

## Analysis of Legal Norms and Gender Equality in Relation to the Concept of Joint Custody for Minors

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### Abstract

*The application of custody rights in Indonesia generally uses sole custody. As stipulated in the Compilation of Islamic Law in Articles 105 and 156, priority for custody rights is automatically given to the mother. This is considered a problematic issue from a gender equality perspective, as child custody is not always monopolized by one gender but should consider aspects of quality, integrity, morality, and ability to fulfill the best interests of the child. At the same time, several court rulings in Indonesia have now established joint custody rather than sole custody. The purpose of this study is to re-examine the concept of joint custody of minor children as an effort and legitimization of the best interests of the child based on an analysis of legal norms and gender equality. This research is qualitative and uses a descriptive analytical method from library data sources. The results of this research can be concluded that joint custody is the granting of custody or care of the child to both parents alternately after divorce until both are required to take joint responsibility for their child. Although the granting of joint custody appears to deviate from existing provisions, it is not based on the provisions of the KHI but rather on the principle of the best interests of the child and the judge's legal interpretation. Furthermore, within the paradigm of gender equality, the role of men in contemporary society is equal to that of women, including in the care of minor children. This concept could serve as an alternative solution in resolving child custody disputes in Indonesia, simplifying the often complex and problematic process of determining custody rights.*

**Keywords:** *child, joint custody, gender equality, legal norms.*

## **INTRODUCTION**

Divorce cases in Indonesia continue to increase over time. After divorce, disputes can still occur, especially regarding child custody. So it can be understood that child custody is one of the branches or parts of family law that is an important concern after the divorce of a husband and wife. It is important and a concern after marriage because child custody is an issue that concerns the fate and future of the child. The relationship between the two parents may break up but the relationship between the parents and their children cannot be broken because both parents and children have a blood relationship that will never be interrupted forever. In the issue of child custody in Indonesia tends to apply single custody. This tendency is based on the regulation in marriage law in Indonesia does not regulate joint custody. Law Number 1 of 1974 Concerning Marriage does not specifically explain in the content of its articles about joint custody. Meanwhile, in other regulatory provisions, the Indonesian government has regulated the provisions of sole custody of children in the content of the articles of the Compilation of Islamic Law. The Compilation of Islamic Law is a guide or legal reference for judges in deciding cases, including with regard to child custody. Child custody rights in the Compilation of Islamic Law (KHI) have been regulated in Article 105 and Article 156, which explicitly states that if the child resulting from the marriage is not yet *mumayyiz*, it is automatically mentioned in the context that it is given to his mother, and if the child is *mumayyiz* or at least 12 (twelve) years old the child can choose to choose the mother or father. (Saraswati, 2021, pp. 118-210)

The regulation of sole custody of children in the Compilation of Islamic Law seems to be more indulgent to mothers, spontaneously the custody of children is given to the mother while a father must bear the costs of such care. A mother must be optimistic that the custody of the child is definitely given to her. Likewise, the ins and outs of the articles on child custody firmly support it. The content of the article is considered problematic, appearing to tend to provide child custody based solely on gender. In fact, the granting of child custody should not only be seen from gender alone like the functional structural theory that men are hunters and women are gatherers. The granting of child custody should look at the quality, integrity, morality, and ability to realize the best interests of the child. Therefore, in regulating child custody and in practice, there is often a conflict between the application of the rules of the single child custody article which is automatically given to the mother as in Articles 105 and

156 of the Compilation of Islamic Law with the legal norms of child custody based on the best interests of the child. Of course, these intersections and differences in arrangements have an impact on the decisions of judges in various courts in Indonesia. In addition, in the trial process by prioritizing the legal norms of the best interests of the child, it must be proven with clear evidence, including tracing the track records of the two parents of the child. (Khair, 2020, pp. 291-300)

Nowadays, a new concept of determining child custody in family law has emerged, namely joint custody. Joint custody is seen as an effort that can simplify the complicated and problematic process of determining custody in Indonesia. Joint custody rights are very attractive to both parties, both former husbands and wives can cooperatively provide for, care for, protect, educate and both can be responsible for the growth and development and best interests of their children. However, in the application in Indonesia, child custody does not yet have a clear legal basis or basis. The Marriage Law and the Compilation of Islamic Law do not clearly regulate joint custody, and one of them is more likely to prioritize sole custody. At the same time, several judicial decisions have been found in the Religious Courts that determine joint custody. This research tries to analyze and examine the legal basis that regulates joint custody for minors. In addition, this study tries to analyze the philosophy of gender equality towards the application of joint custody for minors. (Saputra & Mulyana, 2022, p. p. 10)

As far as researchers read regarding joint custody rights for children, there are several previous studies that are relevant to this research, including: *First*, the research of Mohamad Ikbal Rifqi and Melani Intan Safitri in their journal work entitled "Granting Joint Custody Rights in Resolving Child Custody Disputes in Indonesia: A Maslahah Mursalah Perspective. The essence and results of this research explain that the judge's consideration in determining joint custody is not based on the Compilation of Islamic Law, but on the norm of the best interests of the child with a legal interpretation based on Law Number 35 of 2014 concerning Child Protection. In determining joint custody, the judge must first look at the track record of both parents before establishing joint custody. If one of the parents behaves badly, it is better to have sole custody. (Maulana & Safitri, 2024, p. p. 92)

*Second*, Natsir Asnawi's research in his journal entitled "Application of the Shared Parenting Model in Resolving Child Custody Disputes". The essence and results of the

discussion in this study explain that in general, Indonesia still applies child custody separately (single) or patronese. Patronese in determining child custody is divided into two, namely normative patronese as in Article 105 of the Compilation of Islamic Law and patronese the best interests of the child based on the jurisprudence of the Supreme Court. The joint custody mediates the difference between these two patronese. (Asnawi, 2019, p. p. 61)

*Third*, Rika Saraswati's research in her journal entitled "Fulfillment of Children's Rights in Indonesia Through Planning, Single Parenting and Joint Parenting". The essence of the results of this study explains that the concept of joint parenting or custody has replaced sole custody. This is because sole custody is considered less favorable to gender equality. With regard to joint custody, the court does not have a policy or guidance for judges regarding mandatory couples to make a joint parenting plan after divorce. (Saraswati et al., 2021, p. p. 199)

Previous studies as described have become a comparison in this study. The significance of this research focuses on the concept of joint custody for minors, previously relevant to the concept of parenting in Indonesia, namely the concept of sole child custody, while there are findings that judges have placed joint custody for minors. This clearly deviates from the provisions of the Compilation of Islamic Law (KHI). Therefore, this research tries to explore the legal basis used by judges and analyze it based on legal norms and gender equality. The purpose of this research is to review the concept of joint custody for minors as an effort and legitimization of the best interests of children based on the analysis of legal norms and gender equality. Therefore, the systematic discussion in this research is organized as follows: First, the concept of joint custody for minors. *Second*, the analysis of legal norms on the custody of minors. *Third*, gender equality analysis of joint custody rights for minors.

This research uses a qualitative descriptive method. (Mundir, 2013, p. 51) Qualitative descriptive means, namely the research method by analyzing the data extensively and describing it as a result of in-depth analysis in a paragraph description or writing (non-number). The data collection technique used in this research is a *library research* technique on data that has relevance in this research study. (Muhaimin, 2020, p. 64) The data referred to as primary data are several documents of judges' legal decisions that have permanent legal force in several Religious Courts in the territory of Indonesia and laws and regulations in force in Indonesia. Meanwhile, secondary data in this study include scientific journals,

reference books, and other data. In connection with the theme of this research regarding the study of child custody after divorce, especially the study of legal norms and gender equality towards joint custody of minors after divorce that has been decided in several court decisions. Therefore, this research uses several research approaches, namely a *case* approach, a *statute* approach and a *philosophical* approach. (Muhaimin, 2020, p. 57) As an initial step in the research, the researcher uses a *case* approach to the phenomenon of cases resolving joint custody disputes for minors after divorce. This phenomenon is increasingly becoming the center of attention and is interesting as a study in the norms or rules of law, so this research uses a statutory approach. In addition, used in this research is a philosophical approach in its implementation to philosophically examine gender equality towards the phenomenon of joint custody of minors. This research is expected to be a theoretical and practical reference for judges in an effort to simplify the complicated process of resolving custody disputes in Indonesia. (Muhaimin, 2020, p. 57)

## **RESULTS AND DISCUSSION**

### **The Concept of Joint Custody for Minors**

Child custody is an issue in the field of family law that is quite massive and gets the attention of couples who have been divorced. Children's rights still need to be protected and fulfilled even though both parents have been officially divorced. This indicates that the existence of child care or custody is none other than to maintain the best interests of the child. Generally in Indonesia, child custody is almost certainly a right given to the biological mother of the child. This is because Indonesia adheres to a single child custody system and there are provisions / rules that specifically regulate post-divorce child custody which are automatically given to the mother (for children under the age of 12 (twelve) years), this is as regulated in Article 105 of the Compilation of Islamic Law (KHI). However, in its development, there was a change in the concept of child custody from the original concept of single parenting to joint parenting. This concept does sound biased in the legal order in Indonesia, because in the legal order in Indonesia regarding joint custody for minors in Indonesia has not been officially regulated and contained in the law. However, this condition does not cover the possibility of applying the joint custody system for children in divorce

cases in Indonesia. As in several divorce cases in Indonesia, several judges' decisions decided joint custody for children under the age of 12 (twelve) years. (Meliani & Jaya, 2022, p. p. 60)

Joint custody is the granting of custody or maintenance of children to both parents in turn after divorce until both are charged with joint responsibility for their children . This concept was first applied in the United States around 1940-1950s. It was first applied in America as a response to the increasing number of divorces that did not allow children to be raised and spend time with single parents. Another term for this concept is *co-parenting*. *Co-parenting* is an attempt by parents to make their children happy by agreeing after their divorce to share *parenting* time as a form of cooperation even without marital ties. Indeed, the care or joint custody of this child is emphasized for the good, benefit, and guarantee of the child's future which must be tried as much as possible by his biological parents, not a view that places the child as an object of rights from the dispute "his mother's property" or "his father's property" but "joint property and joint responsibility". (Asnawi, 2019, p. p. 73) In addition, according to Asnawi (2019, p. p. 73). 73) In addition, according to Marsha Kline and Kathy Hoganburg in their journal work entitled "*Joint Custody and Shared Parenting*", it is explained that it should be noted that the concept of joint custody requires a therapeutic focus to improve family emotional relationships, especially for former husbands and wives, must be maintained and can minimize their respective selfishness which can interfere with and have an impact on children. (Kline, 1998, p. p. 291)

The concept of joint custody of children is divided into two parenting patterns, namely the division of physical custody and the division of custody based on responsibility. *First, the* physical division of custody means that both parents agree to divide the time to care for their children according to the needs and best interests of the child. For example, with a division pattern of 50% - 50%, 60% - 40%, or 70% - 30%. Thus, each parent after their divorce can be responsible for the best interests of their children. *Second, the* division of parenting based on responsibility for determining the education, health care, and needs of the child for his future. (Meliani & Jaya, 2022, p. p. 60)

Muhammad Awaluddin Jauhari in his research work entitled "*Muhammad Awaluddin Jauhari, 'Conception of Joint Custody of Minors' Custody Rights (Analysis of the Decision of the Gedong Tataan Religious Court No. 0334/PDT.G/2019/PA.GDT)*" as he quoted in his opinion Judge Rulan in the Kansas Court of Appeals that Joint custody rights are the legal designation for both parents who equally make decisions in the best interests of the child. This custody right

is divided into 2 (two) patterns, namely time-based division and joint responsibility." (Jauhari, 2021, p. p. 51) Joint custody for minors is certainly good for the growth and development and good interests of the child. The child can get the opportunity to return to live and develop with both parents based on time sharing so that the child will not feel one of his parents. That way, the child's development can be more assured. This concept emphasizes a good working relationship between the child's father and mother.

### **Analysis of Legal Norms Against Joint Custody for Minors**

The issue of custody in Indonesia is of great concern to many people, especially for husband and wife after their divorce. This becomes problematic when the legal provisions in Indonesia establish the concept of sole custody which is automatically given to the mother figure for minors. A number of articles regarding the ins and outs of child custody explicitly pamper a mother, in other words, the mother as the owner of the custody of minors while the father is responsible for the costs of caring for the child. However, these articles may be overridden or not used in certain circumstances. However, even though these articles may be overridden or not used in certain circumstances, the best interests of the child must always be upheld over the interests of both parents. Nowadays, there is a new concept of child custody that is infused from the United States legal concept, namely the concept of joint custody for minors. Specifically, the concept of joint custody in Indonesia has not yet become a regulation in law. This is because this concept is relatively new and it is not known when it emerged. Joint custody emphasizes the dynamic efforts of both parents after divorce to continue to jointly educate, maintain, and ensure the growth and development of the child. Indeed, a child, especially a minor, really needs complete love from both parents. (Asnawi, 2019, p. p. 62)

Joint custody with the division of joint responsibilities between the two parents and the division of parenting time must always consider the best interests of the child. The best interests of the child are central and basic in the administration of parenting. The principle of the best interests of the child is based on the provisions of Article 3 paragraph (1) of the Convention on the Rights of the Child as follows: (Bangsa, n.d.)

*"In all actions concerning children undertaken by public or private social welfare institutions, judicial institutions, government agencies or legislative bodies, the best interests of the child shall be a primary consideration".*

Based on the material content of the article above, it is known that the elements in the article are "all actions concerning children" and as actors "public or private social welfare institutions, judicial institutions, government agencies or legislative bodies". The content of this article forces and emphasizes all countries to ratify the results of the child's covenant and make a number of rules for the benefit of the child. Some of the real work results of ratifying the results of the child rights convention in Indonesia are several regulations regarding children, including child protection laws, juvenile justice, elimination of domestic violence, and others. One of them is the child protection law regarding the best interests of children in the law has been regulated in Article 2 of the Child Protection Law, as follows: (RI, 2014, p. p. 3)

*"The implementation of child protection is based on Pancasila and based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child, including: 1. non-discrimination; 2. the best interests of the child; 3. the right to life, survival, and development; and 4. respect for the opinion of the child".*

Based on the material content of the article above, it is clear that paragraph (2) states the best interests of the child. Protection carried out by state institutions must certainly prioritize the best interests of the child. In addition, Article 14 Paragraph 1 of the Child Protection Law also contains the principle of the best interests of the child. This article states as follows: (RI, 2014)

*"Every child has the right to be cared for by his or her own parents, unless there are valid reasons and/or legal rules showing that the separation is in the best interests of the child and is the last consideration."*

Responding to several provisions of the article regarding the best interests of the child, judges usually use legal interpretation methodology in their legal considerations. Legal interpretation is a form of interpretation that sees the entire law in a country as a whole, which is not separated or does not conflict with one another. (Asnawi, 2019, p. p. 60) So that in determining joint custody of children based on the principle of the best interests of the child based on the methodology of legal interpretation of the provisions of the law regarding the principle of the best interests of the child. As the best interests of the child are the main thing and as the main reference in granting joint custody for minors, judges in determining joint custody must believe in several things including: *First*, the maintenance of the child's education. *Second*, ensuring that the child receives affection from both parents. *Third*, ensuring

the fulfillment of children's rights and needs. *Fourth*, caring for children's emotions. *Fifth*, minimizing the impact of divorce on child development. (Maulana & Safitri, 2024, p. p. 103)

Actually, joint custody of minors can also be done through the process of joint parenting planning in the mediation process. After mediation, the results of the joint custody agreement can be outlined in a joint agreement or agreement. As it is known that the nature of mediation is not the same as the nature of a judge's decision, in mediation the parties can come up with ideas and agreements together with a *win-win solution*. The mediation process encourages the parties to work together and come up with the best solution for both. So, with this mediation process both parties can agree to apply for joint custody of their children after divorce. (Ananda & Rizkianti, 2024, p. p. 359) It is recommended that joint childcare planning efforts can be carried out by both parents of children at the mediation stage, this is considering that in this mediation process it will simplify the process of resolving disputes between the two parents of children after their divorce, in other words, mediation by both parties can simplify a dispute brought to court. Mediation arrangements in dispute resolution, including in this case child custody disputes, are based on mediation rules in Indonesia, namely Supreme Court Regulation Number 1 of 2016 concerning Media Procedures. (Saraswati et al., 2024, pp. 359) In addition to efforts for joint custody of minors that can be done at the mediation stage, so far there have been several court decisions that have decided on joint custody of minors. Researchers found several examples of cases regarding joint custody for minors as follows:

**Table. Comparative Data of Judges' Decisions on Joint Custody of Children**

No	Decision Number	Child Custody	Percentage
1	5162/Pdt.G/2020/PA.Badg	One Month Alternating	50% - 50%
2	646/Pdt.G/2020/PA.Blk	Monday - Friday (Father) Saturday - Sunday (Mother)	70% - 30
3	5162/Pdt.G/2020/PA.Bdg	One Month Alternating	50% - 50%
4	0334/Pdt.G/2019/PA.Gdt	Custody of 4 year old child Monday - Friday (Father) Saturday - Sunday (Mother)	70% - 30%

**Source: Data Managed by Researchers**

The judge's decisions as mentioned above have clearly stipulated joint custody rights for minors with percentages that have been determined based on the judge's legal considerations in the facts found at trial. Although it does not appear to deviate from the rules of the actual article in the Compilation of Islamic Law (religious court guidelines), the actual joint custody of minors, especially as in several examples of judges' decisions in the

Religious Courts that have permanent legal force, does not use or make legal references to Article 105 and Article 156 of the Compilation of Islamic Law (KHI) but on other considerations and efforts or the principle of the best interests of the child. The principle of the best interests of the child is the main thing in the focus of resolving child custody disputes that must always be considered in court. This principle is based on Article 2 of Law Number 23 of 2002 concerning Child Protection which has now been amended to Law Number 35 of 2014 concerning Child Protection, as follows: (RI, 2002, p. 4)

*The implementation of child protection is based on Pancasila and is based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child, including: First, non-discrimination; Second, the best interests of the child; Third, the right to life, survival, and development; and Fourth, respect for the opinion of the child.*

The principle of the best interests of the child has clearly been regulated as a focus part that must be prioritized in a child protection legislation. So even if the child's parents are divorced or the relationship between the father and mother has ended (breakup / divorce), the child's relationship with both parents remains unbroken and will never break. The best interests of the child become the top priority even if the parents have officially divorced. Both parents of a child who have officially divorced still maintain *parental responsibility*, namely all the rights, obligations, powers, responsibilities, and authority that parents have over a child. In other words, both parents have the same responsibility for the care of the child resulting from their marriage even though they are officially divorced. Referring to the data table of judges' decisions in several religious courts as above, the determination of joint custody is based on the pattern of sharing joint responsibility between the two parents and the division of time to live together. As in the distribution of time presentation, in the court decision both parents are distributed time to live with the child with a predetermined percentage share as a sample of the judge's decision above. (Saraswati et al., 2024, p. 352)

The sharing of joint custody time as stipulated by the ratio that has been determined for both parents reaps positive opinions and is considered to have a beneficial impact on children compared to the single child custody model. Some positive values for joint custody of children include: the level of child depression tends to be lower due to the impact of the divorce of both parents, school achievement and cognitive development of children tends to be better, and the child's relationship with both parents can be maintained. (Saraswati et al., 2024, p. p. 352) However, in its application in Indonesia, joint custody rights are still relatively minimal. The reason is that there are no real and clear rules governing joint custody. It is important for joint custody rights to be regulated in legislation. (Meliani, 2022, p. p. 273)

### ***Gender Equality Analysis of Joint Custody Rights for Minors***

Child custody rights basically have a noble goal, namely for the good of the child. The principle of the good interests of children is the principle that underlies the fulfillment of children's rights. If this principle is not fulfilled, children's rights are automatically

considered unfulfilled. Generally, custody of minors is given and becomes the mother's right to care for them. A mother's position is given top priority for the care of her child after divorcing her ex-husband because a mother has the characteristics of tenderness, affection needed for the growth and development of her child. In addition, in the figure of a mother there is a nature where as a sexual division of labor that cannot be violated such as pregnancy, childbirth, breastfeeding, and raising children. These conditions are certainly natural (*nature*) based on nature that cannot be denied. However, the implications for child custody of the mother's nature as a woman are considered problematic if child custody is automatically given directly only to the mother (based on gender/sex). In other words, the role of childcare is not solely based and monopolized on the consideration of one sex/sex alone, which ultimately leads to the discussion of gender. The concept of gender should not be based on an understanding that is only normative and categorized as sex/sex (biological) but on qualities and *skills* based on social conventions. (Rofiah, 2015, p. p. 95)

Childcare should be seen not only in the aspect of sex / sex alone as befits the mother is referred to only as a gatherer while the father is only a hunter. However, the provision of care or custody of children must be based on quality, integrity, morality, and ability to realize the best interests of the child. The position as a child caregiver certainly has important responsibilities and roles for children. Child custody holders are obliged to nurture, maintain, and educate children to grow into children with morals, religion, integrity, and morality. Thus, the quality aspects and the ability to educate children cannot be monopolized based on a particular gender but all of these aspects can be owned by all genders, both women and men. (Fanani, 2017, p. p. 161)

Nowadays, there is an issue or paradigm of justice or gender equality, which usually means that both men and women enjoy the opportunity to feel equal rights and responsibilities in all areas of life. The gender equality paradigm places women in many ways equal to men. Indirectly on the contrary, men are equal to women. Indeed, the role dichotomy between men and women (men as hunters and women as gatherers / men in public roles and women in domestic roles) is actually not the absolute will of the religious doctrine and must be implemented. Rather, it is produced by the social construction of gender in society. (Rofiah, 2015, p. p. 96)

Gender equality theory that places equal roles between men and women both equal rights and responsibilities in all areas of life. This kind of theory seems to be drawn in the

context of parenting or child custody, strictly based on gender equality, the role of men today is equal to women and is no exception in terms of caring for minors even after divorce with his ex-wife. When a post-divorce couple fights over child custody, both must realize that childcare is not just a matter of who the child goes to and is raised by, but the interests of the good of the child need to be prioritized above all else and view both as having an equal role. (Asmui Syarkowi, 2022, p. p. 3)

Today's society is no longer the society of the pre-industrial era. As structural functionalist theory recognizes, there is a division of labor tasks based on gender where men are hunters and women are gatherers. This means that as hunters, men are mostly outside the home and are responsible for preparing food for the family (public). While the gatherer, women are more limited around the house in matters of reproduction, conceiving, nurturing, and breastfeeding (domestic). This division of labor has functioned effectively for society in the pre-industrial era. Whereas today contemporary society has undergone many changes and adjustments. So that this kind of theory along with the development of gender does not always have to be emphasized in its application. (Rahim, 2015, p. p. 92) Even according to Siti Rofiah in her journal work entitled "*Building Patterns of Family Relations Based on Gender Equality and Justice*", explains that the concept of division of labor as intended will always experience shifts along with the social conditions of society. (Rofiah, 2015, p. p. 98)

Matters of gender and gender equality are constantly changing from time to time; different from society to other societies; and from certain classes to other classes. So, by therefore there is a need for adjustment. Gender issues are closely related to the thoughts or expectations of society (*socio-cultural*) about how a man should be and how a woman should be. So that with this kind of thinking seeks to be a differentiator in terms of roles, behavior, mentality, characteristics of men and women who develop in society. Once again, that gender is very ever-changing from time to time and society to a particular society, as well as along with the development of changes in the attitude and behavior of society is always changing. So that the care or custody of minors in the past based on gender perspectives cannot be equated today after society has developed attitudes, behaviors, and conditions. So that structural functionalist theory should not always have to be an emphasis and guideline for child custody, especially minors. (Fanani, 2017, p. p. 167) In addition, it does not rule out the possibility of applying the concept of joint custody to minors.

When examining the opinions of the generality of the rules that have been regulated in Indonesia, for example Articles 105 and 156 of the Compilation of Islamic Law (KHI), the basis for taking these legal provisions comes from the opinions of the majority of Islamic law experts in the classical era without contextualizing and interpreting repeatedly adjusted to the conditions and demands of today's society. In general, the opinions of experts that are impregnated in the provisions of the Compilation of Islamic Law are based on gender, namely that women are more patient, gentle, compassionate, and have more time to educate children. Whereas one day the conception of women might change. The conception of women being more patient, gentle, affectionate, and having more time to educate children is a form of socio-cultural or gender perception that will always continue to change. In addition, examining the relationship and position of men and women should be very possible to change. This is based on the perception of society which over time towards gender is very likely to change. It is possible that in the future there will be efforts from both men and women to demand equality and build relationships (relationships) and equal opportunities without exception in the issue of post-divorce child custody provisions. Fighting for equality and building relationships and equal opportunities does not mean contradicting the natures of the two different sexes. (Susanto, 2015, p. p. 128) Equality and building relationships and opportunities should be as open as possible for both men and women, without exception to obtaining child custody after divorce.

So that the renewal of child custody provisions which are automatically only for women in the Compilation of Islamic Law, should be reformed so that the position of women and men is the same and not automatically the custody of minors is given and becomes the custody of the mother. Of course, this should start from updating the provisions on the rules of relations and responsibilities of men and women. (Fanani, 2017, p. p. 162)

## **CONCLUSION**

Joint custody is the granting of custody or maintenance of children to both parents in turn after divorce until both are charged with joint responsibility for their children. This concept of custody has two patterns of care, namely the division of physical custody and the division of custody based on responsibility. Generally in Indonesia, joint custody still sounds taboo and new in religious courts, especially in resolving child custody disputes, which are

generally decided singly following the provisions of the Compilation of Islamic Law. In other considerations, joint custody is not based on the provisions of the Compilation of Islamic Law but in the legal interpretation of judges, and is based on the provisions of child protection legislation which focuses on the best interests of children, especially in the process of resolving child custody disputes. In addition, based on the perspective of gender equality, both women and men are seen as equal. In the context of child care or custody, explicitly based on gender equality, the role of men today is equal to women and is no exception in terms of caring for minors even after divorce with his ex-wife. Therefore, men (fathers) can also have the same rights as women (mothers) to care for children with the concept of joint custody. Through this research, it is hoped that in the future there will be rules regarding joint custody of minors, so as to simplify efforts to resolve prolonged child custody disputes in court.

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