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Protecting Children's Economic Interests in the Post-Divorce Division of Marital Property: A Best-Interests Framework

Sahrul Hanafi[1*], Nurman Akhmadi[2], Beni Ahmad Saebani[3]
[1] Universitas Pamulang, Indonesia
[2,3] UIN Sunan Gunung Djati Bandung, Indonesia
Correspondence: dosen02934@unpam.ac.id

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Abstrak

Penelitian hukum normatif ini membahas perlindungan kepentingan ekonomi anak ketika harta bersama dibagi setelah perceraian. Kajian membedakan hak milik mantan suami dan istri dari kewajiban nafkah dan kepentingan tempat tinggal anak. Analisis perundang-undangan, pedoman kamar agama Mahkamah Agung, dan literatur kasus menunjukkan bahwa SEMA Nomor 1 Tahun 2022 membuka kemungkinan mengabulkan gugatan tetapi menunda pelaksanaan pembagian jika objeknya terbukti satu-satunya rumah tempat tinggal anak. Penelitian menawarkan asesmen kebutuhan anak dan tata cara penundaan yang proporsional, namun tidak menganggap anak otomatis memiliki bagian hak milik atas harta bersama. Pembentukan jaminan kebendaan baru memerlukan landasan hukum yang memadai.

Kata Kunci: harta bersama; kepentingan terbaik anak; tempat tinggal; nafkah anak; SEMA 1/2022

Abstract

This doctrinal article examines children's economic protection when joint marital assets are divided following divorce. It distinguishes the former spouses' ownership interests from child-maintenance duties and the child's need for stable accommodation. Through statutory and conceptual analysis and qualified discussion of judicial materials, the article identifies a specific protective avenue in Supreme Court Circular No. 1 of 2022: a marital-property claim may be granted while implementation of division is deferred where the sole family home occupied by the child is proven, until the child turns twenty-one or marries. It proposes a proportionate, evidence-based assessment while rejecting the unsupported premise that children automatically receive an ownership share in the parents' joint property.

Keywords: *joint marital property; best interests of the child; housing security; child maintenance; Supreme Court Circular No. 1 of 2022*

Introduction

Divorce can alter a child's access to the home, schooling, transportation, and household resources even though the child is not ordinarily the owner of the former spouses' marital property. A legal framework limited to the allocation of property between adults may overlook practical consequences for children, while an approach that grants children an automatic proprietary share would disregard

the statutory structure. The task is to identify legally supportable measures that protect residence and maintenance without casually changing ownership.[1]

Indonesian Marriage Law Articles 35 and 37 concern property acquired during marriage and division following dissolution. Article 97 of the Compilation of Islamic Law (KHI) concerns the shares of former spouses, subject to the applicable framework. By contrast, duties to maintain children arise under different provisions, including Marriage Law Article 41 and the KHI rules on custody and maintenance. Their legal subjects, purposes, and remedies must therefore be distinguished before constructing any child-centered approach to division.[2]

One recurring difficulty concerns the only residence in which a child lives. Execution of an adult property claim could affect housing stability if it produces a sale or displacement. Yet division of joint property does not invariably require a public auction; a court-approved allocation, compensation, or delayed execution may be possible depending on title, consent, and the enforceability of the judgment. These alternative outcomes matter because a policy proposal should not be built on the assumption that every half-share award entails eviction.[3]

Prior studies examine different aspects of children's protection in property disputes. Yusup and Al Hasan address children's rights in joint-property litigation.[4] Budi and colleagues focus on residence, while Fatahillah and colleagues examine postponement of distribution.[5] This article develops a decision framework that separates ownership, the protection of a child's residence, and the enforcement of maintenance duties.

The study asks what existing law permits, when deferral of division of the sole family home is justified, and which reforms could address maintenance risks. Its analysis is doctrinal and does not estimate the frequency of post-divorce eviction or assess the effectiveness of wage deductions. Judicial examples drawn from scholarship are treated as case-specific accounts rather than evidence of a uniform national practice.

Table 1. Selected Prior Studies and the Research Gap

Study	Focus	Contribution	Residual question
Yusup and Al Hasan (2022)	Children's rights in joint-property disputes	Identifies the relevant protective concern	Does not establish automatic child co-ownership

[1] Deni Kamaludin Yusup and Fahadil Amin Al Hasan, "Perlindungan Hukum Terhadap Hak Anak Dalam Sengketa Harta Bersama," *Jurnal Yudisial* 15, no. 3 (2023): 317–335, https://doi.org/10.29123/jy.v15i3.536.

[2] Indonesia, Law No. 1 of 1974 concerning Marriage, arts. 35(1) and 37.

[3] Kukuh Pramono Budi et al., "Adjudicating Joint Property Dispute in Islamic Jurisprudence: Balancing the Best Interests of the Child with a Focus on Residency," *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 2 (2023): 245–266, https://doi.org/10.18592/sjhp.v23i2.12278.

[4] Deni Kamaludin Yusup and Fahadil Amin Al Hasan, "Perlindungan Hukum Terhadap Hak Anak Dalam Sengketa Harta Bersama," *Jurnal Yudisial* 15, no. 3 (2023): 317–335, https://doi.org/10.29123/jy.v15i3.536.

[5] Zahrul Fatahillah et al., "The Urgency of Reformulating Regulations on the Postponement of Marital Property Distribution to Fulfill the Best Interests of the Child," *Dusturiyah: Jurnal Hukum Islam, Perundang-undangan dan Pranata Sosial* 16, no. 1 (2026): 83–99, https://doi.org/10.22373/qhj60v43.

Study	Focus	Contribution	Residual question
Budi et al. (2023)	Residence in joint-property litigation	Highlights housing stability	Cannot make every asset a sole-home case
Fatahillah et al. (2026)	Deferred division and children's interests	Discusses a procedural safeguard	Requires careful distinction from new substantive security rights
Present study	Title, residence, support and due process	Separates existing rules from prospective reforms	Needs verified primary case decisions

Source: Authors' doctrinal analysis of the primary and secondary materials identified in the accompanying text.

Research Method

This normative and prescriptive research combines statutory analysis of the Marriage Law, KHI, Child Protection Law, and relevant Supreme Court circulars with conceptual analysis of ownership, maintenance, and best interests. Its unit of analysis is the legal consequence of division where a child's accommodation or support may be affected. Judicial examples are considered through the cited case literature, with attention to the limits of secondary accounts.[6]

Case literature is selected for relevance to marital-property disputes, an identifiable issue concerning children or enforcement, and a sufficiently clear account of the ruling. The analysis distinguishes a reported outcome from the precise ratio decidendi, which requires the complete judgment. It does not infer a universal procedural rule from a small group of decisions.[7]

The analytical sequence separates existing binding or guiding norms (ius constitutum), case-based illustrations, and proposed reform (ius constituendum). Proposed safeguards are tested against property rights, procedural fairness, children's actual needs, and administrative feasibility. Neither the prevalence of maintenance defaults nor the effectiveness of a proposed security mechanism is inferred from a limited number of published studies.[8]

Results and Discussion

1. Existing Property Entitlements and Children's Separate Rights

Joint marital property ordinarily concerns assets acquired during marriage within the applicable property regime. A child's need for housing does not of itself transform the child into a direct co-owner of the parents' joint assets. Ownership shares, maintenance entitlements, and the right to safe accommodation are related

[6] Meivanza Dwi Aurellia and Abdul Halim, "Urgensi Pembentukan Lembaga Eksekutor Terhadap Pemenuhan Hak Perempuan Dan Anak Pasca Perceraian," *Jurnal USM Law Review* 6, no. 2 (2023): 752–765, https://doi.org/10.26623/julr.v6i2.7270.

[7] Deni Kamaludin Yusup and Fahadil Amin Al Hasan, "Perlindungan Hukum Terhadap Hak Anak Dalam Sengketa Harta Bersama," *Jurnal Yudisial* 15, no. 3 (2023): 317–335, https://doi.org/10.29123/jy.v15i3.536.

[8] Committee on the Rights of the Child, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1), CRC/C/GC/14 (Geneva: United Nations, 2013).

economically, but constitute legally different propositions. A decision should therefore identify the title, the acquisition history, any marital agreement, existing encumbrances, and the child's practical residence before selecting a remedy.[9]

The child's protection arises instead from constitutional and statutory commitments, including Article 28B(2) of the Constitution and the Child Protection Law. The principle of the best interests of the child directs serious consideration to foreseeable effects on the individual child. It does not eliminate parental ownership, negate the other spouse's procedural rights, or authorize a judge to impose a new proprietary burden without a lawful basis.[10]

The best-interests inquiry should be operational. Relevant indicators include the child's age, health and disability-related needs, continuity of schooling, existing caregiving arrangements, safe alternative housing, the financial capacity of both parents, and whether a proposed disposition can be made without an abrupt displacement. Evidence can include school documents, ownership certificates, family records, healthcare needs, and proof of current accommodation. The child's interests require reasons in the judgment, not merely the invocation of a slogan.[11]

The interest in maintenance is distinct again. The person obliged to pay child support, the amount of an existing order, payment history, realistic future capacity, and available execution measures must be evaluated separately from an award of marital property. Property division cannot, without a legal mechanism, substitute for a maintenance order; conversely, a support claim should not automatically deprive a former spouse of their share in jointly owned assets.[12]

Scholarship on overdue maintenance and execution difficulties supplies an important policy concern. These studies document problems within their specified samples or judicial settings, rather than establishing a universal national default rate. They warrant better documentation of enforcement and proportionate procedural solutions; their descriptive findings do not alone justify an unlimited attachment of an obligor's property.[13]

2. Deferring the Sole Family Home: Judicial Guidance and Its Limits

The Religious Chamber formulation in Supreme Court Circular No. 1 of 2022 addresses marital-property litigation where the disputed asset is proven to be the child's only home. The claim may be granted, while division is deferred until the child reaches twenty-one years of age or marries. This distinguishes the determination of the former spouses' ownership from the timing of implementation. The condition that the asset is the child's sole home is central to the formulation.[14]

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[9] Indonesia, Compilation of Islamic Law (1991), art. 97.

[10] Indonesia, Law No. 23 of 2002 concerning Child Protection, as amended, art. 2.

[11] United Nations Committee on the Rights of the Child, General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, CRC/C/GC/14 (2013).

[12] Hotnidah Nasution, Windy Triana, and Ahmad Rifqi Muchtar, "Ensuring Children's Rights after Divorce in Indonesia: Religious Court Decisions on Nafkah Madiyah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 (2024): 41–57, https://doi.org/10.14421/ahwal.2024.17103.

[13] Hotman Sinambela et al., "Efektivitas Eksekusi Putusan Nafkah Terutang Pasca Perceraian Dalam Menjamin Hak Ekonomi Anak," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 14, no. 1 (2026): 269–295, https://doi.org/10.29103/sjp.v14i1.26297.

The word 'may' and the requirement that the relevant property be proven the only residence prevent an unqualified rule for every marital-property suit. Evidence should clarify whether the child actually lives there, whether another safe residence is available, who owns the property, and what interests are held by other persons. A home already subject to third-party security rights requires additional analysis, as a chamber guideline cannot extinguish a creditor's lawful rights by implication.[15]

An internal Supreme Court circular promotes judicial consistency and is operationally relevant to adjudication, yet it is not automatically equivalent to a statute creating new substantive ownership rights. Its legal position therefore supports an explanation of deferred implementation within the judicial system rather than a claim that the circular amends the Marriage Law or the KHI. Judges should clearly distinguish the order granting the property claim from the later moment at which it may be executed.[16]

The case literature also illustrates why the form of relief matters. Declaring a claim inadmissible leaves ownership unresolved and may require fresh litigation; granting the claim while deferring division determines ownership while postponing implementation. These outcomes should not be described as interchangeable. The 2022 chamber formulation provides the principal normative reference for the deferral framework developed here.[17]

Alternative outcomes should not be ignored. Former spouses may agree that one retains the house and pays compensation, or that the property is divided subject to a practical occupancy arrangement. Such solutions depend on valid consent and enforceable instruments, and may fail where the asset is illiquid or encumbered. A judge's reasoning should explain why postponement is proportionate in the circumstances rather than presume it is always the only child-protective option.[18]

Table 2. Existing Norms, Children's Risks, and Limits of Relief

Issue	Norm or evidence	Permissible conclusion / limitation
Adult shares	Marriage Law Articles 35, 37; KHI Article 97	Spouses' ownership, not automatic child co-ownership
Child maintenance	Marriage Law Article 41; KHI 105, 149, 156	Separate enforceable duty and evidence of payment

[14] Supreme Court of Indonesia, Circular No. 1 of 2022, Religious Chamber formulation, sec. C.1.a.

[15] Kukuh Pramono Budi et al., "Adjudicating Joint Property Dispute in Islamic Jurisprudence: Balancing the Best Interests of the Child with a Focus on Residency," *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 2 (2023): 245–266, https://doi.org/10.18592/sjhp.v23i2.12278.

[16] Supreme Court of Indonesia, Circular No. 1 of 2022, Religious Chamber formulation, sec. C.1.a.

[17] Deni Kamaludin Yusup and Fahadil Amin Al Hasan, "Perlindungan Hukum Terhadap Hak Anak Dalam Sengketa Harta Bersama," *Jurnal Yudisial* 15, no. 3 (2023): 317–335, https://doi.org/10.29123/jy.v15i3.536.

[18] Indonesia, Law No. 1 of 1974 concerning Marriage, arts. 35–37.

Issue	Norm or evidence	Permissible conclusion / limitation
Only child residence	SEMA 1/2022, Religious Chamber 1(a)	Claim may be granted; division deferred until age 21 or marriage where sole home is proven
Security for future support	Proposed mechanism (not generally enacted)	Requires legal authority, notice, proportionality, and time limits

Source: Authors' doctrinal analysis of the primary and secondary materials identified in the accompanying text.

3. A Five-Part Protection Framework and Institutional Feasibility

The proposed model has five connected parts: an individualized child-impact assessment; a clear determination of adult title and existing support duties; a specific and proportionate remedy for the sole residence; verification of possible maintenance default; and a documented review or appeal route. It is primarily an analytical and procedural model. It does not create a proprietary entitlement for children or authorize automatic escrow, salary deduction, or confiscation under existing law.[19]

A protective measure affecting assets requires a legal basis, notice, an opportunity for both sides to respond, evidence of a concrete risk, and temporal and monetary limits. The possibility of retaining part of a maintenance obligor's property in security cannot be described as a presently general judicial power. Legislation might be needed to establish substantive security rights, while a Supreme Court regulation might legitimately standardize filing, documentation, hearings, and implementation procedures within an existing grant of competence.[20]

The model should be tested under difficult scenarios. If a third party owns the house, a court cannot assume it belongs to marital property. If a mortgage exists, creditors' entitlements must be examined. If custody changes, the practical relevance of an occupancy arrangement should be reassessed through lawful procedures. If both parents are financially unable, adjudication must consider feasible support and state child-protection services rather than assume that a nonexistent asset can be earmarked.[21]

A proposed child-maintenance enforcement unit, salary withholding arrangement, or interagency data mechanism raises privacy, institutional jurisdiction, and cost questions. Before recommending adoption, policymakers should specify the entity responsible, the statutory authority for obtaining

[19] Zahrul Fatahillah et al., "The Urgency of Reformulating Regulations on the Postponement of Marital Property Distribution to Fulfill the Best Interests of the Child," *Dusturiyah: Jurnal Hukum Islam, Perundang-undangan dan Pranata Sosial* 16, no. 1 (2026): 83–99, https://doi.org/10.22373/qhj60v43.

[20] Syaifuddin Zuhdi et al., "The Confiscation of Husbands' Wealth as A Collateral for Post-Divorce Child Support: Perspective of Maqāṣid Al-Sharī'ah," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 2 (2024): 912–933, https://doi.org/10.22373/sjhk.v8i2.17326.

[21] Muchlis et al., "Child-Centered Adjudication: Integrating the Best Interests Principle Into Indonesian Marital Property Distribution," *Nurani: jurnal kajian syari'ah dan masyarakat* 25, no. 2 (2025): 473–492, https://doi.org/10.19109/nurani.v25i2.30371.

financial data, independent oversight, safeguards against mistaken deductions, and channels for correcting orders when family circumstances materially change.[22]

The legal value of the best-interests principle lies in making the adjudicative process more exact: which child is affected, by what foreseeable harm, supported by which evidence, and prevented through which lawful and proportionate measure? A structured record of those questions may improve reasoned decisions without disregarding the separate proprietary rights of the litigating adults.[23]

Conclusion

Indonesian law does not generally give children a direct share in their parents' joint marital property, but it does protect children's maintenance and welfare through distinct duties. The 2022 Religious Chamber guideline supplies a narrowly framed means of deferring implementation when the disputed property is proven to be the child's sole residence, until twenty-one years of age or marriage. It should not be broadened into a mandatory stay in every case.[24]

This article proposes evidence-based child-impact assessment, proportionate protection of occupancy, and clearer documentation of maintenance risks. A new proprietary security, automatic wage withholding, or compulsory asset reservation would require a separate analysis of enabling legislation and due process. The doctrinal model should be tested against complete judgments and empirical records before claims about its effectiveness are advanced.[25]

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[22] Meivanza Dwi Aurellia and Abdul Halim, "Urgensi Pembentukan Lembaga Eksekutor Terhadap Pemenuhan Hak Perempuan Dan Anak Pasca Perceraian," *Jurnal USM Law Review* 6, no. 2 (2023): 752–765, https://doi.org/10.26623/julr.v6i2.7270.

[23] United Nations Committee on the Rights of the Child, General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, CRC/C/GC/14 (2013).

[24] Supreme Court of Indonesia, Circular No. 1 of 2022, Religious Chamber formulation, sec. C.1.a.

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