Research Article

Shared Custody and The Best Interests of The Child in The Judgments of A Peruvian Family Court

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ABSTRACT:

Peru's Law No. 31590 made shared custody the courts' first option, which requires each decision to show how it protects the child. This study sought to establish how the criteria for shared custody were applied in relation to the best interests of the child in the First Family Court of Tarapoto in proceedings initiated in 2023. A qualitative study with a grounded theory design combined document analysis of eight judgments with semi-structured interviews with seven legal practitioners. Each judgment turned on a single criterion, chiefly the parents' conduct, so that parental conflict served to deny shared custody, and noncompliance with prior agreements served to grant it. The best interests of the child were invoked in all eight judgments, but only one explained how the decision protected the child, and the children's views were heard in every case without any assessment of their maturity. Deficiencies in judicial reasoning were concentrated in the judgments granting shared custody. The study concludes that the principle was present in the decisions but did not provide the reasons that justified them.

Keywords: shared custody, best interests of the child, judicial reasoning, child's views, family law.

1. Introduction

Under Article 3(1) of the Convention on the Rights of the Child, the best interests of the child must be a primary consideration in all actions concerning children. The Committee on the Rights of the Child (2013) gives the principle three dimensions, a right, a rule of interpretation and a procedural guarantee, and the procedural one obliges decision-makers to show how the child's interests were weighed. Peru adopted this approach in Law No. 30466 (2016), which requires decisions affecting children to state the reasons for the assessment of their best interests.

In 2022, Law No. 31590 amended Articles 81 to 84 of the Code of Children and Adolescents (CNA) to make shared custody the court's first option when parents live apart, unless it is not feasible or is detrimental to the child. Amended Article 84 lists the parameters for organizing it, including the allocation of time, the distance between homes, holidays, and the child's age and views. Critics fear that a general presumption may destabilize children whose circumstances go unexamined (Amado Mendoza, 2025; Ampuero Barrantes et al., 2024), while Bravo Soto (2023) sees it as a route to parental co-responsibility, provided each case is assessed individually. Because these studies work from legislation and doctrine, they say little about how trial courts actually apply the new criteria, and that is the gap this study addresses. Its general objective was to determine how the criteria for shared custody were applied in relation to the best interests of the child in the First Family Court of Tarapoto in proceedings initiated in 2023. The specific objectives were to examine how those criteria were applied (SO1), to evaluate how the principle was applied (SO2), and to identify deficiencies in the reasoning of shared custody arrangements (SO3).

Shared custody is not granted automatically in other jurisdictions either. Belgian judges look at the child's routine, the parents' relationship, the distance between homes and whether the child can stay in the same school (Merla et al., 2025). Saini and Chung (2026) went through 66 Canadian decisions, where judges sought to keep children out of parental conflict and to make transitions predictable, and they call for structured parenting plans. Comparing Slovenian and Lithuanian law, Pogorelčnik Vogrinc and Limantė (2025) make a related point: a ruling on physical custody cannot be assessed apart from the contact schedule that accompanies it, because the child lives both as one arrangement.

Several authors are concerned with how much is left to the judge. In interviews with Brazilian justice-system professionals, Alcântara Mendes and Ormerod (2025) found that, without shared parameters, custody outcomes depended on context and on each decision-maker's own understanding, so the best interests standard was applied with considerable uncertainty. Indonesian courts decided custody on proven parenting capacity but did not always hear the child (Saraswati, 2021), and in Denmark children's

participation tends to give way to adult-centric approaches (Alminde, 2024). In Peru, Huerta León and Burga Falla (2026) conceive shared custody as a mechanism of parental co-responsibility, and Camino de Menchaca et al. (2023) favor an individualized assessment over a special regime for children with disabilities.

Feinberg's (2003) coparenting theory defines coparenting as coordination, mutual support and the division of responsibilities between parents, so shared custody entails more than splitting time. Three subcategories followed from this, namely shared parental responsibility, communication and cooperation, and compliance with agreements. The integral protection doctrine treats children as holders or rights whose capacities develop over time and who therefore warrant reinforced protection (Committee on the Rights of the Child, 2013); the best interests of the child were thus examined through the stability of the family environment, the child's views, and protection from parental conflict.

2. Methodology

Design. A basic qualitative study with a descriptive and interpretive scope and a grounded theory design was conducted.

Participants/Sample. Convenience sampling was used to select eight first-instance judgments rendered by the First Family Court of Tarapoto (San Martín, Peru) in custody and custody modification proceedings initiated in 2023, all issued by the same judge. Interviews were also held with seven practitioners, three lawyers (L1–L3), two public defenders (PD1–PD2) and two judges (JU1–JU2), each with at least five years of experience in family proceedings; participation was voluntary.

Instruments. Two instruments were prepared for this study, an interview guide with open questions and a form for recording the content of each judgment. Three legal experts reviewed both before they were applied.

Procedure. Copies of the eight judgments were requested from the court. Since the cases involve children, case numbers were replaced by codes (C1 to C8), and no names or other identifying details appear in the article. Each interviewee signed an informed consent form beforehand, in line with the university's Research Ethics Code (Resolution No. 0659-2024/UCV). The general objective and SO3 were answered from the judgments, SO1 from both the judgments and the interviews, and SO2 from the interviews only.

Data Analysis. Responses and case records were compared in matrices, interpreted with doctrinal and hermeneutic methods, and triangulated with prior studies and theory.

3. Results

3.1. Application of the Criteria in Relation to the Best Interests of the Child

The judge denied shared custody in four judgments (C2, C3, C4 and C8), granted it in three (C1, C6 and C7) and upheld a conciliation agreement providing for it in one (C5). The best interests of the child were invoked in all eight (Table 1).

Table 1 Outcome, Deciding Criterion and Reasoning Deficiencies in the Judgments Analyzed

Case	Outcome	Deciding criterion	Deficiency in the reasoning
C1	Granted (alternating semesters)	Compliance with agreements	Arrangement limited to allocating time; holidays left to the parents
C2	Denied (sole custody to the mother "for now")	Communication and cooperation	Effect of the conflict on the children not explained
C3	Denied (child remained with the mother)	Communication and cooperation	Pre-reform Arts. 81 and 84 cited; contact not tailored to the child's special needs
C4	Denied (sole custody to the father)	Communication and cooperation	Effect of the conflict not explained; Art. 84 not analyzed
C5	Upheld (shared custody agreed in conciliation)	Compliance with agreements	Recommended family therapy not ordered
C6	Granted (weekly schedule)	Shared parental responsibility	Pre-reform Arts. 81 and 84 cited; two changes of home per week without assessing schooling
C7	Granted (alternating years in two cities)	Compliance with agreements	Effect of a yearly change of city and school not assessed
C8	Denied ("for the time being")	Communication and cooperation	Only judgment explaining how the conflict affected the children

Note. C = case; Art. = article of the Code of Children and Adolescents. Case numbers were replaced with codes to protect the children's identity.

In every case a single criterion settled the matter. The four denials rested on the parents' poor communication and cooperation, on the assumption that their conflict would harm the child, although only C8 explained how, relying on a psychological report which found that the children had taken on their parents' disputes as their own. Of the four rulings that granted or maintained shared custody, three (C1, C5 and C7) turned on whether the parents had kept to their earlier agreements, whereas C6 relied on shared parental responsibility because both parents were already sharing the child's care in practice. All eight judgments recorded what the children said, but none explained how their maturity was assessed, not even the four (C2, C4, C5 and C6) that acknowledged the duty to do so.

3.2. Application of the Criteria for Shared Custody (SO1)

For most participants, the criteria have to be applied case by case. Six interviewees considered communication and cooperation essential, all seven stressed parental responsibility, and all agreed that psychosocial assessments are needed. They disagreed, however, about interparental conflict. L2 regarded it as an obstacle, L1 recalled cases in which shared custody was granted despite it, and JU2 held that it is not decisive on its own. The judgments reflect the same tension, since four denied shared custody because of conflict while C1 and C7 granted it even though the parents' relationship had broken down. The practical arrangements were just as uneven, because C1 only divided the time equally, C7 also addressed holidays and travel, and C6 referred to Article 84 in its pre-reform wording.

3.3. Application of the Best Interests Principle (SO2)

Six interviewees said that, to apply the principle, the judge has to look at the child's well-being, family setting and stability, and that the child's opinion counts according to age and maturity, together with the rest of the evidence. JU1 disagreed, holding that no two children are alike, which makes their best interests almost impossible to determine. Only PD1, PD2 and JU2 added that the judgment itself has to state why the measure benefits the child.

3.4. Deficiencies in Judicial Reasoning (SO3)

Three deficiencies emerged, and they appeared mainly in the judgments that granted shared custody. The first is that arrangements were reduced to dividing time, as in C1, which ordered six-month alternating periods for children who had not seen their father for two years and left holidays for the parents to settle. The second is that the rulings did not consider the effect on the child's daily life, since C7 required a change of city and school every year and C6 a change of home twice a week, and neither assessed what this meant for the child's schooling. The third is the use of outdated law, as C3 and C6 cited Articles 81 and 84 as they read before Law No. 31590. C3 also set a contact schedule that took no account of the child's documented speech therapy and special needs.

4. Discussion

In this court the best interests principle is cited in every judgment, so the difficulty lies not in its omission but in the absence of reasons connecting it to each decision. Outcomes depend on how the parents behave, and the child, although mentioned, is not what organizes the reasoning. The Tarapoto rulings thus illustrate the discretion that Alcântara Mendes and Ormerod (2025) attribute to the lack of common parameters.

These findings differ from those of Saini and Chung (2026), whose Canadian judges examined parental conflict from the child's perspective. Conflict is a legitimate indicator of how well parents coordinate (Feinberg, 2003), so the problem is not that judges consider it but that they do not show how it affects the child, which only C8 did. And since shared custody was denied in half the cases, the fear that Law No. 31590 would be applied automatically (Amado Mendoza, 2025; Ampuero Barrantes et al., 2024) is not borne out in this court.

The core issue therefore lies in the judicial reasoning rather than in the legal text. Both the interviews and the judgments match the individualized approach advocated by Bravo Soto (2023) and observed by Merla et al. (2025) in Belgium, yet there is still no shared standard behind it. Interviewees unanimously gave parental responsibility the greatest weight, as do Saraswati (2021) and Huerta León and Burga Falla (2026), yet it decided only one of the eight cases. Feinberg (2003) treats communication, parental responsibility and compliance as parts of one coparenting relationship; following that view, the authors propose that shared parental responsibility serve as the reference point for such a standard.

The finding on the child's voice is close to that of Alminde (2024) and Saraswati (2021), with one difference. In Tarapoto every child was heard, so the shortcoming is not exclusion from the process but the silence of the judgments on how maturity was assessed. Under its procedural dimension, a judgment has to show what weight the child's views received (Committee on the Rights of the Child, 2013; Law No. 30466, 2016).

The weakest point of the judgments is the practical organization of custody, which is precisely what shapes the child's everyday life. Unlike the parenting plans described by Saini and Chung (2026), the orders that moved a child between homes, schools or cities gave no reason to expect that the child would adapt. Nor did the individualized assessment that Camino de Menchaca et al. (2023) prefer to a special regime protect the child with special needs in C3, whose contact schedule ignored those needs. Article 84 already lists the relevant factors, so the problem lies in the absence of reasoning that applies them rather than in the provision itself. These findings rest on eight judgments by a single judge and seven interviews and cannot be generalized. SO2 also relied on interviews alone, and the case files do not show what effect the decisions actually had on the children.

5. Conclusion

In this court, the judge applied the criteria for shared custody selectively while invoking the best interests of the child, and each ruling rested on a single factor tied to the parents' conduct rather than on an overall assessment. All eight judgments invoked the principle, but only one went beyond a formulaic reference to explain how the outcome protected the child. The criteria were applied case by case but with no common standard. Practitioners agreed on what the principle requires, but only three asked that judgments explain why the measure benefits the child. The weaknesses in the reasoning concerned how the arrangement was organized, its effect on the child's daily life and the version of the law applied, and they appeared mainly where shared custody was granted. Judgments should therefore explain how each decision protects the child, how the child's maturity was assessed and, when shared custody is granted, how each parameter of Article 84 was considered.

6. Author Declaration

This original work derives from an undergraduate thesis (Universidad César Vallejo, 2026) and is not under consideration elsewhere. The authors declare no conflicts of interest or external funding.

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