

### THE CONCEPT OF HADHANAH (CHILD CUSTODY) AFTER DIVORCE IN ISLAMIC CIVIL LAW

Hamdan Arief Hanif<sup>1\*</sup>, Aulia Nissa Salsabila<sup>2</sup>, AA Hubur<sup>3</sup>

<sup>1</sup>Universitas Sultan Ageng Tirtayasa, Indonesia

<sup>2</sup>Universitas Darunnajah Jakarta, Indonesia

<sup>3</sup>Tunghai University, Taiwan

<sup>1</sup>[hamdanarief42@gmail.com](mailto:hamdanarief42@gmail.com), <sup>2</sup>[saulianissa@gmail.com](mailto:saulianissa@gmail.com), <sup>3</sup>[aahubur052581@gmail.com](mailto:aahubur052581@gmail.com)

\*Corresponding Author

#### Article Info

#### Abstract

**Submitted:** March 02, 2023

**Revised:** March 21, 2023

**Accepted:** May 10, 2023

#### Keyword:

Hadhanah

Divorce

Parents

Children

Divorce increases every year, and *hadhanah* is essential to maintain balanced child custody in accordance with Islamic law and the principle of prioritizing benefit (*maslahah*). The purpose of this study is to explain and describe *hadhanah* in depth. The research uses qualitative methods with a literature study approach, employing documentation for data collection, data reduction, and presentation for processing, and ensuring validity through source triangulation. This study reveals that the implementation of *hadhanah* (child custody) in Indonesia has moved beyond purely normative considerations, such as gender or lineage, and now prioritizes the principle of the best interests of the child. Judges increasingly take into account the child's psychological well-being, the emotional and financial capacity of the guardian, and the stability of the post-divorce environment. The research highlights the need to reinterpret classical *fiqh* in light of contemporary social contexts. Thus, the findings promote a more adaptive approach to Islamic law one that ensures holistic protection for children in *hadhanah* cases. Conclusion: This study provides positive insight for parents in educating their children after divorce.

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## A. INTRODUCTION

Islam provides the option of divorce for married couples who are unable to maintain their family. In Indonesia, the causes of divorce over the past decade have become increasingly diverse in accordance with the law (Manna et al., 2021). In essence, divorce is permissible, but Allah SWT despises it. As explained in a hadith narrated by Imam Abu Dawud:

B. عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ تَعَالَى الطَّلَاقِ

"The most detestable of lawful things to Allah the Almighty is divorce." (H.R. Abu Dawud)

Fenomena perceraian di Indonesia terus meningkat setiap tahun, di mana banyak pasangan menganggap perceraian sebagai solusi terbaik meskipun sering menimbulkan perselisihan terkait *hadhanah* atau hak asuh anak (Dahwadin et al., 2020). Hukum Islam menetapkan tujuh alasan sah perceraian, sedangkan hukum perdata menambah beberapa alasan

lain (Melisa, 2023). Penyebab dominan perceraian meliputi konflik berkepanjangan, masalah ekonomi, sosial, budaya, komunikasi buruk, dan perselingkuhan yang berdampak negatif pada anak secara psikologis, fisik, dan hukum (Sireger et al., 2023). Pasangan muda rentan bercerai akibat masalah keuangan, konflik rumah tangga, dan kurangnya tanggung jawab suami (Absor & Suhadi, 2023). Dampak pada anak usia 5–6 tahun terlihat pada perkembangan sosial-emosional, dengan gaya pengasuhan ibu tunggal yang permisif dan ayah tunggal yang demokratis (Fahira et al., 2023). Co-parenting yang baik membantu perkembangan anak, dan regulasi negara menjamin perlindungan nafkah pasca perceraian (Cahyani, 2022; Iksan, 2020).

Pengaturan hak asuh anak pasca perceraian semakin mengarah pada joint physical custody, di mana kedua orang tua berbagi hak asuh untuk menjaga hubungan emosional anak dengan kedua pihak (Glover & Steele, 2014). Secara ekonomi, ibu yang memiliki hak asuh tunggal sering menghadapi tantangan seperti tingkat pengangguran yang lebih tinggi, sementara shared custody dapat meringankan beban ekonomi dengan mengurangi biaya pengasuhan dan memberikan fleksibilitas bagi ibu untuk kembali bekerja (Bonnet et al., 2022). Namun, perceraian tetap dapat menurunkan kesejahteraan ekonomi perempuan dan anak-anak (Everett, 2021). Dari segi hubungan orang tua-anak, joint custody cenderung meningkatkan komunikasi dan dukungan dibandingkan hak asuh tunggal (Bastaitis & Pasteels, 2019). Dalam aspek hukum, keputusan hakim terkait hak asuh sangat bervariasi, dengan perkembangan sistem hukum yang mendukung prosedur lebih damai dan pengaturan hak asuh bersama demi kepentingan anak (Cyr et al., 2013).

Hak asuh anak dalam Islam, atau *hadhanah*, berfokus pada prinsip kepentingan terbaik anak sebagai landasan utama dalam pengambilan keputusan hak asuh (Moussa, 2017). Di Malaysia, pengadilan Syariah dan lembaga terkait mengupayakan kesejahteraan anak Muslim melalui inisiatif seperti hak asuh bersama dan keterlibatan ahli dalam penyelesaian *hadhanah*, dipengaruhi juga oleh konvensi internasional (Nasir et al., 2021). Di Indonesia, khususnya Aceh, penyelesaian kasus hak asuh melibatkan perundingan antara hukum nasional, hukum Islam, dan adat lokal, meskipun masih terdapat disparitas putusan hakim yang memerlukan perhatian pada kondisi mental dan lingkungan anak (Nasution & Nasution, 2021; Nasution & Pagar, 2022). Di Thailand, hukum keluarga Islam dan hukum perdata berupaya melindungi hak anak dalam kasus *hadhanah* (Mohamad et al., 2016). Dasar hukum *hadhanah* tertuang dalam Q.S. Al-Baqarah (2:233), Undang-Undang No. 35 Tahun 2014, dan Kompilasi Hukum Islam, yang menegaskan perlindungan hak hidup, tumbuh kembang, dan partisipasi anak (Tarmizi et al., 2023; Mahmudah et al., 2018).

Previous studies on *hadhanah* (child custody) have generally focused on normative or doctrinal aspects, such as provisions in the Qur'an and Hadith, as well as legal approaches applied in various countries. However, there is a noticeable gap in integrative analysis between classical *fiqh* texts and contemporary judicial practices in Indonesia, particularly regarding the psychosocial needs of children after divorce. This study offers a novelty by comprehensively examining *hadhanah*, including the qualifications of a custodian (*hadhin*), the age of discernment (*mumayyiz*), the impact of the mother's remarriage, and modern judicial considerations, all based on the best interests of the child. The aim is to analyze the implementation of *hadhanah* from both Islamic legal and Indonesian judicial perspectives. The findings show that custody decisions take into account the child's psychological condition, the caregiver's competence, and environmental stability. As a result, this study encourages a more

responsive *ijtihad* and serves as a reference for judges in divorce cases.

## B. RESEARCH METHOD

This study employs a qualitative approach using the literature review method, which means the researcher collects various theoretical information and data from written sources such as books, scientific journals, articles, and other relevant documents. All sources are selectively chosen to align with the research topic, namely, *hadhanah* or child custody. In this context, the researcher explicitly emphasizes the discussion of the concept of *hadhanah* post-divorce in Islamic civil law. The data collection technique is carried out through documentary study, which involves gathering data in the form of readings or writings from various literature relevant to the issue of *hadhanah*. Once the data is collected, the researcher processes it through a reduction technique, filtering, sorting, and summarizing the most pertinent information related to the research focus, particularly concerning *hadhanah* and post-divorce *hadhanah*. Subsequently, the processed data is presented in the form of a narrative description or descriptive sentences to make it easier for readers to understand. This presentation aims to comprehensively describe the concept of *hadhanah*, both according to Islamic law and positive law in Indonesia. Thus, this research is expected to provide a clearer understanding of how child custody is regulated after divorce and its implications for child welfare under both legal systems.

## C. RESULTS AND DISCUSSION

### 1. Hadhanah (Child Custody)

Hadhanah is an obligation that must be fulfilled by both the father and mother for the best interests of their child. Even after divorce, the child retains the right to receive care, affection, and attention, as these are parental responsibilities. Sayyid Sabiq defines *hadhanah* as the act of nurturing a young child, whether male or female, or someone who lacks mental capacity, cannot distinguish between right and wrong, is incapable of independently managing their affairs, or does not understand how to act in their best interest. This includes protecting them from harm, educating them, and fostering their physical, mental, and intellectual development so they can lead a responsible and fulfilling life (Muhajir, 2017).

In Islamic law (*syariat*), *hadhanah* means safeguarding someone who cannot independently manage their affairs, educating them, and protecting them from harm (Yusuf, Mahmudah et al., 2018). Parental obligations toward children are extensively regulated in the Qur'an and the Hadith of Prophet Muhammad (PBUH), such as in Surah Al-Baqarah (2:233):

وَالْوَالِدَتُ يُرْضِعْنَ أَوْلَدَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنْمِيَ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا نُضَارُّ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهَا وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

*“Mothers may breastfeed their children for two full years for those who wish to complete the nursing period. The father shall bear the cost of their food and clothing fairly. No soul is burdened beyond its capacity. Neither mother nor father should be harmed because of their child. And the heir is responsible likewise. If both parents mutually agree to wean the*

*child after consultation, there is no blame on them. And if you decide to have the child nursed by a foster mother, there is no blame on you as long as you pay fairly. And fear Allah and know that Allah is All-Seeing of what you do."*

The verse above illustrates the responsibilities of a father in providing food and clothing, while the mother's obligation is to breastfeed their child. It is not uncommon for a woman who has been divorced to have still a baby that needs breastfeeding. However, there are many cases where a mother refuses to breastfeed after the divorce, which results in the child being neglected. This often occurs because the mother wants to take revenge on the child's father for divorcing her. Child custody between father and mother is intended to ensure the well-being of the child. In the event of a divorce, the right of custody is initially granted to the mother. However, if the mother does not meet the requirements, custody is transferred to the next eligible party, namely the father (Mursalin, 2015).

Wahbah Az-Zuhaili defines *hadhanah* as the care of a child by someone who meets the necessary qualifications or has the right to care for the child. *Hadhanah* can also be understood as the provision of protection for someone who is not yet capable of managing their own needs, such as a child who has not reached the age of discernment (*mumayyiz*) or an adult with a mental disorder. This care includes feeding, sleeping, bathing, clothing, washing, and other necessities.

The conditions for *hadhanah* include: the caregiver must be of sound mind thus, a mentally ill person cannot have custody unless the illness occurs only occasionally throughout the year; the caregiver must be free not a slave, as slaves do not have custody rights; the caregiver must be a Muslim non-Muslims cannot have custody of a Muslim child, although it is legally valid for a non-Muslim to care for a non-Muslim child, or for a Muslim to care for a non-Muslim child; the caregiver must be able to protect themselves there is no custody right for a person known for immorality (*fasiq*); the caregiver must be trustworthy there is no custody right for someone who betrays religious trust as it may endanger the child; the caregiver must be capable of providing care custody is not granted to a mother who moves to a location that may harm the child; and finally, the caregiver must not be married to another man, unless the husband is a *mahram* (unmarriageable kin) of the child, such as the child's uncle, and only with the permission of the child's biological father (Al-Jaziri; Gani & Mughnia, 2021).

## 2. Post-Divorce Hadhanah

Hadhanah refers to the care and nurturing of children who are not yet capable of taking care of themselves. In Islamic jurisprudence (*fiqh*), the right to hadhanah after a divorce lies with the mother rather than the father. According to the Compilation of Islamic Law (KHI) in Indonesia, the right to care for a child under the age of 12 is given to the mother, and both parents are obliged to care for the child until the child marries (Purwaningsih, 2014). Sayyid Sabiq emphasizes that it is obligatory to care for young children; neglecting this responsibility may endanger the child's well-being. Allah SWT states in Surah At-Tahrim: 6

يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْجِبَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ

"O you who have believed, protect yourselves and your families from a Fire whose

fuel is people and stones, over which are [appointed] angels, harsh and severe; they do not disobey Allah in what He commands them but do what they are commanded”.

In this verse, it is explained that Allah commands parents to protect and guard their families from the torment of Hellfire by ensuring that family members follow Allah's commands and avoid His prohibitions. The child, as mentioned in this verse, is also included as part of the family. In Islamic law, the rules of *hadhanah* (custody) from the perspective of rights are considered mutual rights between parents and children. As for the age limit for ending the period of *hadhanah*, it varies: seven years old, puberty (for girls), fifteen years old, or until marriage. Regarding who has the most right to *hadhanah*, it is the mother (a widow) as long as she meets the required conditions (Fawsi, 2018).

Divorce is defined as the termination of the relationship or bond carried out by the husband toward the wife or vice versa, as regulated by religious teachings or applicable laws. Divorce does not erase the status of the family, but it does prevent the ideal family from being formed. Divorce often brings consequences, such as those involving property or the children. Caring for young children is the obligation of every parent, as they are responsible for the child's growth and development. Divorce leads to *hadhanah* (custody) for underage children until the child no longer needs constant care and is able to manage their daily needs independently, such as eating, drinking, dressing, and so on (Masadah, 2020).

Essentially, the responsibility for raising a child lies with the parents, whether they are still living harmoniously or have separated due to divorce. *Haḍānah* itself is an obligation that must be fulfilled by the parents because without it, the child could be neglected and their life wasted. If a young child who is not yet discerning (*mumayyiz*) is not properly cared for and educated, it can negatively affect their future and even endanger their very existence.

Therefore, children must be properly cared for, nurtured, and educated. Children also have the right to be raised by their parents, as it is the parents who bear the primary responsibility for their growth and development. Parents have a deep emotional bond with their children, a bond that cannot be replaced by anyone else. This strong emotional connection greatly influences the child's growth and development until they reach adulthood.

In Islam, when a married couple divorces, the priority for child custody falls to the mother if the child has not yet reached the age of discernment (*mumayyiz*). However, the father still has a role in financially supporting the child. Once the child has reached the age of *mumayyiz*, the child has the right to choose whether to live with the father or the mother. This is explained in the hadith of the Prophet Muhammad (peace be upon him).

حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَوَانِيُّ حَدَّثَنَا عَبْدُ الرَّزَّاقِ وَأَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي زَيْدُ عَنْ هِلَالِ بْنِ أَسَامَةَ أَنَّ أَبَا مَيْمُونَةَ سَلَّمَ مَوْلَى مِنْ أَهْلِ الْمَدِينَةِ رَجُلٌ صِدْقٍ قَالَ بَيْنَمَا أَنَا جَالِسٌ مَعَ أَبِي هُرَيْرَةَ جَاءَتْهُ امْرَأَةٌ فَارْسِيَتْ مَعَهَا ابْنٌ لَهَا فَادَّعَاهُ وَقَدْ طَلَّقَهَا زَوْجُهَا فَقَالَتْ يَا أَبَا هُرَيْرَةَ وَرَطَّنْتُ لَهُ بِالْفَارِسِيَةِ زَوْجِي يُرِيدُ أَنْ يَذْهَبَ بِابْنِي فَقَالَ أَبُو هُرَيْرَةَ اسْتَهِمَا عَلَيْهِ وَرَطَّنَ لَهَا بِذَلِكَ فَجَاءَ زَوْجُهَا فَقَالَ مَنْ يُحَاقِنِي فِي وَلَدِي فَقَالَ أَبُو هُرَيْرَةَ اللَّهُمَّ إِنِّي لَا أَقُولُ هَذَا إِلَّا أَنِّي سَمِعْتُ امْرَأَةً جَاءَتْ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا قَاعِدٌ عِنْدَهُ فَقَالَتْ يَا رَسُولَ اللَّهِ إِنَّ زَوْجِي يُرِيدُ أَنْ يَذْهَبَ بِابْنِي وَقَدْ سَقَانِي مِنْ بئرِ أَبِي عَنَيْتٍ وَقَدْ نَفَعَنِي فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اسْتَهِمَا عَلَيْهِ فَقَالَ زَوْجُهَا مَنْ يُحَاقِنِي فِي وَلَدِي فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ هَذَا أَبُوكَ وَهَذِهِ أُمُّكَ فَخُذْ بِيَدِ ابْنَيْهِمَا شِئْتَ فَاخْذْ بِيَدِ أُمِّهِ فَأَنْطَلَقْتُ بِهِ

“*Al-Hasan bin ‘Ali Al-Hulwani narrated to us: ‘Abdurrazzaq and Abu ‘Asim*



*narrated to us, from Ibn Jurayj: Ziyad informed me, from Hilal bin Usamah: Verily, Abu Maymunah Salma, a freed slave of the people of Madinah who was known for his honesty, said: When I was sitting with Abu Hurairah, a Persian woman came to him carrying her child both she and her former husband were claiming the right to the child after their divorce. The woman spoke in Persian: 'O Abu Hurairah, my husband wants to take my child away.' Then Abu Hurairah replied to her in a foreign language: 'Draw lots for the child.' Then the husband came and said: 'Who is disputing my right over my child?' Abu Hurairah said: 'O Allah, I only said this because I once heard a woman come to the Messenger of Allah (peace be upon him) while I was sitting beside him. She said, "O Messenger of Allah, my husband wants to take my child away. He has helped me draw water from the well of Abu 'Inabah and benefited me greatly." The Messenger of Allah (peace be upon him) then said, "Draw lots for the child!" The husband then said, "Who will dispute my right over my child?" Then the Prophet (peace be upon him) said, "This is your father and this is your mother. Take the hand of whichever one you prefer!" The child then took his mother's hand, and the woman left with him.'"* [Narrated by Abu Dawud no. 2277; sahih].

This hadith serves as evidence that when a child has become independent or has reached the age of discernment (tamyiz), they have the right to choose whether to live with their father or mother, as they are already inclined to decide whom they feel more comfortable with. However, neither the Qur'anic verses nor this hadith clearly specify the exact age limit for hadhanah (custody); they only mention the condition of mumayyiz. Scholars differ in opinion regarding the duration of hadhanah.

According to the Hanafi school, hadhanah ends for a boy when he no longer requires care and can manage his daily needs on his own, and for a girl when she begins menstruation. This typically means hadhanah ends at age 7 for boys and around 9 for girls. According to the Maliki school, custody ends when a boy experiences a wet dream (ihtilam), and for a girl, it ends when she reaches marriageable age. However, if the mother is still in her waiting period (iddah), she retains custody of her daughter until she remarries. If she does remarry, custody may shift to the father, paternal relatives, or a female guardian. The Shafi'i school holds that hadhanah lasts until the child reaches seven or eight years old, after which the child may choose with whom they wish to live.

Nonetheless, even when a child is in the mother's custody, certain conditions may disqualify her from guardianship. These include: being a slave (ar-riqq), being openly sinful (fasiq) or disobedient to Allah, being non-Muslim, or remarrying another man. In four Religious Court rulings that were studied, custody rights were granted to the father due to his greater competence in child-rearing such as having good moral character, educational capability, social responsibility, and prioritizing the child's best interest over the mother's custodial right. In these cases, the father met the qualifications of a hadhin (custodian) more appropriately than the mother (Elimartati & Firdaus, 2018). This aligns with the hadith of the Prophet (peace be upon him) which states that a mother loses custody rights if she remarries:

عن عبد الله بن عمرو أن امرأة قالت: يا رسول الله، كان بطني له وعاء وثديي له سقاء وحجري له حواء وإن أباه طلقني وأراد أن ينزعني فقال لها رسول الله صلى الله عليه وسلم أنت أحق به مالم تتكحي رواه أحمد وأبو داود وصححه الحاكم

*“A woman once said: ‘O Messenger of Allah, this child of mine—my womb carried him, my breast fed him, and my lap nurtured him. But his father has divorced me and now wants to take him away from me.’ The Messenger of Allah (peace be upon him) responded: ‘You have more right to the child as long as you have not remarried.’ (Narrated by Ahmad, Abu Dawud, and authenticated by Imam Al-Hakim)*

This hadith explains that when the mother remarries, the right of *hadhanah* (custody) of the child is transferred to the father. The reasoning is that, upon entering a new marriage, the mother’s attention may shift toward her new husband or to any future children from that marriage. As a result, her care and focus toward the child from the previous marriage may diminish, which can lead the child to feel neglected. This emotional neglect may ultimately harm the child’s well-being.

Islamic jurists (*fuqaha*) have agreed that certain conditions must be met by a person in order to be eligible to raise, care for, or educate a child. These conditions include: being of sound mind, trustworthy, maintaining personal purity, not being a dancer or a wine drinker, and not neglecting the child under their care. These requirements aim to ensure the physical and moral well-being of the child. These criteria apply not only to female caregivers but also to male ones. Parents are obligated to care for their children, both physically and spiritually, including religious education and intellectual development (Pertiwi & Sa’adah, 2022).

*Hadhanah* (child custody and care) is considered an obligatory duty in Islam, as children who are still in need of nurturing may suffer harm if not properly cared for. It involves the protection, support, and provision necessary for the child’s well-being and development. *Hadhanah* encompasses three interrelated rights: the right of the mother or caregiver, the right of the child, and the right of the father or guardian. Ideally, these rights should be harmonized; however, in cases of conflict, the child’s best interest must take precedence. Several key principles govern this responsibility: the mother must provide care if she is deemed the most suitable guardian; she should not be forced if others can adequately fulfill the role; the father cannot transfer custody to another woman without valid *shar’i* grounds; and if another woman breastfeeds the child, she must do so alongside the mother to preserve the mother’s custodial rights.

There is a more important right that must be given by both parents, namely the right to affection. Affection is the primary right and serves as the foundation for educating and providing life experiences to children. How could other rights be given if affection is not fully provided? The majority of *fiqh* scholars, such as Imam Shafi’i, Maliki, Hanafi, and Hanbali, prioritize the mother over the father in child-rearing. They argue that women or mothers have an innate instinct in caring for and educating children, exhibiting patience when facing issues related to their children. They believe that men’s patience is not as high as women’s when dealing with such matters.

Considering that, based on Article 1, paragraph (2) of Law Number 23 of 2002 on Child Protection, child protection refers to all activities to guarantee and protect the child and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and receive protection from violence and discrimination. Thus, the rights and obligations of children in this law prioritize the protection of children, even in the

case of a divorce between the parents.

However, regarding the update on child custody rights in Indonesia, particularly in the court realm, it is necessary to examine the judges' decisions, which discuss child custody based on the best interest of the child. Judges in Indonesian religious courts have made significant changes, where the custody may be granted to the mother, or in some cases, to the father, based on considerations such as whether the mother is a busy career woman who cannot care for the child, or if the child has more than one sibling, in which case custody might be shared.

When children's rights are regulated by law, neglecting these rights and unclear child custody arrangements should not occur. Hadhanah is closely related to human rights and gender equality, where the tendency of the law not to grant hadhanah to women upon remarriage is also evident. Hadhanah can be revoked if the parent neglects their duties towards the child, particularly to safeguard the child's life (*hifz al-nafs*), which is the essence of life itself. Failure to meet this duty may cause harm or destruction to the child. In this case, the child does not receive priority in terms of education from the mother. Secondly, the preservation of lineage (*hifzh an-nasl*), where the mother has been proven to prevent the child from meeting with the father (Law No. 23 of 2002, Article 26).

#### D. CONCLUSION

Hadhanah is the duty of the parents (father/mother) to care for, educate, and protect the child, especially when the child is not yet able to be independent, even after divorce. According to Sayyid Sabiq and Wahbah Az-Zuhaili, hadhanah encompasses the physical, mental, and intellectual development of the child. Islamic law emphasizes this responsibility in QS. Al-Baqarah:233, where the father is obliged to provide financial support, and the mother is responsible for breastfeeding. Custody is prioritized for the mother unless she does not meet the required conditions (such as being of sound mind, free, Muslim, trustworthy, and capable). A person who is wicked, non-Muslim, or a betrayer does not have the right to custody. The goal is the welfare of the child, not revenge. Post-divorce custody is a joint responsibility of both parents to care for the child who is not yet independent. According to fiqh and the Compilation of Islamic Law (KHI), the mother has the right to custody of children under 12 years old, while the father is required to provide financial support. However, custody can shift if the mother fails to meet the requirements (e.g., remarriage, wickedness, or non-Islamic status). Children who are already *mumayyiz* (able to choose) have the right to decide whether to stay with the father or the mother. Scholars have different opinions on the age limit for hadhanah (7-15 years or until marriage). The primary principle is the child's welfare, which is in line with QS: at-Tahrim:6 and the Prophet's hadith. The court may decide on custody based on the parents' competence, not just gender.



## LITERATURE

- Absor, M. U., & Suhadi. (2023). Problematika perceraian pada pasangan suami istri dengan usia pernikahan di bawah 5 tahun (Studi kasus di Pengadilan Agama Jepara Tahun 2021–2022). *JIMSYA: Jurnal Ilmu Syariah*, 2(2), 62–82. <https://jim.iainkudus.ac.id/index.php/JIMSYA/index>
- Bastaits, K., & Pasteels, I. (2019). Is joint physical custody in the best interests of the child? Parent–child relationships and custodial arrangements. *Journal of Social and Personal Relationships*, 36(11-12), 3752–3772. <https://doi.org/10.1177/0265407519838071>
- Bonnet, C., Garbinti, B., & Solaz, A. (2022). Does part-time mothering help get a job? The role of shared custody in women's employment. *European Journal of Population*, 38(5), 885–913. <https://doi.org/10.1007/s10680-022-09625-4>
- Cahyani, D. A., & Widyarto, W. G. (2022). Pola asuh co-parenting pada anak korban perceraian. *Jurnal Pendidikan dan Konseling*, 12(2), 139–160. <https://doi.org/10.30829/alirsyad.v12i2i.12790>
- Cyr, F., Di Stefano, G., & Desjardins, B. (2013). Family life, parental separation, and child custody in Canada: A focus on Quebec. *Family Court Review*, 51(4), 522–541. <https://doi.org/10.1111/fcre.12050>
- Dahwadin, Syaripudin, E. I., Sofiati, E., & Somantri, M. D. (2020). Hakikat perceraian berdasarkan ketentuan hukum Islam di Indonesia. *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam*, 11(1), 87–104. <https://doi.org/10.21043/yudisia.v11i1.3622>
- Elimartati, & Firdaus. (2018). Hak hadhanah dalam putusan Pengadilan Agama. *Jurnal Ilmiah Syariah*, 17(2), 233–243. <https://doi.org/10.31958/juris.v17i2.1195>
- Everett, C. A. (2021). *The consequences of divorce: Economic and custodial impact on children and adults*. Taylor and Francis. <https://doi.org/10.4324/9781003210696>
- Fahira, N., Habibbi, M., Nurhasanah, I., & Rachmayani, I. (2023). Pengaruh perceraian terhadap perkembangan sosial emosional anak usia 5-6 tahun di Desa Pondok Perasi Ampenan Kota Mataram tahun 2023 (Studi Kasus). *Jurnal Ilmiah Profesi Pendidikan*, 8(4), 2165–2172. <https://doi.org/10.29303/jipp.v8i4.1669>
- Fawsi, R. (2018). Hak hadhanah dalam perceraian karena pindah agama perspektif hukum Islam. *TAHKIM, Jurnal Peradaban dan Hukum Islam*, 1(2), 94–105. <https://doi.org/10.29313/tahkim.v1i2.4106>
- Gani, B. A., & Mughnia, A. (2021). Konsep hadhanah perspektif Mazhab Syafi'i dan implementasinya dalam putusan Mahkamah Syar'iyah Kota Banda Aceh Nomor 314/Pdt G/2017/MS Bna. *Jurnal El-Hadhanah: Indonesian Journal of Family Law and Islamic Law*, 1(1), 43–62. <https://doi.org/10.22373/hadhanah.v1i1.1615>
- Glover, R. J., & Steele, C. (2014). Comparing the effects on the child of post-divorce parenting arrangements. In *Children of Divorce: Developmental and Clinical Issues* (pp. 185–201). Taylor and Francis. <https://doi.org/10.4324/9781315804057>
- Iksan, & Adnan. (2020). Perlindungan anak pasca perceraian orang tua. *Fundamental: Jurnal Publikasi Hukum*, 9(1), 1–16. <https://doi.org/10.34304>
- Mahmudah, H., Juhriati, & Zuhrah. (2018). Hadhanah anak pasca putusan perceraian (studi komparatif hukum Islam dan hukum positif Indonesia). *Sangaji: Jurnal Pemikiran Syariah dan Hukum*, 2(1), 57–99. <https://doi.org/10.52266/sangaji.v2i1.263>

- Manna, N. S., Doriza, S., & Oktaviani, M. (2021). Cerai gugat: Telaah penyebab perceraian pada keluarga di Indonesia. *Jurnal Al-Azhar Indonesia Seri Humaniora*, 6(1), 11–21. <https://doi.org/10.36722/sh.v6i1.443>
- Masadah. (2020). Hadhanah dalam prespektif Imam Madhab dan Kompilasi Hukum Islam serta pengaruhnya terhadap pendidikan anak. *Dinamika*, 5(2), 69–94. <https://doi.org/10.32764/dinamika.v5i2.1030>
- Melisa. (2023). *Sebab-sebab perceraian: Analisis perbandingan putusan Mahkamah Syar'iyah Idi dan Mahkamah Syar'iyah Kota Lhokseumawe* [Undergraduate thesis, Universitas Islam Negeri Ar-Raniry]. UIN Ar-Raniry Repository. <https://repository.ar-raniry.ac.id/id/eprint/31929/1/Melisa,%20190103034,%20FSH,%20PMH,%20082274286057.pdf>
- Mohamad, A. B., Machae, R., & Khareng, M. (2016). Children's protection in the issue of Hadhanah based on Islamic family law and the law of Thailand. *Asian Social Science*, 12(10), 18–26. <https://doi.org/10.5539/ass.v12n10p18>
- Moussa, J. (2017). Egypt. In *Parental care and the best interests of the child in Muslim countries* (pp. 1–28). T.M.C. Asser Press. [https://doi.org/10.1007/978-94-6265-174-6\\_1](https://doi.org/10.1007/978-94-6265-174-6_1)
- Muhajir, A. (2017). Hadhanah dalam Islam (Hak pengasuhan anak dalam sektor pendidikan rumah). *Jurnal SAP*, 2(2), 165–173. <https://doi.org/10.30998/sap.v2i2.2089>
- Mursalin, S. (2015). Hak hadhanah setelah perceraian (Pertimbangan hak asuh bagi ayah atau ibu). *Mizani*, 25(2), 60–69.
- Nasir, N. M., Zin, N. M., & Sitiris, M. (2021). The implementation of Ḥaḍānah in Malaysian Shari'ah court: A literature review [Implementasi Ḥaḍānah di Mahkamah Syariah Malaysia: Sorotan literatur]. *Malaysian Journal of Syariah and Law*, 9(2), 39–65. <https://doi.org/10.33102/mjssl.vol9no2.335>
- Nasution, A., & Nasution, I. F. A. (2021). Customary law approaches to Ḥaḍānah disputes in Aceh: Arguments and social implications. *Ahkam: Jurnal Ilmu Syariah*, 21(2), 257–278.
- Nasution, A., & Pagar, A. (2022). The disparity of judge's verdict on child custody decision in Aceh Sharia Court. *Samarah*, 6(2), 890–913. <https://doi.org/10.22373/sjkh.v6i2.12758>
- Pertiwi, N., & Nur Sa'adah, C. (2022). Hadhanah dan kewajiban orang tua dalam perspektif hukum Islam. *Syakhshiyyah: Jurnal Hukum Keluarga Islam*, 2(1), 49–60. <https://doi.org/10.32332/syakhshiyyah.v2i1.4997>
- Purwaningsih, P. (2014). Hak pemeliharaan atas anak (Hadhanah) akibat perceraian ditinjau dari hukum positif. *YUSTISI*, 1(2), 55–65. <https://doi.org/10.32832/yustisi.v1i2.1093>
- Siregar, D., Sitepu, K., Darma, M., Na'im, K., Tarigan, M. T. U., Razali, R., & Harahap, F. S. (2023). Studi hukum tentang tingkat perceraian dan efeknya terhadap anak. *Jurnal Deputy*, 3(2), 178–185. <https://doi.org/10.54123/deputi.v3i2.276>
- Tarmizi, Y., Pradiba, Y., & Usman, K. (2023). Hak asuh anak (hadhanah) pasca perceraian serta akibat hukumnya. *Jurnal Ilmu Hukum Pengayoman*, 1(1), 13–27.
- Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan
- Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak