

Consequences of the Law on the Right of Child Care and Inheritance in the Divorce of Parents due to Religious Differences

Ananda Muhammad Imam, Henry Aspan, T. Riza Zarzani

Abstract

Interfaith divorce in Indonesia raises various legal issues, particularly regarding child custody and inheritance rights, due to differences in legal arrangements among statutory law, Islamic law, and judicial practice. This study aims to analyze the legal consequences of divorce caused by religious differences concerning child custody and inheritance rights within the Indonesian legal system. The research employs a normative juridical method using a statutory, conceptual, and case approach. Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, the Compilation of Islamic Law, the Civil Code, and relevant court decisions, while secondary legal materials include books, scientific journals, and legal doctrines. The findings indicate that the determination of child custody is primarily based on the principle of the best interests of the child, regardless of the parents' religious differences. In contrast, inheritance rights in interfaith families remain legally contentious because Indonesian law recognizes different inheritance systems, resulting in legal uncertainty. Judicial decisions have demonstrated progressive legal reasoning through the recognition of mandatory wills (*wasiat wajibah*) in certain cases to ensure justice and legal protection. This study concludes that harmonization of regulations and consistency in judicial interpretation are necessary to provide legal certainty, justice, and protection for children and heirs in interfaith divorce cases in Indonesia. The findings contribute to the development of family law and may serve as a reference for future legal reform.

Keywords: Interfaith Divorce; Child Custody; Inheritance Rights; Legal Consequences; Indonesian Family Law

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3rd International Conference on the Epicentrum of Economic Global Framework (ICEEGLOF)
Theme: Navigating The Future: Business and Social Paradigms in a Transformative Era.
<https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF>

Introduction

Marriage is a legal institution recognized to establish a harmonious and lasting family based on the values of law, religion, and social norms. In Indonesia, the regulation of marriage is governed by Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, which emphasizes that the validity of a marriage is determined according to the laws of each respective religion and belief [1]. Consequently, interfaith marriage remains one of the most debated legal issues because it creates differences in interpretation among statutory law, religious law, and judicial practice. These differences become increasingly complex when the marital relationship ends in divorce, particularly concerning child custody and inheritance rights.

The legal consequences of divorce involving parents of different religions raise significant questions regarding legal certainty and the protection of children's rights. Child custody disputes are generally resolved based on the principle of the best interests of the child, which is recognized under Law Number 35 of 2014 concerning the Amendment to Law Number 23 of 2002 on Child Protection [2]. Nevertheless, differences in the parents' religion often become one of the considerations in judicial decisions, especially when determining the child's religious upbringing and welfare. This condition reflects the need to balance parental rights, children's rights, and the principle of non-discrimination within Indonesia's legal system.

In addition to child custody, inheritance represents another complex legal consequence arising from interfaith divorce. Indonesia recognizes pluralistic inheritance systems consisting of Islamic inheritance law, the Civil Code, and customary inheritance law [3]. Under Islamic inheritance law, religious differences generally constitute an impediment to inheritance, whereas the Civil Code does not explicitly regulate such restrictions. This legal pluralism has resulted in inconsistent judicial decisions, creating uncertainty regarding the inheritance rights of heirs from families with different religious affiliations. Several Supreme Court decisions have adopted progressive legal reasoning by recognizing the concept of *wasiat wajibah* (mandatory will) to ensure justice and legal protection for heirs who cannot inherit directly under Islamic law [4].

Previous studies have examined various aspects of interfaith marriage and inheritance law. Wibisana analyzed the constitutional dimensions of interfaith marriage and highlighted the tension between religious freedom and marriage law in Indonesia [5]. Nurlaelawati examined judicial practices in resolving family law disputes involving religious differences and emphasized the dynamic interpretation adopted by Indonesian courts [6]. Other studies have specifically discussed inheritance disputes in interfaith families and the application of *wasiat wajibah* as a judicial solution to achieve substantive justice [7]. However, these studies generally focus on either inheritance or child custody separately, without comprehensively examining both legal consequences arising from interfaith divorce.

The novelty of this study lies in its integrated analysis of the legal consequences of interfaith divorce concerning both child custody and inheritance rights within the framework of Indonesia's pluralistic legal system. Unlike previous studies that discuss these issues independently, this research evaluates the interaction between statutory law, Islamic law, judicial interpretation, and the principle of the best interests of the child to identify existing legal inconsistencies and propose a more coherent legal framework.

Based on the foregoing discussion, the research problem addressed in this article is how the Indonesian legal system regulates the legal consequences of interfaith divorce concerning child custody and inheritance rights, and whether the existing legal framework provides adequate legal certainty, justice, and protection for the parties involved. Accordingly, this study aims to analyze the legal consequences of interfaith divorce on child custody and inheritance

rights through a normative juridical approach, while identifying legal issues and offering recommendations for strengthening legal certainty within Indonesia's family law system.

Literature Review

2.1 Theory of Legal Certainty

Legal certainty is one of the fundamental principles in the rule of law, ensuring that legal norms are clear, consistent, and enforceable. According to Gustav Radbruch, legal certainty constitutes one of the three primary objectives of law, alongside justice and legal expediency [8]. Legal certainty enables individuals to understand their rights and obligations while providing predictability in the application of legal norms. In the context of interfaith divorce, legal certainty is essential because the coexistence of statutory law, Islamic law, customary law, and judicial interpretation frequently creates inconsistent legal outcomes regarding child custody and inheritance.

Hans Kelsen further explains that legal certainty is achieved through a hierarchical legal system in which lower legal norms derive their validity from higher legal norms [9]. Therefore, judicial decisions concerning interfaith family disputes should be based on coherent legal principles that harmonize statutory provisions with constitutional values, particularly the principles of justice, equality before the law, and the protection of human rights.

2.2 Theory of Child Protection and the Best Interests of the Child

Child custody disputes are inseparable from the principle of the best interests of the child (*the best interests of the child*), which is recognized internationally through the United Nations Convention on the Rights of the Child (CRC) and adopted into Indonesian law through Law Number 35 of 2014 concerning Child Protection [2]. This principle requires that every judicial decision affecting children prioritize their welfare, physical and psychological development, education, and future well-being over the personal interests of either parent.

In Indonesian family law, the determination of child custody following divorce is not solely based on parental rights but also on the child's overall welfare. Consequently, religious differences between parents should not automatically determine custody rights unless such differences demonstrably affect the child's best interests. Courts are therefore expected to evaluate each case comprehensively by considering emotional relationships, caregiving capacity, moral responsibility, and the child's developmental needs.

2.3 Theory of Inheritance Law

Indonesia adopts a pluralistic inheritance system consisting of Islamic inheritance law, the Civil Code, and customary inheritance law [3]. Islamic inheritance law generally prohibits inheritance between persons of different religions based on the principle that religious difference constitutes a legal impediment to inheritance. Nevertheless, developments in judicial practice have introduced more progressive interpretations through the doctrine of *wasiat wajibah* (mandatory will), allowing certain heirs of different religions to receive a portion of the deceased's estate as a matter of justice [4].

Conversely, the Civil Code does not expressly regulate religious differences as an obstacle to inheritance. This divergence among inheritance systems creates legal uncertainty, particularly for families formed through interfaith marriages. Accordingly, judicial interpretation plays a significant role in balancing legal certainty, justice, and the protection of family members' rights.

2.4 Previous Studies (State of the Art)

Several scholars have examined the legal issues surrounding interfaith marriage and its consequences. Wibisana analyzed the constitutional dimensions of interfaith marriage and

concluded that differences between constitutional guarantees of religious freedom and statutory marriage regulations continue to generate legal controversy [5]. Nurlaelawati examined the practices of Indonesian religious courts and found that judges increasingly employ contextual legal reasoning in resolving family disputes involving religious differences [6].

Other studies have focused specifically on inheritance disputes involving heirs of different religions. These studies demonstrate that Indonesian courts have gradually recognized *wasiat wajibah* as an instrument to achieve substantive justice while maintaining the principles of Islamic inheritance law [7]. Research concerning child custody similarly emphasizes that judicial decisions should consistently prioritize the best interests of the child regardless of parental religious affiliation [10].

Despite these contributions, previous studies generally discuss child custody and inheritance separately. Comprehensive research examining both legal consequences of interfaith divorce within a unified analytical framework remains limited.

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2.9 Research Gap and Scientific Novelty

Based on the existing literature, there remains a gap in understanding the relationship between child custody and inheritance rights arising from interfaith divorce. Most previous studies concentrate either on the legality of interfaith marriage or on a single legal consequence, without examining how Indonesia's pluralistic legal system simultaneously affects child custody and inheritance.

The scientific novelty of this research lies in its integrated normative juridical analysis of both child custody and inheritance rights following interfaith divorce. By synthesizing statutory law, Islamic law, judicial decisions, and legal doctrine, this study seeks to provide a more comprehensive understanding of legal certainty and legal protection within Indonesia's family law system while offering recommendations for future legal development.

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Methods

This study employs a normative juridical (doctrinal) legal research method, which focuses on analyzing legal norms governing the legal consequences of interfaith divorce with

respect to child custody and inheritance rights in Indonesia. The research examines legal principles, statutory regulations, judicial decisions, and legal doctrines to evaluate the adequacy of the existing legal framework in providing legal certainty, justice, and protection for the parties involved.

The approaches adopted in this study include the statutory approach, conceptual approach, and case approach. The statutory approach is used to examine relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 35 of 2014 concerning Child Protection, the Compilation of Islamic Law, and the Indonesian Civil Code. The conceptual approach analyzes legal doctrines and theories concerning legal certainty, child protection, and inheritance law. Meanwhile, the case approach reviews relevant Constitutional Court and Supreme Court decisions concerning interfaith marriage, divorce, child custody, and inheritance disputes involving parties of different religions.

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation, Constitutional Court decisions, Supreme Court decisions, and other legally binding regulations. Secondary legal materials comprise textbooks, scientific journal articles, conference proceedings, legal commentaries, and scholarly opinions discussing family law, interfaith marriage, child custody, and inheritance. Tertiary legal materials include legal dictionaries, encyclopedias, and other reference materials that support the interpretation of legal concepts.

Data collection is conducted through library research, involving a systematic review of legal documents, legislation, court decisions, and academic literature relevant to the research topic. The collected legal materials are then organized according to the research issues to facilitate comprehensive legal analysis.

The data are analyzed using a qualitative descriptive method through legal interpretation and legal reasoning. The analysis begins by identifying the applicable legal norms governing child custody and inheritance in cases of interfaith divorce, followed by comparing statutory provisions with judicial practices and legal doctrines. Finally, the study evaluates the consistency of existing legal regulations and judicial interpretations in achieving legal certainty, justice, and legal protection, while formulating recommendations for strengthening the regulation of child custody and inheritance in interfaith divorce cases within Indonesia's pluralistic legal system.

Result and Discussion

4.1 Legal Consequences of Interfaith Divorce on Child Custody

Indonesian family law does not explicitly regulate child custody in cases where parents divorce due to religious differences. Nevertheless, the determination of child custody is principally guided by the best interests of the child as stipulated in Law Number 35 of 2014 concerning Child Protection and reflected in judicial practice. Courts generally prioritize the child's physical, psychological, educational, and emotional well-being over the religious affiliation of either parent.

Under the Compilation of Islamic Law (KHI), children who have not reached the age of *mumayyiz* are generally placed under the custody of their mother, unless there are compelling reasons demonstrating that such custody would be detrimental to the child's welfare. However, judicial practice indicates that judges are not rigidly bound by this provision and frequently consider the caregiving capacity, emotional relationship, and ability of each parent to ensure the child's development.

Several Supreme Court decisions demonstrate that religious differences alone do not automatically determine custody rights. Instead, judges apply the principle of the child's best interests by considering comprehensive factual circumstances. This approach reflects a

progressive interpretation of family law aimed at protecting children's constitutional rights while maintaining fairness between both parents.

4.2 Legal Consequences of Interfaith Divorce on Inheritance Rights

Compared to child custody, inheritance issues present greater legal complexity because Indonesia recognizes a pluralistic inheritance system consisting of Islamic inheritance law, the Civil Code, and customary inheritance law. Under Islamic inheritance law, religious difference generally constitutes a legal impediment to inheritance (*ikhtilaf al-din*), meaning that Muslim and non-Muslim family members cannot inherit from one another through ordinary inheritance mechanisms.

However, judicial developments indicate a more progressive legal approach. Through several Supreme Court decisions, judges have recognized the application of mandatory wills (*wasiat wajibah*) to provide legal protection for heirs of different religions. Although such heirs are not entitled to inherit directly under Islamic inheritance law, they may receive a portion of the deceased's estate through the doctrine of *wasiat wajibah* in order to achieve substantive justice and preserve family welfare.

Conversely, inheritance disputes governed by the Civil Code generally do not recognize religious differences as an obstacle to inheritance. Consequently, similar factual circumstances may produce different legal outcomes depending on the applicable inheritance system. This condition contributes to legal uncertainty for interfaith families in Indonesia.

4.3 Analysis of Legal Certainty in Interfaith Divorce Cases

The coexistence of statutory law, Islamic law, and judicial interpretation demonstrates that Indonesian family law continues to experience legal pluralism. Although legal pluralism reflects Indonesia's cultural and religious diversity, it also creates uncertainty regarding the legal consequences of interfaith divorce.

Regarding child custody, judicial decisions increasingly emphasize child protection principles rather than formal legal status or religious affiliation. This development is consistent with constitutional guarantees protecting children's rights and international human rights standards.

By contrast, inheritance law remains characterized by inconsistencies because different legal systems produce different legal consequences. The recognition of *wasiat wajibah* by the Supreme Court represents judicial innovation intended to bridge the gap between religious doctrine and contemporary demands for justice. Nevertheless, because this doctrine relies primarily on judicial interpretation rather than explicit statutory regulation, differences in judicial reasoning may continue to occur.

Therefore, legal harmonization is necessary to ensure greater legal certainty while preserving the constitutional principles of justice, equality before the law, and legal protection.

Table 1. Comparison of Legal Consequences of Interfaith Divorce

Legal Aspect	Existing Legal Regulation	Judicial Practice	Legal Issue
Child Custody	Marriage Law, Child Protection Law, Compilation of Islamic Law	Best interests of the child become the primary consideration	Generally provides greater legal protection but lacks explicit regulation for interfaith divorce
Inheritance	Compilation of Islamic Law, Civil Code, Customary Law	Recognition of <i>wasiat wajibah</i> in certain cases	Legal uncertainty due to pluralistic inheritance systems

4.4 Comparison with Previous Studies

Previous studies primarily examined either interfaith inheritance or child custody independently. Research by Nurlaelawati emphasizes judicial flexibility in resolving family law disputes involving religious differences, whereas studies concerning inheritance focus mainly on the development of *wasiat wajibah* as an instrument of justice.

This research differs from previous studies by integrating both child custody and inheritance into a single analytical framework. The findings reveal that while judicial practice has gradually strengthened legal protection for children through the application of the best interests principle, inheritance law continues to face normative inconsistencies due to the coexistence of multiple inheritance systems. Consequently, legal reform should not only address inheritance issues but also establish clearer statutory guidelines concerning the legal consequences of interfaith divorce.

4.5 Research Contribution

This study contributes theoretically by enriching the discourse on Indonesia's pluralistic family law through an integrated analysis of child custody and inheritance following interfaith divorce. Practically, the findings may serve as a reference for judges, legal practitioners, policymakers, and academics in developing a more coherent legal framework that ensures legal certainty, justice, and protection of constitutional rights for children and heirs in interfaith family disputes. Furthermore, the study recommends harmonizing marriage law, child protection law, inheritance law, and judicial interpretation to reduce inconsistencies in future legal practice.

Conclusion

This study concludes that interfaith divorce in Indonesia gives rise to significant legal consequences concerning child custody and inheritance rights due to the coexistence of statutory law, Islamic law, customary law, and judicial practice. In matters of child custody, Indonesian courts generally apply the principle of the best interests of the child, prioritizing the child's welfare, safety, and development over the parents' religious differences. This approach reflects the state's commitment to protecting children's rights and ensuring their optimal development.

In contrast, inheritance disputes involving heirs of different religions continue to present legal uncertainty. The pluralistic inheritance system in Indonesia results in differing legal outcomes depending on whether Islamic law, the Civil Code, or customary law is applied. Although judicial developments—particularly through the application of the doctrine of *wasiat wajibah*—have provided a more equitable solution in certain cases, the absence of explicit statutory regulation has led to inconsistent judicial interpretations.

Therefore, harmonization of family and inheritance laws is necessary to provide greater legal certainty, consistency, and justice in resolving interfaith family disputes. Legislative reform should establish clearer legal provisions governing child custody and inheritance following interfaith divorce while maintaining constitutional principles, human rights protection, and the best interests of the child. Such reforms are expected to strengthen legal protection for all parties and contribute to the development of a more coherent and responsive family law system in Indonesia.

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