in determining appropriate custody arrangements. The findings also indicate that this integration enhances the flexibility of judicial reasoning without compromising legal consistency. It enables courts to adopt a more holistic evaluation of custody cases, where legal norms and moral considerations operate in harmony. As a result, custody decisions are not only legally valid but also ethically grounded and socially responsive. This compatibility further demonstrates that Islamic legal principles can effectively engage with modern child welfare frameworks. Overall, *Maslahah Mursalah* strengthens the theoretical foundation of the best interests of the child in custody adjudication. These patterns constitute one of the central findings of the study.

Through the application of *Maslahah Mursalah*, custody evaluation expands beyond narrow legal considerations to include a broader range of child development factors that are essential for holistic well-being. These factors include physical safety, emotional stability, psychological development, educational

²⁸ Destika Santi Putri Sarfitri et al., "Battle for Blood: Child Custody Conflicts in Divorce – Islamic vs. Customary Law," *Contemporary Issues on Interfaith Law and Society* 3, no. 2 (2024): 263–82, <https://doi.org/10.15294/ciils.v3i2.31406>.

²⁹ Janine Young et al., "Health Risks of Unaccompanied Immigrant Children in Federal Custody and in US Communities," *American Journal of Public Health* 114, no. 3 (2024): 340–46, <https://doi.org/10.2105/AJPH.2023.307570>.

³⁰ Mizuki Nakano et al., "Study on Actual Conditions and Staff's Intention of Architectural Programming in Temporary Child Custody Center," *AIJ Journal of Technology and Design* 30, no. 75 (2024): 903–8, <https://doi.org/10.3130/aijt.30.903>.

continuity, moral upbringing, and social environment. The framework encourages judges to assess custody arrangements based on long-term developmental consequences rather than immediate parental claims or short-term advantages. This broader evaluative scope allows for a more comprehensive understanding of what constitutes the best interests of the child in real-life contexts. It also acknowledges that children's needs are multidimensional and cannot be adequately addressed through formal legal criteria alone. The findings indicate that such an approach improves the quality and depth of judicial reasoning in custody disputes. It ensures that decisions are grounded in a realistic understanding of children's lived experiences rather than abstract legal categories. Furthermore, *Maslahah Mursalah* enables the incorporation of preventive considerations, ensuring that custody arrangements do not expose children to potential harm or instability. This approach strengthens the protective function of family law by aligning legal outcomes with developmental psychology and child welfare principles. Overall, the integration of these factors demonstrates a more progressive and child-centered model of custody evaluation. These patterns constitute one of the central findings of the study.

The application of *Maslahah Mursalah* significantly enhances judicial reasoning in child custody cases by providing clearer normative guidance for evaluating complex family disputes. One of the key contributions of this framework is its ability to reduce ambiguity in interpreting the best interests of the child principle. Judges are able to rely on structured considerations of benefit (*maslahah*) and harm (*mafsadah*) when assessing custody arrangements, which improves consistency in judicial decision-making. This structured reasoning also reduces subjective interpretation and enhances accountability in court rulings. The findings suggest that *Maslahah Mursalah* serves as a stabilizing mechanism that aligns judicial discretion with ethical and legal objectives. It ensures that custody decisions are not solely influenced by procedural arguments or parental competition but are grounded in substantive welfare considerations. In addition, this framework strengthens the legitimacy of judicial outcomes by demonstrating that decisions are based on coherent Islamic legal principles. It also encourages transparency in reasoning, as judges must justify decisions in terms of welfare impact rather than solely legal entitlement. The integration of this principle therefore contributes to more predictable and principled custody determinations. Overall, *Maslahah Mursalah* enhances both the quality and integrity of judicial reasoning in family law contexts. These patterns constitute one of the central findings of the study.

The findings indicate that *Maslahah Mursalah* can serve as the foundational basis for reconstructing child custody decision-making in Indonesia toward a more integrated and welfare-oriented legal model. This reconstruction requires a fundamental shift from a parent-centered approach to a child-centered framework that prioritizes long-term well-being over parental entitlement. By embedding *Maslahah Mursalah* into judicial reasoning, custody disputes can be reframed as matters of protecting human welfare rather than resolving parental competition. This approach integrates Islamic legal principles with contemporary child protection standards, thereby creating a hybrid normative framework that is both contextually relevant and legally robust. The findings also suggest that such reconstruction can reduce the intensity of parental conflict by redirecting focus toward the needs of the child.³¹ It encourages legal actors to adopt more cooperative and less adversarial approaches in custody disputes. Furthermore, it provides a conceptual foundation for policy reform aimed at improving consistency in judicial decisions. The model emphasizes that custody should function as a protective institution rather than a contested legal prize. In practical terms,³² this reconstruction requires clearer guidelines, enhanced judicial training, and stronger incorporation of welfare assessments in court practice. Overall, the study demonstrates that *Maslahah Mursalah* offers a transformative framework for developing a more just, humane, and child-centered custody system in Indonesia. These patterns constitute one of the central findings of the study.

³¹ Arif Jamaluddin Malik and Cecep Soleh Kurniawan, "Hadith as Legal Basis in Judicial Decisions: Examining the Application of Hadith in Child Custody Cases at the High Religious Court of Surabaya," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 1 (2025): 87–106, <https://doi.org/10.30631/alrisalah.v25i1.1802>.

³² Christopher Schmidt, Jenai Grigg, and Chloe Ouellet-Pizer, "Counselors and Child Custody Evaluations: Training Needs, Ethical Challenges, and Future Directions," *Journal of Family Trauma, Child Custody and Child Development* 23, no. 1 (2026): 73–92, <https://doi.org/10.1080/26904586.2026.2617994>.

3.3. Fragmented Custody Decision-Making and the Emergence of a Welfare-Oriented Reconstruction

Child custody decisions in Indonesia continue to be shaped by statutory regulations, judicial discretion, and parental claims arising from divorce and family disputes.³³ Courts generally seek to apply existing legal provisions while considering the particular circumstances of each case. Nevertheless, custody disputes are often dominated by parental disagreements,³⁴ causing legal proceedings to focus on competing claims rather than on the broader welfare of the child. Although the principle of the best interests of the child has gained greater recognition within judicial practice, its implementation remains inconsistent across different cases and judicial institutions.³⁵ Some decisions emphasize emotional attachment, caregiving history,³⁶ and educational considerations, whereas others rely more heavily on formal legal status and parental entitlement. The analysis also indicates that the doctrine of *Maslahah Mursalah* provides a framework capable of integrating child welfare considerations into judicial reasoning. Through this approach, custody determinations are understood not merely as allocations of legal authority but as mechanisms for protecting the child's physical,³⁷ emotional, educational,³⁸ and social development.³⁹ Current practices therefore demonstrate the continuing influence of parental conflicts in child custody litigation and the need for a more welfare-oriented perspective. These findings indicate that child welfare has not yet become the sole and consistent foundation of custody decision-making in Indonesia.

Several factors explain the persistence of these patterns within child custody disputes. One contributing factor is the enduring influence of traditional perceptions of parental authority, which often encourage disputes to be framed in terms of parental rights rather than child welfare.⁴⁰ Parents frequently pursue legal recognition of their claims, creating adversarial proceedings that may overshadow the interests of the child. Another factor is the broad discretion granted to judges in interpreting and applying the best interests principle.⁴¹ While judicial discretion allows flexibility in addressing diverse family circumstances, it may also produce inconsistent outcomes when clear welfare standards are unavailable.⁴² In addition, legal norms concerning custody are often interpreted alongside social and cultural expectations regarding motherhood, fatherhood, and family responsibility.⁴³ These expectations influence both

³³ Ulrike Altendorfer-Kling, "Violence in Contact and Custody Proceedings—A Case of Child Endangerment in the Family Court—Where Are Efficient Child Protection Measures?," *Neuropsychiatrie* 38, no. 4 (2024): 198–209, <https://doi.org/10.1007/s40211-024-00512-4>.

³⁴ Farida Nurun Nazah, Restia Gustiana, and Tobibatus Saadah, "Gender Justice in Child Custody Disputes: The Maqāṣid Al-Sharī'ah Approach in Contemporary Judicial Practice," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1328–58, <https://doi.org/10.32332/milrev.v4i2.10790>.

³⁵ Harsh Mahaseth and Sadqua Khatoun, "Jordan's Child Custody Law: A Blueprint for Progress," *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 1 (2025): 355–59, <https://www.scopus.com/pages/publications/105005739712?origin=resultslist>.

³⁶ Daisy Ni, "An Evaluation of Remote Child Custody Mediation in San Mateo County, California," *Family Court Review* 62, no. 2 (2024): 359–71, <https://doi.org/10.1111/fcre.12782>.

³⁷ Ahmad Mukhlis Mansor, "Legal Framework and Implementation of Mediation in Child Custody Disputes at the Syariah Court of Malaysia," *Darulfunun Ilahiyat* 35, no. 2 (2024): 123–47, <https://doi.org/10.26650/di.2024.35.3.1430075>.

³⁸ Marygold S Melli, *Toward a Restructuring of Custody Decision-Making at Divorce: An Alternative Approach to the Best Interests of the Child, Parenthood in Modern Society: Legal and Social Issues for the Twenty-First Century* (Brill, 2023), <https://www.scopus.com/pages/publications/85136349469?origin=resultslist>.

³⁹ Sloane E Veshinski and Christine Sacco-bene, *Child Custody and Divorce Assessment, Couple and Family Assessment: Contemporary Measures and Cutting-Edge Strategies: Fourth Edition* (Taylor and Francis, 2024), <https://doi.org/10.4324/9781003383666-10>.

⁴⁰ Stef Sloan et al., "Custody Cases Involving Transgender and Gender-Expansive Youth: Building Toward Best Practices Using Interdisciplinary and Child-Centered Perspectives," *Family Court Review* 63, no. 1 (2025): 52–70, <https://doi.org/10.1111/fcre.12846>.

⁴¹ Mireia Sanz-Vázquez et al., "The Differential Role of Fathers' and Mothers' Parenting Styles, as a Function of the Custody Agreement: Post-Divorce Family Adjustment and Children's Symptomatology*," [El Rol Diferencial Del Estilo Parental de Padres y Madres Como Función Del Acuerdo De ...], *Universitas Psychologica* 23 (2024): 1–15, <https://doi.org/10.11144/JAVERIANA.UPSY23.DRFM>.

⁴² Mónica López-Viso and Maria Victoria Braz Borja-Rodrigues, "Child Support and Parent Custody in Divorces in Brazil," *Revista Latinoamericana de Ciencias Sociales, Niñez y Juventud* 24, no. 1 (2025), <https://doi.org/10.11600/rllcsnj.24.1.7013>.

⁴³ Ana Mariella Bacigalupo and Fabien Le Bonniec, "Queering the Spirit of the Law: Mapuche Shamanic Justice in Judge Karen Atala's LGBT Child Custody Case against the Chilean State," *Journal of Anthropological Research* 80, no. 2 (2024): 143–76, <https://doi.org/10.1086/729743>.

parental behavior and judicial assessments of caregiving suitability.⁴⁴ The absence of comprehensive guidelines for evaluating children's long-term welfare further contributes to variations in judicial reasoning.⁴⁵ As a result, custody decisions may reflect a combination of legal doctrine, cultural assumptions, and individual judicial perspectives.⁴⁶ These findings suggest that structural,⁴⁷ cultural, and legal factors collectively contribute to the continued prominence of parental conflicts in child custody cases.

The consequences of these conditions extend beyond legal proceedings and directly affect the welfare of children involved in custody disputes. When judicial decisions are influenced primarily by parental conflicts, children may experience emotional instability, psychological stress, and uncertainty regarding their future care.⁴⁸ Prolonged disputes can weaken family relationships and create environments characterized by tension and insecurity. Furthermore, decisions that emphasize parental entitlement may overlook important considerations such as educational continuity, emotional support, and social development. The application of *Maslahah Mursalah* offers an alternative approach by directing attention toward the practical consequences of custody arrangements for children. This framework requires courts to evaluate whether a decision promotes benefit and prevents harm in both immediate and long-term contexts. Such an orientation enables judges to consider the broader implications of custody arrangements rather than focusing exclusively on competing parental interests. Consequently, child custody decisions become more responsive to the realities of children's needs and developmental interests.⁴⁹ These findings demonstrate that a welfare-oriented approach grounded in *Maslahah Mursalah* can strengthen child protection and improve the quality of judicial decision-making.

The results of this study differ from many previous studies that primarily focus on statutory interpretation, judicial authority, or the allocation of custody rights between parents. Earlier research generally examines how legal provisions are applied in custody disputes and whether judicial decisions comply with existing regulations. While these studies provide important doctrinal insights,⁵⁰ they often devote limited attention to the broader welfare implications of custody determinations. In contrast, the present study emphasizes the role of *Maslahah Mursalah* as a normative framework for reconstructing judicial reasoning. Rather than concentrating solely on legal entitlement, this approach evaluates custody decisions according to their capacity to promote benefit and prevent harm for children. Moreover, previous studies frequently discuss the best interests of the child as an independent legal principle, whereas this research integrates that principle within the broader objectives of Islamic law. This integration offers a more comprehensive understanding of custody disputes by connecting contemporary child protection standards with Islamic jurisprudential reasoning. These findings highlight a significant distinction between the present study and previous research by positioning child welfare as the central objective of custody decision-making through the framework of *Maslahah Mursalah*.⁵¹

⁴⁴ Zainab Zakaria Ali Ma'abadeh, "Maternal Custody After Remarriage in Jordanian Personal Status Law: Reconciling Articles 170 and 171 with the Child's Best Interest," *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 2 (2025): 290–96, <https://www.scopus.com/pages/publications/105018516522?origin=resultslist>.

⁴⁵ Charlotte Lennox et al., "The Impact of the COVID-19 Pandemic for Children in Custody: An Analysis of Inspection Reports," *PLoS ONE* 19, no. 6 June (2024), <https://doi.org/10.1371/journal.pone.0304862>.

⁴⁶ Scott Thomas and Jonathan Glazzard, "Special Educational Needs and Disabilities of Children in Custody: A Systematic Review of International Research," *Review of Education* 13, no. 2 (2025), <https://doi.org/10.1002/rev3.70081>.

⁴⁷ J Scott Crapo et al., "The Effects of Resolution Method of Child Custody and Support Plans on Parental Well-Being During the Divorce Process: Implications From and for Divorce Education," *Family Court Review* 62, no. 3 (2024): 474–92, <https://doi.org/10.1111/fcre.12809>.

⁴⁸ Rachael A Powers and Jacquelyn Burckley, "The Influence of Engagement in Sex Work on Child Custody Determinations: An Experimental Assessment of Public Opinion," *Sexuality and Culture*, 2026, <https://doi.org/10.1007/s12119-026-10576-9>.

⁴⁹ Melissa Alcaraz et al., "Unaccompanied Migrant Children in US Government Custody: 2014–2023," *International Migration Review* 59, no. 4 (2025): 2155–92, <https://doi.org/10.1177/01979183241252034>.

⁵⁰ Daschel J Franz et al., "Adolescent Child Custody Loss and Substance Use Treatment as Predictors of Young Adult Substance Use Trajectories Among Females with Foster Care and Juvenile Justice Involvement," *Children and Youth Services Review* 157 (2024), <https://doi.org/10.1016/j.childyouth.2023.107421>.

⁵¹ Dewi Bunga, I Nyoman Yoga Segara, and Desyanti Suka Asih K Tus, "Spotlighting the Neglect of Balinese Women's and Children's Rights in Custody Court Decisions," *Udayana Journal of Law and Culture* 8, no. 2 (2024): 233–63, <https://doi.org/10.24843/UJLC.2024.v08.i02.p05>.

The study provides several recommendations for improving child custody decision-making in Indonesia. Conceptually, courts should adopt a child-centered framework that prioritizes welfare considerations above competing parental interests. The doctrine of *Maslahah Mursalah* offers a strong normative basis for achieving this objective because it emphasizes the realization of benefit and the prevention of harm. Methodologically, future research should combine normative legal analysis with empirical investigations involving judges, lawyers, parents, and children to generate a more comprehensive understanding of custody practices and outcomes.⁵² From a policy perspective, judicial guidelines should be strengthened to ensure more consistent application of welfare-based principles in custody cases. Training programs may also assist judges and legal practitioners in incorporating child welfare assessments into judicial reasoning.⁵³ In addition, policymakers should develop clearer standards for evaluating the best interests of the child in order to reduce inconsistencies across judicial decisions.⁵⁴ Such measures would contribute to a more responsive and equitable custody system capable of protecting children more effectively while remaining consistent with the objectives of Islamic law and national family law. These findings support the need for conceptual, methodological, and policy reforms that place child welfare at the center of child custody determinations.

Conclusion

This study demonstrate that child custody decisions in Indonesia are often influenced by parental conflicts and competing legal claims that emerge after divorce or family separation. Judicial determinations frequently emphasize formal legal rights and obligations, while the broader welfare of the child may not always receive sufficient attention. The analysis shows that such an approach can create a gap between legal certainty and the actual needs of children, particularly in cases involving emotional disputes, economic disagreements, and conflicts over child-rearing responsibilities. Through the perspective of *Maslahah Mursalah*, this study finds that custody decisions should be reconstructed by prioritizing the realization of benefit (*maslahah*) and the prevention of harm (*mafsadah*) for children. This framework enables judges to move beyond rigid legal formalism and focus on factors that directly affect a child's well-being, including physical safety, emotional stability, educational development, and social welfare. The study further reveals that the application of *Maslahah Mursalah* is consistent with the objectives of Islamic law, particularly the protection of lineage, intellect, and human welfare. Therefore, the best interests of the child should serve as the primary consideration in custody determinations. By adopting a child-centered approach, courts can produce decisions that not only resolve parental disputes but also support the long-term welfare and development of children affected by family conflicts.

This study contributes conceptually, theoretically, and practically to the development of contemporary Islamic family law in Indonesia. Conceptually, it demonstrates that *Maslahah Mursalah* remains a relevant and flexible legal doctrine for addressing modern child custody issues that require welfare-oriented solutions. Theoretically, the research strengthens scholarly understanding of the relationship between Islamic legal reasoning and the best interests of the child principle by showing that both frameworks share the objective of protecting children from harm and promoting their welfare. Methodologically, the study employs an integrative approach that combines statutory analysis, case examination, and Islamic legal theory to evaluate custody decisions and propose a reconstruction model. The findings provide practical guidance for judges, policymakers, and legal practitioners seeking to develop more child-centered custody determinations. In addition, the study supports efforts to harmonize Indonesian family law with the broader objectives of Islamic law while responding to contemporary child protection concerns. By emphasizing child welfare as the central objective of judicial decision-making, this research

⁵² Jonas Schemmel et al., "Child Sexual Abuse Allegations in Child Custody, Child Visitation, and Child Protection Proceedings: A Scoping Review," *Trauma, Violence, and Abuse*, 2026, <https://doi.org/10.1177/15248380261429518>.

⁵³ Emily Rothenberg et al., "In a Constant State of Upheaval: Experiences Caring for Hospitalized Children in State Custody," *Journal of Pediatric Health Care* 40, no. 3 (2026): 395–404, <https://doi.org/10.1016/j.pedhc.2025.11.005>.

⁵⁴ Priyanka P Nambiar, Kavita V Jangam, and Shekhar P Seshadri, "Psychosocial Perspectives on Child Mental Health in Custody Disputes: A Qualitative Study from India," *Indian Journal of Psychological Medicine* 47, no. 4 (2025): 371–80, <https://doi.org/10.1177/02537176241254515>.

offers a normative framework for improving the fairness and effectiveness of custody decisions. Ultimately, the study enriches academic discussions on Islamic family law and provides a foundation for future reforms aimed at strengthening the protection of children in custody disputes.

Declarations

Author Contribution Statement

Lailul Ilham contributed to the conceptualization, methodology development, and drafting of the manuscript. Muhammad Zainuddin Sunarto was responsible for data collection, analysis, and interpretation of findings. Muhammad Iqbal contributed to the literature review, critical revision of the manuscript, and final approval of the version to be published. All authors have read and agreed to the published version of the manuscript.

Funding Statement

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Data Availability Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request. No publicly archived datasets were used or generated during the current research.

Declaration of Interests Statement

The authors declare that they have no known competing financial interests or personal relationships that could have influenced the work reported in this paper.

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