

THE ROLE OF CHILD PSYCHOLOGICAL TEST RESULTS IN CUSTODY DECISIONS IN DIVORCE CASES

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Abstract: This study examines the urgency of documentary evidence in the form of child psychology test results as a consideration for judges in determining child custody (*hadanah*) in divorce cases. Legal decisions in divorce cases in Medan (2021) prioritize the best interests of children, especially those who are still minors and vulnerable to psychological trauma due to conflict and parental separation. The results of child psychology tests serve as formal indicators of trauma or emotional disturbance and can help identify which parents provide a safer and more emotionally stable environment. This article uses a normative legal research method with a statutory and conceptual approach and is supported by a comparative study of first-instance court decisions. Empirical data obtained from interviews with psychologists and several judges at the Medan Religious Court show that child psychological assessments are often submitted but rarely considered by judges in their final decisions. This study criticizes the court's decision to grant custody to parents who have a history of violent behavior based on the results of psychological tests, which causes the child to show fear and be reluctant to interact with his mother. This article concludes that the principle of justice for children as the primary victims should be reviewed and emphasized and that psychological test results should be considered as crucial legal evidence in child custody decisions.

Artikel ini mengkaji urgensi alat bukti surat berupa hasil analisis tes psikologi anak sebagai bahan pertimbangan hakim dalam menetapkan hak asuh anak (*hadanah*) dalam perkara perceraian. Putusan hukum dalam perkara perceraian di Medan (2021) mengutamakan kepentingan terbaik anak, terutama yang masih di bawah umur dan rentan mengalami trauma psikologis akibat konflik dan perpisahan orang tua. Hasil tes psikologi anak berfungsi sebagai indikator formal adanya trauma atau gangguan emosional, serta dapat membantu mengidentifikasi orang tua mana yang memberikan lingkungan yang lebih aman dan lebih stabil secara emosional. Artikel ini menggunakan metode penelitian yuridis normatif dengan pendekatan perundang-undangan dan konseptual serta didukung oleh studi banding putusan pengadilan tingkat pertama. Data empiris yang diperoleh dari wawancara dengan psikolog dan beberapa hakim di Pengadilan Agama Medan menunjukkan bahwa penilaian psikologi anak sering diajukan

tetapi jarang dipertimbangkan oleh hakim dalam keputusan akhir mereka. Penelitian ini mengkritik keputusan pengadilan yang memberikan hak asuh kepada orang tua yang memiliki riwayat perilaku kekerasan berdasarkan hasil tes psikologis, yang menyebabkan anak tersebut menunjukkan rasa takut dan enggan berinteraksi dengan ibunya. Artikel ini menyimpulkan bahwa prinsip keadilan bagi anak sebagai korban utama harus ditinjau kembali dan ditekankan, dan bahwa hasil tes psikologi harus dipertimbangkan sebagai bukti hukum yang penting dalam putusan hak asuh anak.

Keywords: Child; Psychological Test; Hadanah; Divorce Cases.

INTRODUCTION

Child custody refers to the legal responsibility to nurture and protect underage children in order to ensure their development and prevent harm (Ghazali 2008). Custody encompasses safeguarding individuals who are unable to protect themselves. In Islamic jurisprudence, *Al-Bajurid* emphasizes the duty of parents to shield their children from harm, both in the physical and spiritual sense. This is in line with Surah At-Tahrim verse 6, which places the burden of family protection on the parents as spiritual and moral educators (Bairi, 1999).

In the context of positive law, Article 45 of Law No. 1 of 1974 mandates both parents to educate and care for their children until the child becomes independent or marries. The implications of divorce, however, often extend beyond the couple, profoundly affecting children who are emotionally vulnerable. Studies have shown that unresolved parental conflict and post-divorce hostility can lead to severe emotional and developmental disorders in children (Pagar 2010). The fight for *hadhanah* in court becomes a sensitive issue, often reducing the child's voice and best interests into a mere formality. According to Law No. 23 of 2002 on Child Protection, every child has the right to receive love and care from both parents. Classical Islamic scholars, such as those from the *Hanafiyah* school, prioritize the mother for custody due to her ability to provide emotional nurturing. Similarly, the Compilation of Islamic Law grants custody of non-*mumayyiz* children to the mother, unless proven otherwise, and only allows the child to choose when they reach sufficient maturity.

In judicial practice, however, custody battles are not always resolved with the child's best psychological interests in mind. For example, in the decision of Decision No. 57/Pdt.G/2022/PA.Mdn, the judge awarded custody to the father despite the results of a psychological test indicating the child feared and avoided him due to past trauma. In contrast, in Decision No. 17/Pdt.G/2020/PA.JKT.SEL, the judge considered a psychological report stating that the child was emotionally stable and attached to the mother, and thus granted custody to the mother in alignment with the child's psychological wellbeing (Indonesia, 2014).

Such comparison demonstrates inconsistency in judicial application of psychological evidence. This inconsistency is further confirmed by empirical findings—interviews with family court judges and child psychologists indicate that psychological test results are often

considered supplementary at best, and are not given substantial weight in final decisions unless corroborated by strong testimonial or social services reports. (Burgerlijk Werboek, 2010) This highlights a serious gap in the legal structure: the lack of a normative framework that mandates the prioritization of the child's psychological condition as documented evidence. Consequently, decisions may end up violating the principle of the best interest of the child as guaranteed under both national and international child protection frameworks (Effendi and Zein 2004).

This paper, therefore, aims to: Analyze the normative urgency of child psychological test results as documentary evidence in custody disputes; Compare judicial attitudes in different custody rulings regarding such evidence; Critically evaluate a case in which the judge's failure to consider psychological trauma led to potentially harmful custody allocation; Offer empirical insight and recommendations for strengthening the legal role of psychological evidence in the protection of minors post-divorce (Mu'ammal, 2008).

RESEARCH METHOD

This research uses the normative juridical method, which is an approach that views the law as a structured and binding system of norms. This method is carried out by analyzing laws and regulations and legal documents that are relevant to answering the legal problems studied. (Septi Fransiska et al., 2024) In this approach, the law is not only understood as a text, but also as an interpretative practice reflected in court decisions and opinions of legal experts. Data processing and analysis techniques in this research are qualitative, which means that they do not use statistical techniques, but emphasize an understanding of legal arguments, legal principles, and their application in judicial practice. The data analyzed consisted of primary and secondary legal materials (Marzuki 2014).

Primary legal materials in this research are binding legal materials, namely a copy of the Medan Religious High Court Decision Number 57/Pdt.G/2021/PTA.Mdn, which is the main study in analyzing the judge's consideration in determining child custody. Meanwhile, secondary legal materials include non-official legal publications such as books, legal journal articles, views of legal experts, as well as the results of previous research relevant to the theme of child protection and evidence in civil cases.

Data collection was conducted through document studies, namely by examining the contents of primary and secondary legal materials, as well as using the desk research method to explore various supporting literature that provides theoretical and normative context to the issues raised. This approach is intended so that the research can provide a comprehensive answer to the juridical issues studied (Marzuki 2014).

RESULT AND DISCUSSION

Case Position

Divorce verdict Number 57/Pdt.G/2022/PTA.Mdn which resulted in a significant impact on two minor children or not yet *mumayyiz*, a boy aged 4 years and a girl aged 2 years

11 months. Following the divorce, both parents competed fiercely for custody. The mother left the house, her husband and the two children. The children then lived with their father and showed close affinity with him, but their relationship with their mother was not good.

A psychological analysis conducted by Ms. M.R, from Mustika Konsulting revealed that the father was the main figure in providing a sense of security and positive emotions to both children. They feel loved and protected by their father, and their brotherly relationship is also strong. The boy shows a sense of wanting to protect his sister, and vice versa (Almakstur 2021).

However, the emotional relationship with the mother was not well established, especially for boys who described their mothers as frightening. This indicates an experience that caused great fear in the children. Although fathers are able to build a good personality in children, the presence of mothers triggers negative responses and discomfort. In the decision of the Medan High Court of Religious Affairs Number 57/Pdt.G/2022/PTA.Mdn, the judge granted the mother's claim (as plaintiff) based on relevant and objective witness testimony, which showed that the plaintiff and the defendant (father) had lived separately and were in constant conflict.

The judge considered Article 7 paragraph (1) and Article 14 of the Child Protection Law as well as Article 156 letter (a) of the Compilation of Islamic Law, which prioritizes the mother as the holder of *hadhanah* rights for children under 12 years old, unless there are obstacles that prevent her or legal reasons that nullify the right. Finally, the judge decided that the mother was the most entitled party to hold *hadhanah* rights over the two children. This was despite the results of a psychological test analysis of the child.

Judges' Considerations in Decision Number 57/Pdt.G/2022/PTA.Mdn

Freedom of Judges when talking about the “freedom of judges”, there are various interpretations. Some people argue that the freedom of judges is not absolute, but must still be based on the values of justice and law that refer to Pancasila. Therefore, the freedom of judges cannot be separated from responsibility, and should not be used arbitrarily. This freedom should be limited to ensure that decisions are fair and do not violate the law (Floranta 2015).

Judges' Considerations in the Decision of the Medan Religious Court Class 1-A No. 57/Pdt.G/2022/PTA.Mdn Based on the decision, the panel of judges considered several things. In considering the divorce suit, the judge saw that the household conditions were no longer harmonious, so that continuing the marriage would hinder the purpose of marriage in accordance with Islamic teachings contained in QS. *Ar-Rum* verse 21 and Law No. 1 of 1974 concerning Marriage. Therefore, the plaintiff's claim to obtain divorce one *bain shugra* is considered valid and granted.

In addition, in a child custody case, the plaintiff filed a petition to obtain custody of the two minor children. The plaintiff submitted evidence in the form of authentic deeds, which were examined by the panel of judges and deemed to meet the legal requirements to be accepted as evidence. Although the respondent claimed the children were afraid of the

plaintiff and did not want to live with her, the judge still judged based on the applicable law (Sastra, Tjandi and Herida 2022).

Based on Article 7 paragraph (1) and Article 14 of Law No. 23 of 2002 on Child Protection, as well as the Compilation of Islamic Law which gives custody priority to the mother of children who have not reached the age of 12 years, the judge decided that the mother was entitled to custody of the children, unless there was a legal obstacle preventing the plaintiff. However, in the judge's legal considerations, the results of the psychological analysis submitted by a psychology expert were not taken into consideration. Although the evidence was declared valid by the judge, the decision not to consider the results of this psychological analysis shows an attitude that ignores the psychological condition of children in determining who should take care of them. In this case, child custody should not only be based on formal law, but also pay attention to the psychological condition of children in accordance with Law No. 35 of 2014 concerning Child Protection.

Based on the results of the psychological analysis, there are several factors that should be considered in determining child custody, including the child's wishes, the child's relationship with parents, and the child's psychological and physical condition. Therefore, although the law stipulates that the mother has custody of children under 12 years old, the judge should dig deeper into the best conditions for the children, which involves their physical and mental well-being (Wijaya 2023).

In this case, although the judge adhered to the existing legal rules, the judge should have also considered broader legal findings, including the results of the psychological analysis. The law requires judges to explore legal values that live in the community, so in this case, legal considerations should take into account the psychological well-being of the child as a whole, not just referring to the existing law. In the context of the Indonesian justice system, the results of child psychological tests conducted by forensic psychologists have juridical validity as part of letter evidence as stipulated in Article 164 HIR and Article 1866 of the Civil Code. In civil practice, the results of psychological tests as outlined in a written report by an expert, can be considered as a letter made by an official or party who has professional competence, so that it has its own evidentiary strength.

Moreover, if the results of the psychological test are accompanied by direct testimony from the psychologist who examined the child, then the document can be strengthened into expert testimony as stipulated in Article 1866 of the Civil Code and Article 197 paragraph (1) letter f RBg. In civil cases, especially child custody disputes, psychological aspects are very important to assess, given the principle of "the best interest of the child" which has become a standard in various national and international legal instruments. Forensically, the validity of child psychological test results in civil cases is measured by the methodology used (e.g. projective tests such as family drawings, Kinetic Family Drawing tests, or clinical interviews), the competence of the expert conducting the test, and the sustainability of the observation data. If the test is conducted using standardized methods that can be scientifically accounted

for, then the results can be used as a basis by the judge to objectively assess the child's mental condition (Safiyah and Kamaruddin 2021).

The Urgency of Child Psychology Test Results

In Indonesian civil procedural law, psychologists can be presented as expert witnesses, as stipulated in Article 154 RBg and Article 168 HIR, which allows the parties to the case to submit a person who is an expert in a particular field to provide explanations related to the case being examined. A psychologist who has professional certification and experience in child or forensic psychology can explain the interpretation results of psychological tests conducted on the child who is the subject of the custody case. Psychology, which is often referred to as the science of the soul, comes from the Greek “psyche” which means soul, and “logos” which means science. Thus, psychology can be defined as the study of human psychology or behavior that is influenced by the condition of one's soul, or more briefly, as the study of mental processes. According to William James, psychology is the study of mental life, including its phenomena and conditions, such as feelings, desires, cognition, and decision-making (Constanzo 2014).

In divorce cases, the court only witnesses the proceedings, without deciding the divorce between husband and wife. However, the court needs to consider many aspects, not only from a legal perspective, but also from a sociological perspective, especially in terms of the development of the child's personality in social life and the surrounding environment. The legal psychology approach in determining child custody holders after divorce refers to various specific applications of psychology in law, such as the role of psychologists as expert witnesses, assessing the reliability of eyewitness testimony, and providing recommendations in determining child custody. Expert testimony from a psychologist has a strategic function, namely providing a basis for scientific consideration for judges, especially in deciding which party is more suitable to be a child caregiver, based on the child's emotional condition, trauma, affective attachment, and comfort level with each parent. In practice, forensic psychologists not only deliver test results, but also explain in depth the long-term psychological consequences if the child is cared for by a party that is not in accordance with the results of the psychological evaluation. Psychology also provides an understanding of a child's mental and emotional state following the divorce of his or her parents. Therefore, the judge must consider who is better able to provide attention, affection, and a healthy environment for the child's development.

It is important for judges to consider the results of child psychology tests, as these tests can provide an in-depth picture of the psychological impact experienced by children after divorce, as well as who is better able to provide emotional support and stability. Psychologists can play a key role as mediators in custody disputes or as expert witnesses in providing professional views that help judges make fair decisions. However, in the practice of religious courts, the presence of expert witnesses from among psychologists is still not a normative habit or requirement, so that in many *hadanah* cases, judges tend to explicitly ignore the

psychological aspects of children. Therefore, it is important for the Indonesian legal system, especially in civil cases related to children, to institutionalize the role of psychologists as part of a systematic evidentiary process and not merely optional.

In Islamic law, custody of minor children is generally given to the mother, especially those who have not reached the age of 12, based on the emotional bond between mother and child. However, in some situations, such as if the mother is unable to meet the emotional or physical needs of the child, the custody can be transferred. For example, under Article 165 letter c of the Compilation of Islamic Law, a mother can lose custody if she is unable to ensure the safety and well-being of the child, even though maintenance and other needs have been met. Psychological test analysis provides important information about the child's mental state post-divorce and can assist the judge in considering who is more fit to hold custody of the child. This decision depends not only on the applicable law, but also on the psychological well-being of the child and their emotional comfort while living with either parent.

In some cases, the court may decide to award custody to the father, especially if the child feels more comfortable with the father than with the mother who may be more career-focused or less attentive to the child's emotional needs. In this case, the judge's decision takes into account the child's comfort and mental health, as well as their emotional relationship with the parent. Overall, child psychological test results have a very important role in helping judges make fair and appropriate decisions regarding custody holders, taking into account the well-being and psychological development of the child after the divorce of his or her parents. It is possible to add sections as needed. A section may consist of several sub-sections, typed in numbered list style, like the following example.

Comparison of International Practices and Supreme Court Jurisprudence: In the family court system in various countries, psychological considerations of children have become an important instrument in deciding custody cases. In the United States, for example, many family courts require a child custody evaluation by a licensed psychologist before the judge makes a final decision. This evaluation is not only in the form of the results of the child's psychological test, but also involves observations of the child's interactions with both parents, in-depth interviews, and professional recommendations regarding the most appropriate caregiver in the best interests of the child; Likewise in England, through the provisions of the Children Act 1989, every court decision must consider "the welfare checklist" one of the elements of which is the emotional needs of the child. For this reason, Cafcass officers (Children and Family Court Advisory and Support Service) who have a background in child psychology are often actively involved as neutral observers and court advisors; Meanwhile, in Indonesia, the practice of using child psychology test results as evidence is still inconsistent and has no legal basis that explicitly requires judges to consider it. Although there are no norms prohibiting its use, the absence of procedural regulations means that psychological results are often ignored or only used as a supplement, not as the main consideration.

CONCLUSION

In decision No. 57/Pdt.G/2022/PTA.Mdn, a couple who had officially divorced had two minor children, a boy aged 4 years and a girl aged 2 years and 11 months, as recorded in their birth certificates. In his ruling, the judge granted the claim of the plaintiff, who was the mother of the two children, to obtain *hadhanah* rights over the children. However, in the assessment process, the judge did not consider the results of the child psychology analysis which showed that the two children were traumatized by their own mother. In addition, the judge did not take into account the emotional closeness between the father and the children, which could have a positive impact on their development. The judge focused more on the arguments of the plaintiff's lawsuit without considering the relevant psychological aspects.

The judge's decision not to consider the results of the child's psychological test is contrary to the provisions in Law No. 1 of 1974 and the Compilation of Islamic Law (KHI), which state that parents or guardians can lose custody of children if they are negligent or misbehave, by court decision. In the best interests of the child, the judge should consider whether the person granted custody can properly care for the child, in order to support the child's optimal growth and development. For the protection and good of the child, the results of an official psychological analysis issued by a psychologist should be considered, especially if the child feels safer and more comfortable with the father. Judges should not only rely on Article 105 of the Compilation of Islamic Law as a fixed rule in determining child custody holders. The article is more general in nature and does not fully cover the interests of the child as a whole. With the existence of Law No. 35 of 2014 on Child Protection, which prioritizes children's rights, judges should prioritize the protection and welfare of children as a top priority. In this case, if the judge has difficulty conducting a psychological analysis related to the interests of the child, they should have the courage to submit expert witnesses from psychologists to provide stronger considerations in deciding who is more entitled to child custody. Thus, child custody can be given to the party that is better able to provide the best attention and protection for the child's development. [W]

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