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## **A Comparative Study of Indonesian and Egyptian Islamic Law on Post-Divorce Child Custody Rules**

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**Received:** 2025-7-12

**Revised:** 2025-09-07

**Accepted:** 2025-10-17

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### **Abstract**

This study aims to compare Islamic law in Indonesia and Egypt regarding child custody (*hadhanah*) regulations after divorce, with a focus on the principles of protection and the best interests of the child. This research employs a library research method, examining sources such as the Qur'an, hadith, classical Islamic jurisprudence texts, statutory regulations, and relevant scholarly studies. The research process involves reading, reviewing, and analyzing literature related to the implementation of *hadhanah* in both legal systems. The findings indicate that Indonesia views *hadhanah* as an essential aspect of family Law that emphasizes child protection and welfare. Legally, mothers receive priority in caring for young children; however, final decisions are always made in the child's best interests. This reflects the adaptive, humanistic, and justice-oriented nature of Islamic Law in Indonesia, which remains responsive to modern societal needs. Meanwhile, Egypt places *maslahah al-thifl* (the child's best interest) at the core of its regulation of *hadhanah* and has successfully integrated Islamic values into modern national law. Both countries affirm that the child's welfare is the paramount consideration in determining custody after divorce.

**Keywords:** Islamic Law; Child Custody; Divorce.

## Abstrak

Penelitian ini bertujuan untuk membandingkan hukum Islam di Indonesia dan Mesir terkait peraturan hak asuh anak (*hadhanah*) setelah perceraian, dengan fokus pada prinsip perlindungan dan kepentingan terbaik anak. Penelitian ini menggunakan metode penelitian perpustakaan, dengan mengkaji sumber-sumber seperti Al-Qur'an, hadis, teks-teks fiqih Islam klasik, peraturan perundang-undangan, dan studi-studi ilmiah yang relevan. Proses penelitian melibatkan pembacaan, tinjauan, dan analisis literatur yang berkaitan dengan implementasi *hadhanah* dalam kedua sistem hukum tersebut. Hasil penelitian menunjukkan bahwa Indonesia memandang *hadhanah* sebagai aspek penting dalam hukum keluarga yang menekankan perlindungan dan kesejahteraan anak. Secara hukum, ibu diberi prioritas dalam merawat anak-anak kecil; namun, keputusan akhir selalu diambil berdasarkan kepentingan terbaik anak. Hal ini mencerminkan sifat adaptif, humanis, dan berorientasi pada keadilan dari hukum Islam di Indonesia, yang tetap responsif terhadap kebutuhan masyarakat modern. Di sisi lain, Mesir menempatkan *maslahah al-thifl* (kepentingan terbaik anak) sebagai inti regulasi *hadhanah* dan berhasil mengintegrasikan nilai-nilai Islam ke dalam hukum nasional modern. Kedua negara menegaskan bahwa kesejahteraan anak adalah pertimbangan utama dalam menentukan hak asuh setelah perceraian.

**Kata Kunci:** Perempuan Merantau; Tanpa Mahram; *Maslahah Mursalah*;

## Introduction

Islamic Law is the Law of Allah revealed to the Prophet Muhammad SAW in the form of words, deeds, or acknowledgments contained in the Qur'an and the Sunnah of the Prophet Muhammad SAW to be conveyed to mankind. In Islam, all human activities are regulated by the sharia of Allah SWT, as contained in the Holy Qur'an, and the sunnah of the Prophet Muhammad SAW.<sup>1</sup>

Islamic law has undergone continuous development across both fundamental and more complex political domains, supported by social and cultural factors.<sup>2</sup> All of this is actually based on the socio-cultural forces that interact in the political decision-making process. The various perspectives and interpretations that have emerged in different understandings of Muslims regarding the essence of Islamic law have influenced how it is applied.<sup>3</sup>

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<sup>1</sup> Abdul Karim Zaidan, *Pengantar Studi Syari'ah: Mengenal Syari'ah Islam Lebih Dalam*, (Jakarta:Rabbani Press, 2008), 45.

<sup>2</sup> Raja Ritonga, Desi Asmaret, Julhadi, Tamrin Kamal and Saifullah. "Factors Influencing The History Of The Growth And Development Of Islamic Law From The Era Of The Prophet To The Abbasid Period." *El-Ahli: Jurnal Hukum Keluarga Islam* (2024). <https://doi.org/10.56874/el-ahli.v5i2.2224>.

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Islamic law is a legal system derived from the Qur'an, Sunnah, ijma, and qiyas, which has a major influence in regulating various aspects of Muslim life, including family matters. A critical issue in Islamic family law is child custody (ḥaḍānah) after divorce. The issue of custody is a complex topic because it involves the interests of the child, the rights of the parents, and the application of Islamic principles amid the development of national and social laws in each country.

In many Muslim countries, including Indonesia and Egypt, Islamic law is a significant basis for family law systems. However, its application and interpretation are not always the same. Differences in social and political conditions and legal systems have led to variations in the determination of child custody rights after divorce. Therefore, a comparison between Islamic law in Indonesia and Egypt is relevant to study, as both are countries with Muslim-majority populations but have different legal systems and approaches to the application of Islamic law.<sup>4</sup>

In Indonesia, Islamic law is incorporated into the national legal system through the Compilation of Islamic Law (KHI), enacted by Presidential Instruction No. 1 of 1991. The KHI serves as a guideline for the Religious Court in resolving family cases for Muslims, including divorce and child custody issues. Under Article 105 of the KHI, custody of children who are not yet mumayyiz (under 12 years of age) rests with the mother, unless the mother is found unfit to fulfill her responsibilities. Meanwhile, children who have reached the age of discernment are given the freedom to choose to live with their father or mother. This provision shows the influence of the Shafi'i school of fiqh, which is dominant in Indonesia, as well as an adaptation of the principle of the best interests of the child, as stipulated in Law No. 35 of 2014 concerning Child Protection.

Meanwhile, Egypt is one of the key references in the development of modern Islamic family law. Since the early 20th century, Egypt has codified Islamic law in the form of *the Qānūn al-Aḥwāl al-Syakṣiyyah* (Personal Status Law), which has undergone several revisions, most recently through Law No. 25 of 1929 and its amendments.<sup>5</sup> In Egyptian family law, custody of children is also granted to the mother in the early stages, taking into account the age and

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Estado, D., México, D., De, S., Primaria, E., Secundaria, Y., & , M. (2024). Tracing the Roots of Socio-Cultural Factors in Legal and Religious Thought: Historical and Contemporary Perspectives. *Solo International Collaboration and Publication of Social Sciences and Humanities*. <https://doi.org/10.61455/sicopus.v2i02.122>.

<sup>4</sup> Lahaji Lahaji and Sulaiman Ibrahim. "Fiqh Perempuan Keindonesiaan." *Al-Bayyinah* (2019). <https://doi.org/10.35673/al-bayyinah.v3i1.127>.

<sup>5</sup> Nasaruddin Mera, Marzuki Marzuki, M. Taufan B., Sapruddin Sapruddin and Andi Intan Cahyani. "Child Custody Rights for Mothers of Different Religions: Maqāṣid al-Sharī'ah Perspective on Islamic Family Law in Indonesia." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* (2024). <https://doi.org/10.22373/sjhh.v8i3.23809>.

needs of the child. However, the age limit for custody in Egyptian law is generally longer than in Indonesia, namely until the child is 15 years old for boys and 17 years old for girls, with the possibility of extension based on the best interests of the child.<sup>6</sup>

The differences in custody arrangements between Indonesia and Egypt demonstrate the dynamics of *ijtihad* and the renewal of Islamic law in accordance with the social context of each country. Egypt, as a country with a strong Hanafi fiqh tradition, tends to give mothers more leeway in caring for their children by taking into account the psychological well-being of the child and other welfare aspects. Meanwhile, Indonesia, despite adhering to Shafi'i fiqh, has modified classical Islamic law by integrating modern principles such as *the best interests of the child*, which is taken from international legal practice.<sup>7</sup>

In addition, sociocultural factors also influence the implementation of custody laws in both countries. In Indonesia, family values and the social role of women, which tends to be domestic, mean that custody is often granted to mothers. However, in practice, there are many cases where custody is granted to fathers due to economic considerations and environmental stability. In Egypt, social changes and increasing legal awareness among women have also encouraged family law reforms to be more gender-fair, without neglecting Islamic values.

A comparative study of Islamic law between Indonesia and Egypt in the context of child custody after divorce is important because it illustrates how Islamic legal principles are applied in different national legal systems. Through this comparison, it can be seen to what extent both countries are able to balance classical fiqh texts with modern social demands, as well as how Islamic law remains relevant in protecting children's rights and ensuring justice for both parents after divorce.<sup>8</sup>

This research is a type of *library research*, which is research that uses library data in the form of books as its source data.<sup>9</sup> This research was conducted by reading, reviewing, and analyzing various literature and relevant research results.

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<sup>6</sup> Vina Mareta and Muh Jufri Achmad. "PERLINDUNGAN TERHADAP PENGABAIAN HAK ASUH ANAK AKIBAT PERCERAIAN." *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* (2022). <https://doi.org/10.53363/bureau.v2i1.146>.

<sup>7</sup> K. Yount, A. Crandall and Y. F. Cheong. "WOMEN'S AGE AT FIRST MARRIAGE AND LONG-TERM ECONOMIC EMPOWERMENT IN EGYPT.." *World development*, 102 (2018): 124-134 . <https://doi.org/10.1016/j.worlddev.2017.09.013>.

<sup>8</sup> H. Abdelfatah. "The Effects of the Egyptian Personal Status law On Divorce Children." *SSRN Electronic Journal* (2020). <https://doi.org/10.2139/ssrn.3636783>.

<sup>9</sup> Sutrisno Hadi, *Metodelogi Research, Andi Offset*, (Yogyakarta, 2002), 9.

## Islamic Law on Child Custody After Divorce

Child custody is the act of caring for or raising a child who is not yet mumayyiz so that they become a complete and responsible human being.<sup>10</sup> Hadhanah, or child care, is obligatory in Islam, as the safety of a child's body and soul will be threatened if they are neglected.<sup>11</sup> In terms of terminology, child custody is the activity of caring for boys or girls who are not yet able to live independently and protecting them from environments that threaten their lives, bodies, and minds. This is done to provide the rights that must be given to the child so that they can live independently and be responsible for all their obligations.<sup>12</sup> Child maintenance is also the duty and responsibility of both husband and wife or father and mother to care for, nurture, and educate their children. They have equal responsibility in carrying out child maintenance, which includes providing food, clothing, health care, education, and protection from various dangers and other necessary matters.<sup>13</sup>

The legal basis for child maintenance or hadhanah is mentioned in the Word of Allah in Surah At-Tahrim, verse 6:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا قُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَظَ شِدَادٌ لَا يَعْصُونَ اللَّهَ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ

Translation:

O you who believe, protect yourselves and your families from the fire of Hell, whose fuel is men and stones, and whose guards are fierce, harsh angels who disobey not Allah in what He commands them, and always do what they are commanded.<sup>14</sup>

The father's obligation to his children is to provide for their economic needs, both in terms of food and clothing. In addition to the commitment of the father and mother to provide for their children economically, the father and mother also have a responsibility to educate their children, which is very important, because their position is very decisive for the lives of their children, both in terms of disposition and environment. Therefore, Islamic law has the term hadanah.<sup>15</sup>

The protection of children's rights not only includes physical custody,

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<sup>10</sup> Hamdan Arief Hanif and Aulia Nissa Salsabila, "Konsep Hadhanah Pasca Perceraian Dalam Perdata Islam," *Al Irsyad: Jurnal Studi Islam* 2, no. 2 (2023), 63-72

<sup>11</sup> Arif Sugitanata, "Product Renewal in the Field of Family Law in Indonesia," *Law and Justice* 6, no. 1 (2021), 62-79.

<sup>12</sup> Slamet Arofik, "Pengasuhan Anak (Hadhanah) Perspektif Sayyid Sabiq Dan Wahbah Zuhaili," *Jurnal Usratuna*, Vol.2 No. 1 (Desember, 2018), 8.

<sup>13</sup> Zainudin Ali, *Hukum Perdata islam di Indonesia* (Jakarta Sinar Grafindo, 2006), 64

<sup>14</sup> Kementerian Agama, *Al-Qur'an dan Terjemahnya*, (Jakarta: PT Sinerji Pustaka Indonesia, 2012), 820.

<sup>15</sup> H. Abdul Qadir Djaelani, *Keluarga Sakina* (Surabaya: Pt Bina Ilmu 1995), 212.

but also includes the right to education, health, protection from violence, and the right to receive love from both parents. Fathers remain obliged to bear the costs of child maintenance and education, while mothers play a major role in providing attention and direct care. Both have moral and legal responsibilities to ensure that children grow up in an environment full of love and stability.<sup>16</sup>

Thus, it can be concluded that the maintenance of children's rights in the perspective of Islamic law emphasizes the balance between the rights and obligations of parents, with the main orientation being the best interests of the child. The state, through the religious court system, plays an important role in upholding justice and protecting children's rights after divorce.<sup>17</sup> The principles of justice, compassion, and benefit must be the basis for every legal decision, so that children, as the future generation of the nation, continue to receive full protection and welfare in accordance with Islamic teachings and universal human values.

### **Background of Islamic Law in Indonesia on Child Custody Rights After Divorce**

Divorce is a legal event with broad impact, not only on the relationship between husband and wife but also on the children born of the marriage. One of the critical issues after divorce is the determination of child custody (*hadhanah*), namely, who has the right to care for, nurture, and educate the children after the marriage ends. In the context of Indonesian society, which is predominantly Muslim, the issue of child custody cannot be separated from the teachings and provisions of Islamic law, as well as from the national legal system that accommodates these values.<sup>18</sup>

Normatively, Islamic law pays great attention to the protection of children, especially in terms of care and upbringing after divorce. In Islam, children are a trust from Allah SWT whose rights must be protected and upheld, including the right to life, growth, affection, and a proper education. Therefore, in the event of divorce, Islam establishes certain principles in determining who is most entitled to custody of the children, taking into consideration the welfare and best interests of the children (*mashlahah al-thifl*).<sup>19</sup>

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<sup>16</sup> Afifun Najib Najib. "Pembaharuan Hukum Keluarga Islam Tentang Hak Pengasuhan Anak (Hadlanah) Akibat Perceraian dalam Kompilasi Hukum Islam (Khi) dan Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak." *YUDHISTIRA : Jurnal Yurisprudensi, Hukum dan Peradilan* (2025). <https://doi.org/10.59966/yudhistira.v3i1.725>.

<sup>17</sup> Lahaji Lahaji and Sulaiman Ibrahim. "Fiqh Perempuan Keindonesiaan." *Al-Bayyinah* (2019). <https://doi.org/10.35673/al-bayyinah.v3i1.127>.

<sup>18</sup> Ahmad Rusyaid Idris, Muhammad Khusaini and Syaiful Anwar Al-Mansyuri. "Contemporary Islamic Law in Indonesia: the Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage." *MILRev : Metro Islamic Law Review* (2024). <https://doi.org/10.32332/milrev.v3i1.8907>.

<sup>19</sup> Umar Multazam. "The Concept of Child Custody (Hadhanah) After Divorce in the

In Islamic law, the legal basis for hadhanah can be found in the Qur'an and Hadith. For example, in Surah Al-Baqarah verse 233, Allah SWT says that "Mothers shall breastfeed their children for two full years for those who wish to complete breastfeeding." This verse implies that mothers have primary responsibility for their children in the early stages of their lives, especially in terms of care and affection. In addition, there is a hadith of the Prophet Muhammad SAW narrated by Abu Dawud, in which a woman came to the Prophet SAW to complain that her husband wanted to take their child after they divorced. The Prophet said: "*You have more right to your child as long as you have not remarried.*" (HR. Abu Dawud). This hadith is a strong basis for the fact that custody of children is basically given to the mother, as long as she is capable and has not remarried.<sup>20</sup>

However, Islamic law also emphasizes that custody rights are not absolute, but rather a trust that can be revoked if the party holding the rights is unable to fulfill their obligations or does not provide for the welfare of the child. The main principle is the best interest of the child. If the mother is deemed unfit or has remarried and the child does not like her new husband, custody may be transferred to the father or other close relatives who are better able to ensure the child's welfare.

In Indonesia, provisions regarding child custody after divorce are not only derived from Islamic law, but also from national law that accommodates the principles of justice and child protection.<sup>21</sup> These provisions can be found in several laws and regulations, such as Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2002 in conjunction with Law No. 35 of 2014 on Child Protection, as well as the Compilation of Islamic Law (KHI), which serves as a guideline for religious courts in resolving family cases for Muslims.<sup>22</sup>

The termination of a marriage by a court decision that has permanent legal force (*inkracht van gewijsde*) has legal consequences. One of these relates to the right to care for children born of the marriage. Rights and obligations arise from the bond between the two parents and their minor children. Parents are obligated to care for their children in matters of education, economics, and

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Perspective of Islamic Law." *Indonesian Journal of Islamic Law* (2024). <https://doi.org/10.35719/ijil.v7i1.1956>.

<sup>20</sup> Muhammad Farid, Muhammad Syukri Albani and Fauziah Lubis. "Legal Reconstruction of Hadhanah Rights Due to Divorce in Indonesia from a Maqashid Syari'ah Perspective." *JURNAL AKTA* (2025). <https://doi.org/10.30659/akta.v12i1.43809>.

<sup>21</sup> Lahaji Lahaji and Sulaiman Ibrahim. "Fiqh Perempuan Keindonesiaan." *Al-Bayyinah* (2019). <https://doi.org/10.35673/al-bayyinah.v3i1.127>.

<sup>22</sup> Afifun Najib Najib. "Pembaharuan Hukum Keluarga Islam Tentang Hak Pengasuhan Anak (Hadhanah) Akibat Perceraian dalam Kompilasi Hukum Islam (KHI) dan Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak." *YUDHISTIRA : Jurnal Yurisprudensi, Hukum dan Peradilan* (2025). <https://doi.org/10.59966/yudhistira.v3i1.725>.

all aspects of basic needs.<sup>23</sup> Protecting children from various threats is part of safeguarding human welfare; caring for and educating children also means caring for their parents' lives.<sup>24</sup>

The Compilation of Islamic Law regulates the status of children who are victims of divorce from their parents, as stipulated in Article 105, which states that in the event of divorce:

- a. The custody of a child who is not yet mumayyiz or under the age of 12 is the right of the mother.
- b. The custody of a child who has reached the age of discernment is left to the child to choose between the father and mother as the custodial parent.
- c. The father bears the costs of custody.<sup>25</sup>

Furthermore, according to Articles 105 and 156, letter b, of the KHI, in the event of divorce, the custody of a child who has reached the age of discernment is left to the child to choose between the father and mother as the holder of the right of custody. The right to choose is given to the child if certain conditions are met, namely that both parents are qualified to care for the child and the child is not mentally disabled. Imam Malik and Abu Hanifah believe that the child should not be given the right to choose. Abu Hanifah argues that if the child can live independently, then the father has more rights over the child. Malik claims that the mother has more rights to care for the child until the end of the custody period. Furthermore, regarding the financing of child maintenance, Article 41, Letter b of Law No. 1/1974 states that the father is responsible for all maintenance and education costs required by the child. If the father is unable to fulfill this obligation, the court will determine that the mother will also bear these costs.<sup>26</sup>

This provision demonstrates the alignment between Islamic law and national law in protecting children's rights after divorce. However, its application in the field often raises various problems, such as custody disputes, the implementation of child support obligations, and the psychological and social aspects experienced by children after their parents separate. In practice, religious court judges often have to interpret these custody provisions carefully, taking into account the child's moral, psychological, and social

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<sup>23</sup> Andi acoagus, Haryani. “*Hak Asuh Anak Pasca Perceraian*”, Jurnal Supremasi, Vol XIII Nomor 1, 2018, 62

<sup>24</sup> Amany Lubis, *Ketahanan Keluarga dalam Perspektif Islam*, (Jakarta: Pustaka Cendekiawan, 2018), 11.

<sup>25</sup> Nunung Rodliyah, Dkk. *Pemberian Hak Asuh Anak (Hadhanah) Dalam Perkara Perceraian Di Pengadilan Agama Pesawaran* (Studi Putusan: Nomor 0007/PDT.G/2019/PA.GDT.) JHM Vol. 2 No. 2 November 2021. 3.

<sup>26</sup> Fakhrurazi, Pemeliharaan Anak Pasca Perceraian Pada Kasus Kekerasan Dalam Rumah Tangga Menurut Hukum Positif Indonesia, *Journal Evidence Of Law*, Vol 3 No 1 Januari-April 2024. 55.



aspects, so that the decision truly reflects the child's best interests.

In addition, social dynamics and the development of modern society influence perspectives on child custody. In traditional societies, mothers are often considered the most appropriate caregivers for children, especially young children. However, in the modern context, considerations of economic capacity, emotional stability, and mental readiness are also important factors. It is not uncommon for fathers to be considered more suitable to care for children if they are deemed more capable of providing an environment that supports the child's growth and development. Thus, judges need to be objective in determining custody without gender bias, but rather oriented towards the overall welfare of the child.

The enforcement of child custody laws in Indonesia is also closely related to the religious court system, which has absolute authority in family matters for Muslims, including divorce and custody. In this context, religious courts serve not only as dispute-resolution institutions but also as guardians of Islamic moral values in family life. Religious judges are required to be able to integrate Sharia principles with the values of social justice that exist in society and the applicable laws and regulations.

Thus, the discussion of child custody after divorce from the perspective of Islamic law in Indonesia is very important. This issue not only concerns legal aspects but also touches on moral, social, and humanitarian dimensions. Proper regulation of child custody is expected to provide legal protection for children, guarantee their rights to grow and develop properly, and minimize the negative impact of divorce on children's lives.

Therefore, a study of post-divorce child custody from the perspective of Islamic law in Indonesia needs to be conducted to understand the extent to which Islamic legal principles have been implemented in judicial practice, as well as how the synchronization between religious norms and positive legal provisions can be realized in order to achieve justice and benefit for children as the nation's future generation.

### **Background of Islamic Law in Egypt on Child Custody After Divorce**

Geographically, Egypt (Jumhuriyah Misr al-Arabiyah, Arab Republic of Egypt) is located on the northeast coast of the African continent. To the north, the country borders the Mediterranean Sea, to the east the Red Sea, to the south Sudan, and to the west Libya. Its area covers approximately 997,739 km<sup>2</sup>. The dominant ethnic groups in Egypt are Egyptians, Bedouins, and Nubians. The capital of the country is Cairo, and the official language is Arabic. The Nile River is the main source of life in Egypt, and its valley stretches for 17,000 km<sup>2</sup> with 200-400 m high coral walls on both sides.<sup>27</sup>

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<sup>27</sup> Ensiklopedi Islam, vol. 3, (Cet. III; Jakarta: PT Ichtiar Baru van Hoeve, 1994), 227.

Egypt codified family law for the first time by enacting Law No. 25 of 1920 and Law No. 25 of 1929. Prior to that, in 1875, family law regulations were compiled comprehensively for the first time by Egyptian lawyer and Minister of Justice Muhammad Qadri Pasha, during the reign of Viceroy Osman of Egypt, Ismail Pasha. This was essentially a collection of family law regulations from the Hanafi school of thought. However, this compilation was never passed as a law and thus never came into effect in Egypt.<sup>28</sup>

Egyptian legislation on divorce is contained in Law No. 25 of 1920 on alimony and divorce, as well as Law No. 25 of 1929 on Divorce, which was later amended to become Law No. 100 of 1985 on *Personal Status*. The grounds for divorce, when examined in the context of fiqh, are in accordance with the provisions applicable in the Maliki school of thought, meaning that Egyptian legislation adopts opinions from schools of thought other than the Hanafi school.<sup>29</sup>

A husband's declaration of divorce before the court is valid if it is recorded and the wife is notified of the divorce. This is because the divorce is not considered to have taken place if the notification of divorce has not reached the wife. This is stated in President Anwar Sadat's decree on Law No. 44 of 1979, which amended Law No. 20/1920 and Law No. 25/1929. The presidential decree also regulates the right of a wife to file for divorce in court through an arbitrator, and the court has the authority to end the marriage even if the wife has to pay compensation. Meanwhile, suppose a wife's petition for divorce is rejected by the judge and she submits evidence that cannot be proven (e.g., suffering due to her husband's actions). In that case, she can appoint an arbitrator (mediator). As explained in Articles 7-11 of Law No. 100/1985 concerning arbitration.<sup>30</sup>

Life shows that many marriages built with great effort ultimately fall apart due to the turmoil that strikes them. Marital bonds built on love and affection can be severed due to incompatibility between husband and wife over time. The termination of a marriage due to divorce can occur because of the will of the husband or wife or the will of both, which is motivated by many factors, such as the non-fulfillment of the rights and obligations as a husband or wife, a relationship between husband and wife that is not mutually respectful, a failure to keep each other's secrets, an unsafe and unstable

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<sup>28</sup> Nora Alim dan Nadjma Yassari, "Between Procedure and Substance : a Review of Law Making in Egypt," dalam Changing God's law: the dynamics of Middle Eastern family law, ed. oleh Nadjma Yassari, Islamic law in context (Milton Park, Abingdon, Oxon ; New York, NY: Routledge, 2016), 113-114.

<sup>29</sup> Hesham Maged Abdel Fatah and G. Shama. "Egyptian Personal Status Law is a Crime against Divorce Children." *Journal of Psychiatry and Psychiatric Disorders* (2020). <https://doi.org/10.26502/jppd.2572-519x0101>.

<sup>30</sup> Moh. Mujibur Rohman and Moh. Zarkasi, "Reformasi Hukum Keluarga Di Dunia Islam (Studi Normatif Perbandingan Hukum Perceraian Mesir-Indonesia)," *Al-Syakhshiyah: Jurnal Hukum Keluarga Islam dan Kemanusiaan* 3, no. 2 (2019), 67-69

household, and frequent disputes or fundamental differences of opinion.<sup>31</sup>

One of the consequences of the termination of marriage due to divorce is the emergence of issues related to child custody between husband and wife. The right to child custody after divorce in Islam is a complex issue involving various legal, social, and moral aspects.<sup>32</sup> Although there are standard rules in classical fiqh, Islam also allows for flexibility and contextual considerations in its implementation. The main principle that must always be upheld is the best interests of the child. In addressing contemporary challenges, it is necessary to reinterpret and contextualize the concept of ḥaḍānah, which adheres to the basic principles of Islam while also being responsive to modern realities. An interdisciplinary approach that combines an understanding of fiqh, child psychology, and other social sciences is becoming increasingly important in handling child custody cases.<sup>33</sup>

In the context of Egypt, this issue is interesting because it applies Islamic law (sharia) in its legal system while also adopting a modern legal system derived from European civil law.

The history of Islamic law in Egypt shows a long process of codification and modernization of Islamic family law. After the Ottoman Dynasty, Egypt began legal reforms in the 19th century by adopting the Western legal system in many areas, but retained Islamic law in family matters, such as marriage, divorce, inheritance, and child custody. Legal reforms concerning family law in Egypt began with the enactment of Law No. 25 of 1920 on Marriage and Divorce Regulations, which was later supplemented by Law No. 25 of 1929 and various subsequent amendments, including Law No. 100 of 1985. In these laws, the regulation of ḥaḍānah received special attention as part of the protection of children and women after divorce.<sup>34</sup>

From an Islamic legal perspective, the basis for custody in Egypt continues to refer to the principles of Sharia as found in the Qur'an and Sunnah of the Prophet. One of the verses that forms the legal basis for custody is Surah Al-Baqarah verse 233, which explains that a mother has an obligation to breastfeed her child for two full years for those who wish to complete breastfeeding. This verse is understood by scholars as a form of recognition

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<sup>31</sup> Muhammad Syarifuddin, *Hukum Perceraian* (Jakarta: Sinar Grafika, 2014), 6.

<sup>32</sup> Mohamad Faisal Aulia, "Analisis Perbandingan Penerapan Hukum Keluarga Di Mesir Dan Di Indonesia," *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga dan Peradilan Islam* 2, no. 2 (2022): 123–32, <https://doi.org/10.15575/as.v2i2.14327>.

<sup>33</sup> Ach. Fauzan dan Moh. Hamzah, *Pendekatan Holistik Dalam Hak Asuh Anak Pasca Perceraian: Perspektif Maqāṣid Syarī'ah Al-Tahir Ibnu Asyur. Al-Rasīkh: Jurnal Hukum Islam* Vol: 13, No: 01, (Juli-2024). 120

<sup>34</sup> Shatha Elnakib, May Elsallab, Maha Abdel Wanis, Shadia Elshiwiy, Nishan Krishnapalan and Nada Aghar Naja. "Understanding the impacts of child marriage on the health and well-being of adolescent girls and young women residing in urban areas in Egypt." *Reproductive Health*, 19 (2022). <https://doi.org/10.1186/s12978-021-01315-4>.

that mothers have primary responsibility for caring for and raising children, especially in the early stages of life. In addition, the hadith of the Prophet Muhammad SAW narrated by Abu Dawud is also often used as a legal basis: "*You have more rights over your child as long as you have not remarried.*" (HR. Abu Dawud). This hadith confirms that custody of the child is given to the mother as long as she still meets the requirements and has not married another man.

Egypt, as one of the centers of Islamic scholarship in the world through Al-Azhar University, has long been a reference in the development of Islamic law, including in the field of family law. Egyptian scholars and fuqaha, especially from the Shafi'i and Hanafi schools of thought, have made significant contributions to the determination of the principles of hadhanah. In the view of the majority of Egyptian scholars who follow the Hanafi school of thought, custody of young children is preferably granted to the mother, because a mother's love and tenderness are considered very important for a child's growth and development. However, this right of custody is not absolute ( ) because it can be transferred if the mother is deemed incapable of fulfilling her responsibilities or if the interests of the child require otherwise.<sup>35</sup>

Egyptian family law has adopted this classical fiqh perspective, adapting it to social developments and modern needs. For example, Article 20 of Law No. 25 of 1929 (as amended by Law No. 100 of 1985) stipulates that custody of girls is given to the mother until the child reaches marriageable age, while custody of boys is given until the child reaches the age of 15. After reaching that age, the child is given the freedom to choose whether to remain with their mother or move in with their father. This provision is a compromise between classical Islamic teachings and the principle of children's rights in modern law.

One of the characteristics of Egyptian law is its attempt to harmonize Sharia values with international legal standards, particularly those related to child protection. The Egyptian government recognizes that in divorce situations, children are the most vulnerable parties. Therefore, the state gives a major role to the family court (*Mahkamat al-Usrah*) to assess who is most deserving of custody based on the psychological, moral, and economic conditions of each party. Judges do not only adhere to textual rules, but also consider *maslahah al-thifl* (the best interests of the child) as the main principle. Thus, decisions regarding child custody in Egypt are more flexible and contextual, in accordance with the needs and best interests of the child.

In addition, social and economic developments in Egypt have also influenced the application of hadhanah law. In modern urban Egyptian society, many women work and are economically independent. This often leads courts

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<sup>35</sup> Abdel-Fattah Hmm. "Neuropsychiatric disorders in Egyptian children's after divorcing." *International Journal of Psychology Sciences* (2021). <https://doi.org/10.33545/26648377.2021.v3.i1a.21>.

to rule that mothers are better able to care for children than fathers, who may not be directly involved in day-to-day childcare. However, if the mother remarries or is considered negligent in raising the child, custody may be transferred to the father or the father's immediate family, in accordance with applicable Islamic law.<sup>36</sup>

Although Egyptian law has detailed provisions on hadhanah, its implementation is not without social and cultural challenges. Custody disputes often become protracted conflicts in court, especially when each party tries to prove their suitability before the judge. In some cases, custody issues are also linked to obligations regarding financial support, residence, and visitation rights. This shows that hadhanah is not only a religious issue, but is also closely related to complex social, economic, and psychological aspects.<sup>37</sup>

From a legal theory perspective, Egypt is one example of a Muslim country that has successfully developed a modern Islamic family law model. Family law reforms carried out since the early 20th century show that Islamic law can be adapted to the principles of social justice without abandoning the basic values of Sharia. In the context of custody, the state not only recognizes the rights of parents, but also emphasizes the protection of the interests of children as legal subjects with their own rights. This is in line with the spirit of Islamic law, which places children as a trust that must be protected and cared for.<sup>38</sup>

Thus, the discussion of child custody rights after divorce in the context of Islamic law in Egypt is very relevant to study. Through a legal system that combines the principles of Sharia and modern positive law, Egypt shows that Islamic law has a high degree of flexibility in responding to the challenges of the times. The regulation of child custody in Egypt reflects a combination of religious values, humanity, and protection of children, so that it can be used as a model for other Muslim countries in developing a fair and socially just family law system.

From the above explanation of the comparison between Islamic law in Indonesia and Egypt regarding child custody after divorce, it can be seen that both share a basic principle: prioritizing the best interests of the child.<sup>39</sup> However, there are differences in the application and interpretation of the law.

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<sup>36</sup> Walaa Elsayed. "Breaking the cycle of child labor in Egypt: Exploring Social and Economic Factors Associated with Child Labor in Egypt for a Sustainable Future." *Sustainable Futures* (2024). <https://doi.org/10.1016/j.sfr.2024.100235>.

<sup>37</sup> M. Al-Sharmani. "Child Custody in Islamic Law: Theory and Practice in Egypt since the Sixteenth Century. By Ahmed Fekry Ibrahim." *Journal of the American Oriental Society* (2021). <https://doi.org/10.7817/jameroriesoci.141.3.0735>.

<sup>38</sup> Muhammad Farid, Muhammad Syukri Albani and Fauziah Lubis. "Legal Reconstruction of Hadhanah Rights Due to Divorce in Indonesia from a Maqashid Syari'ah Perspective." *JURNAL AKTA* (2025). <https://doi.org/10.30659/akta.v12i1.43809>.

<sup>39</sup> Maha Muhammad Asaad. "The divinity of personal status law in Egypt." (2016).

Indonesia tends to maintain a traditional approach in accordance with classical fiqh with age restrictions, while Egypt is more flexible and modern, taking into account psychological and social factors, as well as the child's right to choose.

Despite differences in technical implementation, both countries demonstrate that Islamic law is dynamic and capable of adapting to the times. Through adaptation and legal reform, both Indonesia and Egypt strive to establish an Islamic family law system that guarantees protection for children, upholds justice, and preserves the human values that are at the core of Islamic teachings.

## Conclusion

Based on the above discussion, it can be concluded that, first, Islamic law in Indonesia places the issue of child custody (*hadhanah*) as an important aspect of family law that aims to protect the rights and interests of children after divorce. In Islamic teachings, children are viewed as a trust from Allah SWT that must be cared for, nurtured, and educated with love by both parents, regardless of whether they are still married or have separated. Therefore, divorce should not remove the parents' responsibility towards their children, both in terms of care and financial support. Islamic law in Indonesia regarding child custody after divorce is oriented towards the protection and welfare of children. Although legally mothers are given priority in the care of young children, the final decision is always directed towards the overall welfare of the child. This reflects that Islamic law in Indonesia is adaptive, humanistic, and fair, and is able to respond to the needs of modern society without abandoning the basic values of sharia. Second, Islamic law in Egypt places child custody (*hadhanah*) as an important part of family law that aims to protect the interests of children after divorce. As a country with a Muslim majority and a long history of developing Islamic law, Egypt has succeeded in codifying Islamic family law into a modern national legal system without neglecting sharia values. The main principle underlying the regulation of *hadhanah* is *maslahah al-thifl* (the best interests of the child), which is in line with the spirit of Islam in ensuring the protection, love, and welfare of children. Islamic law in Egypt regarding child custody after divorce prioritizes the interests and welfare of the child above all else. The legal provisions applied strike a balance between Sharia principles and modern social demands. Egypt is an example of a Muslim country that has successfully integrated religious values with the positive legal system in a harmonious manner. The principles of compassion, justice, and protection of children are at the core of the application of *hadhanah*, so that Islamic law in Egypt not only functions as a normative rule, but also as a means of upholding humanity and social justice in family life.

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