

# Child Custody after Divorce Laws in Malaysia: Muslim Parents and Children Perspective

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## ABSTRACT

*Child custody after divorce laws in Malaysia advocates sole custody as the main practice. Sole custody means the child will live with a parent and have contact with the other parent through access. The parent living with the child will also have parental responsibility. Social studies have suggested that sole custody generates problems that affect the best interests of the child. Some problems are lack of contact and the child being deprived of maintenance. Other countries have undergone legal reforms to better the situation through joint custody. Joint custody advocates sharing the child's residence and parental responsibility. Therefore, this article examines the experiences the selected Muslim parents and children faced regarding child custody. The experiences concern the legal process of divorce, child custody, the residence of the child and access, parental responsibility, and parental relationships. An important finding is the general recognition of joint custody by the Shari'ah courts, the parents, and the children. However, the recognition must be in line with the best interests of the child.*

**Keywords:** Access, Child Maintenance, Custody, Parental Responsibility



## **INTRODUCTION**

The laws in Malaysia, for instance, the Law Reform Act (Marriage and Divorce Act, 1976, the Islamic Family Law (Federal Territories) Act, 1984, and the other State Islamic family law enactments, recognise sole custody in child custody after divorce (Daleleer, Nurezan, & Akbar, 2018; Akbar, 2013; Zaleha, 2005; Mimi Kamariah, 1999; Ahmad, 1984; Ahmad, 1997). In sole custody, one party will live with the child and exercise parental responsibility. The other party will exercise access through contact with the child (Lamanna & Riedman, 2003; Strong, DeVault, Sayad, & Cohen, 2001; Cox, 1999). Sociological studies on sole custody demonstrate essential findings. In sole custody, the child mostly lives with the mother and has contact with the father (Lamanna & Riedman, 2003; Strong, DeVault, Sayad, & Cohen, 2001; Cox, 1999). However, this practice creates problems that affect the best interest of the child. Examples of the problems are lack of contact between the child and the father and the father's failure to provide the child with maintenance (Rowlingson & McKay, 2002; Bidwell & Mey, 2000). Some of the causes of the problems are the remarriage of the father, the father's resentment of not being awarded parental responsibility, and the low economic status of the father (Greene, Anderson, Hetherington, Forgatch, & DeGarmo, 2003).

Problems resulting from sole custody have influenced countries such as the United States of America, Canada, England, and Australia to adopt legal reforms through joint custody. Joint custody recognises the sharing of parental responsibility by more than one party. However, the residence of the child may be shared by more than one party based on the facts of the case (Rathus, 2007; Diduck & Kaganas, 2006; Greenberg, 2005; Bazzomo, 2002; Goubao, 2000).

The recognition of the laws in Malaysia towards sole custody raises several important issues concerning the findings of the sociological studies. The first is the issue related to the pattern of sole custody. The pattern verifies whether the residence of the child is frequently awarded to the mother and access to the father. It also determines whether access leads to problems such as lack of contact between the father and the child and non-fulfilment of child maintenance by the father. Besides, it investigates whether the problems are based on similar reasons, such as the remarriage of the father,

the father's resentment of not being afforded parental responsibility, and the low economic status of the father. Finally, more importantly, the question is whether there exists recognition of joint custody in Malaysia since the laws of the country favour sole custody. Therefore, this article concerns a study that examines the problems based on the Malaysian perspective involving the selected Muslim parents and children. The related findings concern experiences and challenges faced by the parents and the children regarding custody and visitation.

## **RESEARCH METHODOLOGY**

The study adopted the qualitative method. Discussions on the method concerned the informants, the sampling techniques, the instruments, the administration of the instruments, and the analysis of the information. The informants involved were nine Muslim divorced fathers, eight divorced mothers, and two children of divorce. The majority of the informants comprised of six divorced fathers, seven divorced mothers, and a child of divorce were under sole custody. The other divorced parents and a child of divorce were under joint custody.

The sampling techniques depended on the ability to obtain permission from the informants to obtain the relevant information. The techniques used in the study were of convenience and snowballing samplings. Under the convenience sampling technique, the number of the informants was based on convenience. The informants were obtained through personal contact with the courts, the welfare organisation, and colleagues. Under the snowballing sampling technique, the number of the informants was based on personal recommendation by the informants of the study. An informant would recommend his or her friends to be part of the study. The informant's friends would then become the informants of the study.

The instruments used in the study were unstructured questions. The questions comprised of issues concerning custody and access. The issues concerned legal process, arrangements, parental relationships, and responsibility. The administration of the questions was done through personal interviews with the informants. The informants were asked to narrate their experiences regarding the issues under the questions. The

experiences were recorded using handwritten techniques as permission were not granted from the informants to record their experiences. The personal interviews would normally last within an hour. There were no interruptions during the narration of the experiences regarding the issues unless further clarifications were needed from the informants.

The analysis of the information was done using qualitative analysis. The analysis involved the quality of the information based on the unstructured questions. The purpose of the questions was to recognise and appreciate the experiences and challenges faced by the selected informants regarding the issues. Therefore, the qualitative analysis manifested the use of thematic analysis from personal interviews.

## **BRIEF LITERATURE REVIEW**

Child custody after divorce writings are varied. For the purpose of the study, the writings involve the methods of study, approaches, the best interest of the child, and social writings. In the methods of study, the preferred methods are the doctrinal, qualitative, quantitative, and hybrid methods (Dadomo, 2004; Coltrane & Collins, 2004; Lauer & Lauer, 2004). The doctrinal method discusses the principles of child custody. The qualitative and quantitative methods touch on empirical studies. The hybrid method encompasses all the doctrinal, qualitative, and quantitative methods.

The approaches of study involve exclusive, comparative, and regional discussions. The exclusive discussions focus on one single law. Both civil and Islamic law have their own separate discussions on child custody (Ehrlich, 2002; Al-Zuhayli, 2004; Zaydan, 1992). The discussions involve comparative child custody analyses in civil and Islamic law (Daleleer & Akbar, 2020; Kharofa, 2004). The regional discussions focus on the practices of child custody in a particular country (Douglas, 2004; Ahmad, 1997; Ali & Khan, 1986).

Discussions on the best interest of the child are varied. The discussions concern the historical development of the law and its principles. In the historical development of the law, civil law discussions reveal evolution. Civil law has taken a long time to recognise the child's best interest as

the main consideration in child custody. Before the child's best interest, parental preference was the main consideration (Wright, 2002). Islamic law discussions reveal consistency and continuity. The child's best interest has been the main consideration in child custody since the beginning of Islam. Islamic law was earlier than civil law in recognising the child's best interest (Al-Ashqar, 1991; Al-Tantawi, 1987; Zaydan, 1985).

The principles of the best interest of the child involve concepts, child custody arrangements, and the best interest factors. In the concept of the best interest of the child, both civil and Islamic law prioritise the child over the parents and the other parties. In civil law, the concept is based on legal theories (Mendes & Ormerod, 2019; Smith, 2003; Prest & Wildblood, 2005). However, the concept under Islamic law involves the Holy Qur'an and the Sunnah of the Prophet Muhammad (s.a.w) (Ibn 'Abidin (d. 1252 H), 1998; Ibn Qudamah (d. 620 H), 2004; Al-Bayhaqi (d. 458H); Aby Dawud (d. 275H); ). The process of *ijtihad* interprets and expands the meaning and understanding of the Holy Qur'an and the Sunnah.

In child custody arrangements, discussions highlight sole and joint custody. Sole and joint custody have different approaches in the residence of the child. The child's best interest determines whether the child lives with one or more parties (Harris, Teitelbaum, and Carbone, 2005; Mckenzie, 2007). Both civil and Islamic law expound that sole and joint custody advocate parental responsibility. Both parents will continue to exercise parental responsibility (Middleton, 2007; Rathus, 2007; Al-Dasuqi (d. 1230 H); Ibn 'Abd al-Rahman al-Maghribi (d. 954 H); Ibn Muflih (d. 884H); Al-Nawawi (d. 676H); Al-Kasani (d. 587H); Al-Ghazali (d. 505H)).

In the best interest factors, examples of the factors are the petitioner's religion, moral character, income, the wishes of the child, the wishes of the parents, and the fitness of the petitioner. The courts could also consider other factors to determine child custody (Nurhidayah & Lindsey, 2016; Black, Bridge, and Bond, 2000; Gallo, 2004). The social writings involve empirical studies on child custody. For instance, there are studies on sole custody which establish that in most cases, the child will live with the mother and has contact with the father (Black, Bridge, and Bond, 2000; Gallo, 2004). There are also studies which highlight the problems of this approach. Examples of the problems are the lack of contact between the

child and the father as well as the father's failure to provide the child with maintenance (Rowlingson & McKay, 2002; Bidwell & Mey, 2000). There are also studies which suggest the causes of the problems such as the remarriage of the father, the father's resentment of not being awarded parental responsibility, and the low economic status of the father (Greene, Anderson, Hetherington, Forgatch, & DeGarmo, 2003).

In short, the above studies, discussions, and analyses prove that child custody is an important subject. This is derived from the diverse methodologies, approaches, and issues on the matter. It is important to recognise that child custody goes beyond religion and custom. Unity in the recognition is evident in civil and Islamic law.

## **FINDINGS AND ANALYSIS**

The information derived from the informants generates issues that concern the legal process and arrangements of divorce and child custody after divorce, the residence of the child and access, parental responsibility, and parental relationships.

The informants were the fathers, the mothers, and the children (Fathers: n = 9; Mothers: n = 8; Children: n = 2). The parents were under sole custody with the residence of the child and parental responsibility (Fathers: n = 1; Mothers: n = 6), with access (Fathers: n = 5; Mothers: n = 1), or under joint custody with joint residence of the child and joint parental responsibility (Fathers: n = 3; Mothers: n = 1) whereas the children were under sole or joint custody (Children: Sole custody: n = 1; Joint custody: n = 1). The profiles of informants were categorised into race, age, education, and employment status. Mostly, the parents were within the age between 30 to 39 years and followed by the parents within the ages between 20 to 29 years (30-39 years: Fathers: n = 6 or 66.6%; Mothers: n = 4 or 50%); 20 to 29 years: Mothers: n = 1 or 12.5%; 40 to 49 years: Fathers: n = 3 or 33.3%; Mothers: n = 3 or 37.5%). The children were between the age of 20 to 29 years (20 to 29 years: n = 2). The highest level of education of the parents was mostly at the diploma level (Fathers: n = 4 or 44.4%; Mothers: n = 3 or 37.5%). There were also parents who obtained a Ph.D degree, a master degree, and the SPM certificate (A Ph.D degree: Mothers: n = 1 or

12.5%; A master degree: Fathers: n = 3 or 33.3%; Mothers: n = 1 or 12.5%; A bachelor degree: Fathers: n = 2 or 22.2%; Mothers: n = 2 or 25%; the SPM certificate: Mothers: n = 1 or 12.5%). The children obtained bachelor degree and diploma as the highest levels of education (A bachelor degree: n = 1 or 50%; A diploma degree: n = 1 or 50%).

Majority of the fathers were working in the private sector, followed by the fathers working in the government sector and who were self-employed (Private sector: n = 6 or 66.6%; Government sector: n = 2 or 22.2%; Self-employment: 1 or 11.1%). The mothers were mostly working in the government sector followed by the mothers working in the private sector and who were self-employed, pensioners, and unemployed (Government sector: n = 3 or 37.5%; Private sector: n = 1 or 12.5%; Self-employment: n = 2 or 25%; pensioners: n = 1 or 12.5%; Not working: n = 1 or 12.5%). The children were working in the private sector and not working (Private sector: n = 1 or 50%; Not working: n = 1 or 50%). The information derived from the informants was influenced by the ability to have access to the information from the informants. The factors influenced the manner in which the study should be conducted, as stated in the previous discussions and analysis concerning the methods of the study.

## **Legal Process of Divorce**

There are two themes, namely the irresponsible attitudes of marriage counsellors and continuous delays in legal proceedings.

The irresponsible attitudes of marriage counsellors were faced by the parents when attending counselling sessions prior to divorce. The counsellors did not adopt impartiality in conveying views to the parents regarding marital problems during the sessions. The parents manifested unhappiness towards the counsellors, who persistently blamed them for the problems. The unprofessionalism on the part of the counsellors failed not only to provide solutions but also further aggravated the problems faced by the parents.

Continuous delays in legal proceedings address were faced by the parents in legalising divorce in the courts. The problems concerned two issues: the duration of time and the attitudes of the parties involved in the

legal proceedings. The duration of time established unhappiness of the parents resulted from the proceedings that took a long time to settle. There were cases where the parents had to resubmit a petition for divorce because the court staff had lost their applications and files. The attitudes of parties involved in the legal proceedings demonstrated the unhappiness of the parents in which the judges and other parties contributed to the delays in the proceedings. The parents were upset by the actions of the judges who continuously postponed the proceedings without providing valid reasons.

Another issue was the negative attitudes of one of the parents who failed to follow the court's orders, which resulted in the postponement of the proceeding. It was frustrating for the parent to witness the failure of the courts to take appropriate action against the other parent who failed to execute the orders.

The above themes generated negative images of the legal administration of divorce. The images concerned the ignorance of legal ethics and the inefficiency of the legal process. The ignorance of legal ethics by marriage counsellors and the court staff was serious. Marriage counsellors should discharge duties in an impartial manner. Likewise, the court staff should prudently manage divorce applications and not commit any breach of trust such as losing the applications.

The inefficiency of the legal process concerned the duration of time taken by the courts in legalising divorce. The courts should not take a long time to legalise divorce because it involves the rights of many parties, especially the parents and the children. The courts should manifest sympathy to the children who would be affected by divorce and the parents desiring a new happy life again through a divorce. The courts should not tolerate any party intending to interrupt the legal proceedings. The ignorance of legal ethics and the inefficiency of the legal process could make the public of generating disbelief towards the whole legal process.

### **Legal Process of Child Custody**

There are themes of personal satisfaction, continuous delays in legal proceedings, and mutual satisfaction.



In personal satisfactions, the satisfactions concerned the courts' settlements in custody and access. The parents were satisfied if the courts ruled the settlements in their favour. However, the parents criticised the courts if the settlements were against their favour. The criticism resulted from the failure of the courts to consider the previous evidence which gave legal advantages to the parent such as the incapability of the other parent to care for the child and parental sacrifices for the child in terms of love and financial needs. Another contributing factor was the over-reliance of the courts on the child's views without verifying the validity and authenticity of the views.

Continuous delays in legal proceedings were faced by the parents in obtaining settlements in custody and access. The delays generated insecurity to the children. The delays influenced the parties to manipulate the situation such as the denial of access. Although numerous legal reports had been made by the parent against the denial, there were no appropriate actions taken by the relevant authorities in addressing the situation.

In mutual satisfactions, the satisfactions concerned mutual settlements in custody and access. The satisfactions were based on two factors. The first factor established the parent's success in undergoing a mutual divorce with the other parent. The second factor demonstrated the importance that the parents gave to the rights of the children compared to their personal rights.

The above themes manifested some attitudes of the parents and the courts, which may affect the rights of the children. The parent who was satisfied with the courts' decisions might have put their personal rights above the rights of the children. The satisfaction might also be based on personal observations of the whole situation. The parent could view that the courts' decisions were for the sake of the children. The parent who was not satisfied with the decisions might be more concerned about their personal rights than the rights of their children. The dissatisfaction should be recognised if personal observations of the whole situation established that the decisions were jeopardising the rights of the children.

The attitude of the courts in postponing custody and access generates a negative perception of the public. The denial of access and the manipulation of the situation were instances of the negative images. The courts could

also be seen as having less sympathy towards the rights of the child. The child has the right to a continuous relationship with both parents, although custody and access have not been resolved by the courts. The situation might lead the public to distrust the whole process of divorce.

It was important to appreciate the parents who resorted to mutual consent in settling custody and access. The parents believed that their personal rights should not be above the rights of the children. It was commendable for the parents to have their mutual consent legalised by the courts to avoid future conflicts. The practice of the parents not having the consent legalised by the courts could be rejected or justified. It could be rejected because the parents prioritised their personal rights above the rights of the children. On the other hand, it could be justified if the past experiences have led the parents to believe that the courts had failed to be impartial in dealing with custody and visitation.

## **Post-Divorce Custody Arrangements**

The themes are divided into parental satisfaction with child custody arrangements, children's satisfaction with the arrangements, qualified increase of the duration of access, and qualified recognition of joint custody.

In parental satisfaction with custody arrangements, the parent wanted to prevent the other parent from corrupting the children's minds. An example of the corruption was the other parent's negative lifestyle which might affect the children's upbringing. The parent was relieved when the courts restricted the rights of the other parent in the children's residence, access, and parental responsibility due to the negative lifestyle. Another reason for the satisfaction was the flexibility and equality of the arrangements. The flexibility and equality enable the parents to modify the terms of the arrangements by mutual consent with the other parent.

The parents also highlighted challenges that they faced in practising custody arrangements. One of the challenges was child abduction. The abduction occurred when the parent having contact decided to abduct the children away from the parent having the children's residence. Another challenge was the denial of access. The parent living with the children continuously denied the other parent to exercise access. Sometimes, the

parent with access was physically hurt by the parent with the children's residence when attempting to have contact. The aggrieved parent lodged legal reports but to no avail. No access was also a challenge. The parent was angry with the other parent, who failed to exercise access. Although the failure was related to the negative attitudes of the other parent, other considerations should be considered. Some parents confessed to not frequently exercising access. The parents were still in the state of accepting the reality of divorce. They promised to have contact with the children eventually. The parents were also satisfied because they had sufficient contact with the children. The main reason for the situation was parental responsibility. Another reason cited was parental tolerance and mutual cooperation among the parents in making access a success.

Children were satisfied with custody arrangements because they could know the parents and have contact with them. Contact enabled the children to know the parents better. This helped the children to develop their personal characters which were considered to be important.

In qualified increase of the duration of access, the parents and the children stated that the increase should be based on relevant conditions. For instance, there should not be any increase if the other parent had a negative lifestyle which might influence the characters of the children. The increase was also not practical if the children were living far away from their parents.

In qualified recognition of joint custody, joint custody should not be practised if the other parent also had a negative lifestyle which might affect the children. If the other parent committed a breach of trust such as child abduction during access, the children did not want it, or there were financial problems, joint custody should not be recognised. The parents and the children agreed that joint custody should be prioritised over sole custody for the rights of the children.

The above themes manifested the issues of personal satisfaction, challenges, and consensus. In personal satisfaction, they referred to self-interest, mutual consent, and contact. Self-interest involved the parent who felt that custody arrangements protected their rights more than the other parent's. The other parent with negative personal characters did not deserve more rights under the arrangements that could affect the rights of

the children. Mutual consent concerned the flexibility and equality of the arrangements. The flexibility and equality meant that the parents might, from time to time, alter the terms of the arrangements based on practical conveniences. Contact concerned the children's ability to know and spend time with their parents. The children were dissatisfied if they had less contact with their parents, especially under sole custody.

In challenges, they were more related to sole custody. The parent who lived with the child should be happy. At the same time, there were problems if the parent with access had less contact with the child. The reasons for the situation varied. One of the reasons was parental selfishness. For instance, the parent residing with the children denied the other parent having contact with the children. Another instance was that the parent having access would be dissatisfied with not having parental responsibility through not having contact with the children.

The other reason was parental negligence. For instance, the parent having the residence of the children were unhappy with the failure of the other parent to have contact with the children. To avoid the situation, there should be parental tolerance among the parents. Regardless of the arrangements, both parents should work with each other for the sake of the children. Children need both parents during their upbringing.

In consensus, it concerned access and joint custody. In sole custody, the main problem was the success of access. The emphasis of the parents and the children on the increase of the duration of access was justified to protect the rights of the children. The children should have contact with the parent having access. However, the increase should be based on the facts of the case. The emphasis of the parents and the children on the importance of joint custody was unique. They wanted the children to live with both parents. As in the case of the increase of the duration, joint custody should also be based on the facts of the case.

The importance of access and the general consensus on joint custody should attract the attention of the relevant authorities. Sole custody should encourage frequent access. More importantly, the issue of the child living with both parents as practised in joint custody demonstrated a new perspective among the parents and the children. The personal selfishness

of both parents could influence the upbringing of the children. The relevant authorities should consider the new perspective which demonstrated the existence of modern parents who were more objective and concerned with the proper upbringing of their children.

## **Parental Responsibility**

There are five themes: satisfaction of the parent with parental responsibility, satisfaction with the other parent's parental responsibility, children's satisfaction with parental responsibility, satisfaction with joint parental responsibility, and satisfaction with parental discussions.

In satisfaction with parental responsibility, the parents believed that parental responsibility concerned the children's necessities. There were reasons for the satisfaction. One of the reasons was the ability of the parents to provide the children with adequate necessities such as residence, food, clothing, and education. The ability manifested the parents' satisfaction, whereas failure to provide the children with their needs generated their dissatisfaction. The dissatisfactions were caused by the parents' low financial status. The parents did attempt to provide the children with parental responsibility. Regardless of satisfaction or dissatisfaction, mutual tolerance played an important role.

In personal satisfaction, parental tolerance ensured that parental responsibility was discharged adequately. Under personal dissatisfaction, tolerance establishes the parent's understanding of the other parent's problems in discharging parental responsibility. Another reason was the ability of the parent to provide parental responsibility alone. The other parent who continued to be missing from the children's lives failed to provide parental responsibility together with the parent living with the children. The other reason specified that the parents had worked together to provide the children with parental responsibility. The other reason was the inability of the parents to provide the children with parental responsibility. The inability was because the parent continued to deny the other parent from discharging parental responsibility.

In satisfaction with the other parent's parental responsibility, the parents believed that parental responsibility was mostly related to the

children's necessities. There were reasons for the satisfaction. One of the reasons was the other parent's ability to provide the children with adequate necessities such as residence, food, clothes, and education. Another reason was parental negligence. The other parent prioritised his or her affairs over the rights of the children. The other reason was the other parent's state of health. The parent was unhappy with the other parent who had mental illness which may affect his or her ability to discharge with parental responsibility.

In children's satisfaction, the children were satisfied when both parents adequately discharged parental responsibility. However, the children were dissatisfied when one of the parents was uncommitted to providing parental responsibility.

In satisfaction with joint parental responsibility, the parents and children agreed that joint parental responsibility should be implemented. The agreement was based on certain reasons. One of the reasons specified that although the parents had undergone a divorce, they were still the parents of children afforded joint responsibility. The other reason was that the children needed both parents in their upbringing. Another reason was that joint parental responsibility is the will of God the Almighty. Both parents had a religious duty to execute joint parental responsibility. The parents and the children also agreed that joint parental responsibility should be based on certain reasons. One of the reasons established that if the other parent was living a negative lifestyle, joint parental responsibility should not be recognised as it might affect the rights of the children. Another reason was the financial status of the parents. If the parents had a low financial status, joint responsibility was not suitable.

In satisfaction with parental discussions on executing parental responsibility, the parents always met with each other to discuss problems faced by the children regarding their upbringing. The unsatisfied parents and children emphasised the priority the parents gave to their jobs and lives. The priority affected the upbringing of the children. On the part of the parent, the other parent was too busy with their jobs and lives to the extent of neglecting the importance of having parental discussions. On the part of the children, the parents were also too busy with their jobs and their lives to the extent of not having time to discuss. The dissatisfactions concerned the non-relationships between the parent and the other parent. Parental

discussions were impossible because the parent had no contact with the other parent after the divorce. The discussions were also impossible when the other parent started missing from the children's lives. One of the reasons behind the situation was the attitudes of the other parent of not committing to thinking about parental responsibility.

The above themes establish the issues of personal satisfaction, challenges, and consensus. In personal satisfaction, the satisfaction concerned the parents' positive contributions to executing parental responsibility and discussions. Both parents should cooperate to ensure that the children would obtain parental responsibility. The cooperation was effective through positive and continuous parental discussions and actions. On the other hand, dissatisfaction concerned the parents' non-contributions to the executions of parental responsibility and discussions.

It was commendable for the parents, especially the fathers, who admitted that they had not been able to provide the children with parental responsibility. The parents' regret and intention to improve the situation should be recognised. The dissatisfaction established the inability of the parent to cooperate with the other parent in ensuring that the children would obtain parental responsibility. The cooperation was not effective because of non-continuous parental discussions and actions.

In challenges, it was a challenge for the parent who was alone in executing parental responsibility. The non-contributions from the other parent were unacceptable as they could affect the upbringing of the children. It was also praiseworthy for the parent who understood the situation of the other parent's failure to provide the children with parental responsibility. The parent had a positive attitude towards the other parent. The parent would allow the other parent to provide the children with parental responsibility if his or her current life situation was better.

In consensus, the emphasis of the parents and the children on the importance of joint parental responsibility was unique. The parents and the children also recognised that the child should be given an opportunity to have joint parental responsibility. Joint parental responsibility should be based on practical conveniences and not affect the rights of the child.

The importance of general consensus on joint parental responsibility should attract interest from the relevant authorities. The recognition of joint custody was based on the rights of the child to live with both parents. The idea of the child having joint parental responsibility manifested a new perspective among the parents and the children. The parents were more concerned with the rights of the children. The new perspective was part of joint custody. The relevant authorities should consider the new perspective, which demonstrated the existence of modern parents who were more concerned with the importance of the children having a proper upbringing.

### **Child Maintenance**

There are two themes, namely parental and children's satisfaction with the execution of child maintenance.

In parental satisfaction, the satisfactions involved personal and joint executions of child maintenance. The personal executions were discharged only by the father or the mother. The amount of maintenance covered items such as food, clothing, education, insurance, allowance, and bank savings. Parental non-satisfactions with the execution of the maintenance concerned two issues. The first issue involved the father's low financial status, who failed to provide adequate maintenance. However, the mother understood the reasons behind the father's failure to provide the maintenance. The second issue demonstrated that the mothers had to provide the maintenance alone because the father had been absent from the children's lives for years. The joint executions were discharged by both the father and the mother. Although the amount of maintenance was mostly provided by the fathers, the mothers also contributed to the amount. Both mother and father believed they should have joint parental responsibility from the financial aspect.

In children's satisfaction, the children were satisfied if the amount of child maintenance was adequate to fulfil their needs. On the contrary, the children were not satisfied if the amounts were inadequate. The non-satisfactions of the children concerned the fathers who forgot to provide them with maintenance.

The above themes manifested the issues of personal satisfaction and challenges. In personal satisfaction, they included the father's



discharge of child maintenance. The rights of the children were adequately protected through the father's continuous commitment in discharging an adequate amount of maintenance. Dissatisfaction concerned the father's non-executions of the maintenance. The rights of the children were not adequately protected through the father's non-continuous commitment in discharging the adequate amount of maintenance. It was commendable for the parent who admitted that he or she was not able to provide the children with the maintenance. The fact that the parents demonstrated regret and intention to improve the situation should be recognised.

In challenges, they were faced by the parents, especially the father, in executing child maintenance. It was also challenging for the mother to discharge with the maintenance alone instead of the father. It was commendable for the parent who understood the situation of the other parent who failed to provide the maintenance. The parent also had a positive attitude towards the other parent. The parent would allow the other parent to provide the maintenance if his or her current life situation was better. It was praiseworthy for the father, who admitted that he failed to provide adequate maintenance. He would provide the adequate amount if his current life situation were better.

## **Parental Relationships**

There are four themes of parental and children's satisfaction with relationships after divorce and parental and children's satisfaction with parental cooperation.

In parental satisfaction with relationships after divorce, the satisfaction concerned the process of divorce. The parents had undergone a friendly and mutual divorce. However, the divorce generated good and bad relationships between the parents. The good relationship established that the parents wanted a divorce and continued to have the relationship for the sake of the children. On the other hand, the bad relationship concerned several situations. One of the situations demonstrated that one of the parents intended to have a relationship with the other parent for the sake of the children. Nevertheless, the other parent refused to have such relationship. The situation resulted in the other parent not having contact with the children.

In children's satisfaction with parental relationships after divorce, the satisfactions involved two situations. Parental relationships after the divorce were good because the parents were still good friends. Although there were differences in parental views regarding the upbringing of the children, the children regarded them as normal. The parents managed to resolve any differences that occurred. The main reason for resolving the differences was because the parents had peacefully undergone divorce.

In parental satisfaction with cooperation after divorce, the level of cooperation was good because the parents had undergone a friendly divorce and practised mutual tolerance for the betterment of the children. The parents set aside personal egos and thought more about loving and caring for the children. The level of cooperation was not good if personal hostilities continued after the divorce. The hostilities existed due to the parents' marital conflicts during the marriage. The parents were angry with each other and expressed regret about the situation. The anger and regret manifested failure on the part of the parents to act accordingly as a husband, a wife, and parents of the children before the divorce. The level of cooperation was also not good if the parents had personal, mental, and character problems. The problems were related to the parent who continued to be absent from the children's lives, making it very impossible to have good parental cooperation.

In children's satisfaction with parental cooperation after divorce, the satisfaction was based on parental relationships after divorce. The parents were always in contact with each other regarding the upbringing of the children.

The above themes establish the importance of parental relationships and cooperation after divorce in the upbringing of children. Although mutual divorce leads to a positive relationship among the parents, a negative parental relationship might also occur. The negative parental relationship was based on various perspectives. The relationships did not necessarily mean that the parents had actual parental conflicts. Instead, the relationship meant that the parents went their separate ways and had new lives altogether. On the contrary, the relationship would also mean that the parents had actual parental conflicts or were more concerned with their personal interests. Although the conflicts and the interests were acceptable, they had affected the rights of the children.

The positive or negative relationship among the parents affected parental cooperation after divorce. The positive relationship was based on mutual divorce. In order to have positive parental cooperation, mutual tolerance was exercised among the parents. On the contrary, the negative relationship based on parental conflicts or personal interest generated negative parental cooperation. It was impossible to have positive parental cooperation among the parents who were still in states of anger and hate. The parent with personal interests might lead them to not having contact with the other parent. No contact then resulted in non-parental discussions regarding the upbringing of the children. The parents should be able to balance their personal interests and the needs of the children. Parents should not ignore their children's needs. Therefore, although parental conflicts and personal interests were justified, positive parental cooperation existed because the parents exercised mutual tolerance for the sake of the children.

## **CONCLUSION**

This study establishes the trends such as the role of mutual consent in child custody after divorce, child custody arrangements, the residence of the child, parental responsibility for the child, and child maintenance. The trends should guide the parties administering child custody in Malaysia to understand whether there is a need for legal reforms. The legal reforms strengthen the best interests of the child, which the laws recognise as the main consideration in custody and access (Daleleer, Nurezan, & Akbar, 2018; Akbar, 2013; Zaleha, 2005; Mimi Kamariah, 1999; Ahmad, 1984; Ahmad, 1997).

In settlement of child custody, mutual consent is practised by some parties. Mutual consent influences custody settlement agreements. The ability of the parties to practise mutual consent is a positive situation. The situation protects the rights of the child. The parties prioritise the rights of the child and put aside temporarily or permanently post-divorce hostilities for the sake of the child. The role of the courts is to ensure that mutual consent does not affect the rights of the child.

There is also the recognition of sole and joint custody. This study shows that the parties practise sole custody more than joint custody. Although the

parties practise sole custody, they also recognise joint custody. They want the child to live with both parents and the parents to have joint parental responsibility. However, they suggest that joint custody should be based on practical conveniences. The parties practise more sole custody because the laws in Malaysia advocate it as the main practice. There is an automatic presumption in favour of sole custody unless it infringes the rights of the child. The recognition of joint custody is unique because of the position of the laws (Daleleer, Nurezan, & Akbar, 2018; Akbar, 2013; Zaleha, 2005; Mimi Kamariah, 1999; Ahmad, 1984; Ahmad, 1997). Normally, in joint custody, the parties apply for it before the courts. The courts will then determine whether joint custody should be granted. There is no automatic presumption in favour of joint custody. Therefore, the recognition of joint custody is positive for the development of laws in Malaysia. The courts are prepared to go beyond the general provisions of the laws in protecting the rights of the child.

The preference of the mothers in the award of the residence of the child is in line with the findings of other sociological studies on custody and access. The findings of the studies state that the mothers, in most cases, will live with the child (Lamanna & Riedman, 2003; Strong, DeVault, Sayad, & Cohen, 2001; Cox, 1999). The laws in Malaysia also give preference to mothers over others in child custody. The award of the child's residence to the father manifests several issues. One of the issues relates the award to the laws which give opportunities to others to live with the child, although there is a preference of the mothers over others (Daleleer, Nurezan, & Akbar, 2018; Akbar, 2013; Zaleha, 2005; Mimi Kamariah, 1999; Ahmad, 1984; Ahmad, 1997). The other issue concerns the new attitude of the courts in applying the laws which give opportunities to others to have the child's residence. The courts determine custody and access based on the welfare of the child and not on gender preferences. Another issue is the important role of mutual consent. The parties will together decide the child's residence. However, the courts will determine whether mutual consent is within the rights of the child.

The award of the residence of the child to both parents establishes several issues. One of the issues relates the award to the recognition of the courts to joint custody. The other issue concerns the important role of mutual consent. The parties will mutually decide on the child's residence. The courts will determine whether mutual consent is within the rights of the child.

The preference of fathers over others in the award of access is in line with the findings of other sociological studies on custody and access. The preference confirms the findings of the studies, which establish that the fathers, in most cases, are awarded access (Lamanna & Riedman, 2003; Strong, DeVault, Sayad, & Cohen, 2001; Cox, 1999). The award to the mothers relates to the role of the courts in determining custody and access based on the welfare of the child.

Parental responsibility is also awarded to the parent or both parents. The award to the parent resembles sole custody, which is in line with the laws in Malaysia. The laws establish that the parties with the residence will also have parental responsibility (Daleleer, Nurezan, & Akbar, 2018; Akbar, 2013; Zaleha, 2005; Mimi Kamariah, 1999; Ahmad, 1984; Ahmad, 1997).

The award of parental responsibility to both parents resembles joint custody. Joint custody emphasises on joint parental responsibility. Both parents should work together for the sake of the child. However, joint parental responsibility should only be allowed based on practical conveniences.

Child maintenance is mostly awarded to the fathers. The award emphasises the laws in Malaysia in recognising the rights of the child to receive an adequate amount of maintenance. The award to those other than the fathers establishes the intention of the laws to protect the rights of the child to receive maintenance. The laws recognise the sharing of burden in discharging with child maintenance (Daleleer, Nurezan, & Akbar, 2018; Akbar, 2013; Zaleha, 2005; Mimi Kamariah, 1999; Ahmad, 1984; Ahmad, 1997).

Delays in proceedings affect custody and access. Unnecessary delays by the court in determining custody and access are the cause of concern in terms of legal ethics and public trust. Legal ethics manifest the inability of the courts and their administration to promote justice, especially in protecting not only the rights of the child but also the rights of the parents and the other related parties. The inability establishes some problems. One of the problems is possible manipulations by the parties having the residence of the child to deny the other parties from executing access. Another problem is the failure of the parties to adhere to the courts' orders. The problems affect the rights of the child.

The above trends are important for the future development of the laws relating to custody and access in Malaysia. Mutual consent obtained by the parties in custody and access should not be ignored. The parties have mutually determined issues such as the residence of the child, access, parental responsibility, and child maintenance. Therefore, the laws should consider recognising mutual consent through clear legal provisions. Mutual consent has influenced custody and access arrangements, parental responsibility, and child maintenance.

The recognition of sole custody is based on the laws in Malaysia. Sole custody specifies that the residence of the child is awarded to one party and access to another party. The party residing with the child will also have parental responsibility. The recognition of joint custody is unique because the laws do not provide clear legal provisions for joint custody. Joint custody establishes that the residence of the child will be awarded to more than one party. The parties will also have joint parental responsibility. In the residence of the child, the child will either reside with both parties or one party and have contact with the other party. There is a possibility of the involvement of the parents and the non-parents working together for the sake of the child, which is considered respectable. Therefore, the laws should consider recognising joint custody through clear legal provisions. The possible option is to make joint custody the main practice or as an alternative to sole custody.

The main reason for the laws in Malaysia to formally recognise joint custody is to be in line with the current best interest of the child. The best interest prioritises the rights of the child without neglecting the rights of the parents and the other related parties. The parents have a legal interest in the laws and others, such as the family members, the society, and the government. All must work together for the sake of the child. Therefore, joint parental responsibility should be extended to other parties. The situation should be formally recognised by the laws through legal provisions. The laws should not continuously practice sole custody without ignoring the fact that joint custody is also important. The laws should not continuously recognise only one parent to have parental responsibility. The other parent should also have parental responsibility because parents are always parents. The laws should not require the other parent to apply for parental responsibility. The non-parents may also have parental responsibility if it is in the best interest

of the child. The laws should also formally recognise joint custody in providing the courts with alternatives when deciding custody and visitation.

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The author declares no competing interests, such as financial or personal relationships, regarding the writing of this article.

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The author is the sole writer of this article. The author contributes solely to the formation of abstract, topics, contents, and references. Thus, the editorial teams of this journal contribute to provide the author with advice and consultancy on publication matters.

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