



The Concept of Child Custody (*Hadhanah*) After Divorce in the Perspective of Islamic Law

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ABSTRACT

This research discusses post-divorce child custody (*hadhanah*) disputes in Indonesia which are resolved in religious courts based on substantive and formal law. The Qur'an and hadith do not explicitly mention *hadhanah*, but the verses about breastfeeding and fathers' obligations are close to the concept of child custody. The obligations of parents after marriage are to care for, protect, educate, and care for children until adulthood, with the determination of custody by a judge after a divorce it can fall to the mother or father. This research aims to understand the concept of child custody after divorce according to the Qur'an and hadith, juridical review, and the legal consequences. The method used is qualitative with the type of Library Research, collecting data through documentation and triangulation analysis. The research results show that assigning custody to the mother or father does not conflict with regulations as long as the child's best interests are met, and both mother and father have the right to care for the child, although the mother has more rights. In conclusion, determining child custody after divorce must guarantee the child's best interests following applicable regulations.

Keywords

Parenting, Custody; Divorce; Dispute; Judge's Policy



Abstrak

Penelitian ini membahas sengketa hak asuh anak (*hadhanah*) pasca perceraian di Indonesia yang diselesaikan di pengadilan agama berdasarkan hukum substantif dan formal. Al-Qur'an dan hadis tidak secara eksplisit menyebutkan *hadhanah*, namun ayat tentang menyusui dan kewajiban ayah dekat dengan konsep hak asuh anak. Kewajiban orangtua setelah pernikahan adalah merawat, melindungi, mendidik, dan mengasuh anak hingga dewasa, dengan penentuan hak asuh oleh hakim pasca perceraian bisa jatuh kepada ibu atau ayah. Penelitian ini bertujuan untuk memahami konsep hak asuh anak pasca perceraian menurut al-Qur'an dan hadis, tinjauan yuridis, serta konsekuensi hukumnya. Metode yang digunakan adalah kualitatif dengan jenis Library Research, mengumpulkan data melalui dokumentasi dan analisis triangulasi. Hasil penelitian menunjukkan bahwa penetapan hak asuh kepada ibu atau ayah tidak bertentangan dengan peraturan selama kepentingan terbaik anak terpenuhi, dan baik ibu maupun ayah memiliki hak untuk mengasuh anak, meskipun ibu lebih berhak. Kesimpulannya, penetapan hak asuh anak pasca perceraian harus menjamin kepentingan terbaik anak sesuai dengan peraturan yang berlaku.

Kata Kunci

Hak Asuh; Perceraian; Sengketa; Kebijakan Hakim

Introduction

Marriage in Islam gets a lot of attention in parts. Islam aims for security in the afterlife and considers it as one of the important pillars for building a noble life in the world. Islam introduces marriage to humanity as a contract that is binding for life, not just temporarily. The problem of *talaq* (divorce) is also known as a complement to marriage, but Islam provides a solution when there are problems in marriage and divorce is the only solution (Saebani 2021).

The emergence of *hadhanah* problems is sometimes caused by divorce or death when the children are not yet adults and are unable to take care of themselves, therefore it is necessary to have

people who are responsible. Wants to care for and educate the child. The issue of *hadhanah* receives special attention in Islam, Islam has regulated the right to care for children, so not just anyone can take over child care (Antareng 2018).

Post-divorce does not mean eliminating the parents' obligation to look after their children, but this obligation continues until the children are adults and can stand on their own. Children are a very great gift from God that must be looked after as well as possible so that they become useful children for the homeland and nation. Therefore, both parents must care for, educate, care for, protect, and develop their children well (Auliya Ghazna Nizami 2018).

Divorce is a legal action justified by religion in emergencies when the marriage bond cannot be maintained. This state of emergency means that all peace efforts, including mediation and steps taught by the Qur'an and hadith, have been taken. Article 113 of the Compilation of Islamic Law states that marriage can be dissolved due to death, divorce, and court decisions. Law Number 1 of 1974 regulates that divorce can only be carried out in front of a court after mediation efforts have failed and there are sufficient reasons that the household cannot be maintained. Divorce often raises various problems, including the division of joint assets and child custody (*hadhanah*). Children born from marriage have the rights and obligations of their parents, especially the rights to maintenance, education, food, drink, clothing, and shelter. Based on this problem, it is important to examine in depth the concept of child custody rights (*hadhanah*) post-divorce from the perspective of the Qur'an and hadith (Mahmudah, Juhriati, and Zuhrah 2018).

Methods

This research uses a descriptive method with a qualitative approach to analyze the concept of child custody (*hadhanah*) after divorce from the perspective of the Qur'an and hadith. Research subjects include texts of the Qur'an, and hadith, as well as literature related to Islamic law and legislation in Indonesia. The research procedure begins with collecting material from books, contemporary scholarly books, and relevant scientific works, which are then analyzed using the Library Research approach.

The materials and instruments used in this research include various primary and secondary literature sources related to child custody in Islam and Indonesian positive law. Data collection is carried out through documentation techniques, namely collecting, reading, and recording important information from these sources. The collected data was analyzed using triangulation techniques, namely comparing information from various sources to obtain a comprehensive and in-depth understanding. The data analysis technique is carried out in three stages: data reduction, data presentation, and concluding. At the data reduction stage, irrelevant information is filtered out, while important information is arranged systematically. Data presentation is carried out by organizing findings in a form that is easy to understand, such as tables or descriptive narratives. Conclusions were drawn by interpreting the data in the context of the research objective, namely to understand and explain the concept of post-divorce child custody from the perspective of the Qur'an and hadith, as well as its implications in Indonesian positive law.

Result and Discussion

Hadhanah in the Compilation of Islamic Law

Article 41 of the Marriage Law explains the obligations of parents in caring for and educating children after divorce as follows:

- a. Both mother and father are still obliged to care for and educate their children based on the child's interests. If there is a dispute regarding control of the child, the court will make a decision. The father is responsible for all costs of the child's maintenance and education. If the father cannot fulfill these obligations, the court can decide that the mother will share in the costs.
- b. The court can require the ex-husband to provide living expenses and/or determine certain obligations for the ex-wife.

Article 49 paragraph (2) of Law No. 1 of 1974 concerning Marriage states that even though parents are deprived of their authority, they are still obliged to provide maintenance costs for the child (Putra 2020).

From these provisions, it can be concluded that whether the child is under the care of the father or mother, the costs of the child's maintenance and education remain the responsibility of the father (Ali and Puspita 2023). The amount of the fee is determined based on the child's needs and adjusted to the parents' economic conditions. If parents have good economic conditions, they are obliged to provide expenses according to the child's needs. On the other hand, if the parents' economic

conditions are weak, these obligations must be adjusted to their abilities. The rights and responsibilities for caring for minor children are explained in Article 105 paragraph (a) of the Compilation of Islamic Law, which states that caring for children who are not *mumayyiz* or under 12 years old is the right of the mother. This is in line with Article 41 paragraph (a) of the Marriage Law, which emphasizes that both mother and father remain obliged to care for and educate their children, and if there is a dispute regarding control of the child, the court will make a decision (Putra 2020).

Hadhana in the Islamic legal system means the need or necessity for the child's welfare so that a child has the right to care for both parents, even if the parents are related by blood or divorce (Sormin and Ali 2023). This is because Article 106 of the Islamic Code states that parents are obliged to care for and look after the assets of children who have not yet reached the age of majority or who have been forgiven (Ihwanudin 2016).

This *hadhanah* problem arises due to divorce or the death of one of the partners when the children are not yet adults and are unable to take care of themselves, therefore it is necessary to have people who are responsible for caring for and educating the children (Badrudin 2018).

Hadhanah is an authority to care for and educate people who are not yet *mumayyiz* or people who are adults but have lost their thinking intelligence. The emergence of *hadhanah* problems is sometimes caused by divorce or death when the children are not yet adults and are no longer able to take care of themselves, therefore it is necessary to have people who are responsible for caring for and educating the children (Mahmudah, Juhriati, and Zuhrah 2018).

The period of *hadhanah* or child care in the event of a divorce Compilation of Islamic Law and Law no. 1 of 1974 concerning marriage does not explain this matter in detail or clearly, but there is enthusiasm in the absence of an article explaining the *hadhanah* period. It can be seen in Article 47 paragraph 1 of the Law on Marriage, namely: Children who have not reached the age of 18 (eighteen) years or have never been married are under the authority of their parents as long as they are not deprived of their authority. From the article above, it can be understood that the *hadhanah* period required by law in the event of a divorce must wait until after the child is 18 years old so that the child can choose who he will live with, whether with his child or his mother (Hifni 2016).

Article 105 of the Compilation of Islamic Law states that in the event of a divorce:

- a. The maintenance of children who are not *mumayyiz* or under 12 years old is the mother's right.
- b. The care of a child who is *mumayyiz* is handed over to the child to choose between the father or mother as the holder of the right to care.
- c. The maintenance costs are borne by his father.

Hadhanah will end when a small child no longer needs services, is an adult can stand on his own, and can take care of his own basic needs, such as: eating, dressing, bathing, etc. In this case, there is no specific limit on the timeout. It's just that the measurement used is *tamyiz* and the ability to take care of oneself. If a small child can differentiate between good and bad things, of course no longer needs service, and can fulfill his own

basic needs, then his *hadhanah* period has expired (Huda Muklis 2011).

Additionally, in Islamic law, there are groups of people who are entitled to child custody, known as *hadanah*, which consists of men and women. The classification of people entitled to *hadhanah* is based on elements or groups of priority, as is the case with inheritance. This is very important to know if a divorce occurs, resulting in child custody issues that are abandoned because there is no one to take care of them after the divorce. The following is the order of people who are entitled to *hadhanah*: (Tarmizi, Pradiba, and Usman 2023). From the female group: mother, mother's mother (grandmother), sister, aunt (mother's sister), sister's daughter, aunt (father's sister). From the male group, if the child (*mahdlun*) does not have a female nanny, *hadhanah* is given to the male group following the order of the *asabah* heirs, starting from father, grandfather, brothers, and their children, then their uncles (Aditama 2016).

Post-Divorce Child Custody Rights

Divorce is the severing of the marital bond between a man and a woman through divorce or divorce proceedings. Divorce could only occur before a meeting of the Inquisition, which attempted to reconcile the parties but failed. There are several types of divorce: First, there is divorce. Talaq is an oath made by the husband in a religious court which is the cause of the dissolution of the marriage. If the marriage breaks up due to divorce, the ex-husband has the following obligations: (1) Give the ex-wife appropriate mut'ah in the form of money or goods, unless the ex-wife is *qobla al dukhul*. (2) provide living, food, and kiswah to his ex-wife during the iddah period, unless the ex-wife has been sentenced to talaqbain or nusyuz and is not pregnant;

(3) In the case of *qobla al dukhul*, pay all and half of the unpaid dowry. (4) Payment of *Hadhanah* fees for children under the age of 21. Second, *khulu'* means removing, or taking off clothes. Because women are men's clothes and men are women's clothes. *Khulu'* is also called ransom because the woman who subjects it redeems herself with what she gives to her husband after the divorce. Divorce through *Khulu'* reduces the number of divorces and cannot be said. Third, *Fasakh* ruins a marriage or the dissolution of a marriage relationship. Fourth, *li'an* is a man's oath when accusing his wife of adultery. He swore an oath of truth to the accusation four times, and in the fifth oath, he asked God to curse him if he lied. When *li'an* occurs, the marriage is dissolved forever, the child she is carrying is handed over to the mother, and the husband is freed from the obligation to provide maintenance. The fifth *zihar* is a greeting spoken by a husband to his wife. You are like my mother who has returned. In that period of ignorance, *zihar* was considered divorce, but Islam then established a rule that prohibited interference before the husband made repairs, and we abolished it (Azizah 2017).

Custody problems usually result from the divorce of the child's parents. As parents, it is natural for husband and wife to want to have custody of their children. If custody is granted, both parents have the right to live with and care for the child. All children have the right to health services and social security following their physical, psychological, spiritual, and social needs. Even if there is a law stating that one parent has custody of the child, there is no other reason to prohibit the ex-spouse from seeing the child. For the welfare of children, parents need to have a caring attitude towards their children, and custody

issues are necessary. The best hope for completing this task is integration and cooperation between parents. Just like the rights and obligations that arise from marriage, divorce also has legal consequences for both parties and the children born to them (Tarmizi, Pradiba, and Usman 2023).

No less important, divorce also harms the children in the family. Divorce cases are still common today, so unmarried children receive less love and attention, and their future is not guaranteed due to pressure from their parents to divorce. Many children face neglect due to divorce, which impacts their development in various ways. Some divorce cases cause prolonged disputes. As a result, things that are currently popular in the world of social media, such as broken home, sadgirl/boy, and justice, have appeared on social media and are widely used on social media as expressions for children who are victims of divorce (Widiastuti 2015).

As is known, divorce between couples who have children raises child custody issues. Based on the explanation above, the problem of parenting children after divorce is twofold. First, in cases where the couple wants custody of the child and does not want to budge, the custody battle must be decided in an Islamic court. Second, in cases where parents do not take care of children after divorce and parents give each other responsibility for raising children, which harms the child's mental health and well-being. Therefore, both law and religion must determine who should care for children after divorce (M Yusuf 2014).

Apart from that, many people do not know about parental obligations, especially those involved in divorce, and children's rights regarding living expenses. Therefore, laws must be

established to protect the rights of children after divorce, who have not yet done so. Therefore, efforts are needed to solve the problem of child custody, and legal outreach and counseling are needed to educate the public about *hadhanah* and child custody (Tarmizi, Pradiba, and Usman 2023).

It can be concluded that child custody after divorce remains in the hands of both parents, what happens. Following Law Number 1 of 1974 concerning Marriage, children under the age of 18 will be under the authority of their parents as long as their authority is not revoked. Therefore, parents, as long as their authority is not revoked, have the same rights in court to care for and educate their children without being separated from their custody rights (Khair 2020).

Legal Basis of Hadhanah

a. The law of *hadhanah* in the Qur'an

As we already know, child care is the responsibility of both parents (husband and wife). Regarding the costs of maintaining and educating children, it is the responsibility of the father (husband), while the right to maintain lies in the hands of the wife, as stated in the words of Allah Subhānahu wa Ta'āla in Surah al-Tahrim verse 6. O believers, protect yourselves and your families from the fire of hell whose fuel is people and stones. Its guardians are rough and tough angels. They did not disobey Allah for what He commanded them and always did what they were ordered to do.

In the verse above, parents are commanded by Allah Subhānahu wa Ta'āla to protect their families from hellfire, by trying to ensure that all family members carry out the

commandments and stay away from Allah's prohibitions, including the family members in this verse who are children.

In interpreting this verse, Hamka explains that simply professing faith is not enough, faith must be maintained and cultivated primarily based on faith and every person should keep himself and his family (household) safe from things that could plunge him into fire, hell (Fatih 2019).

Ahmad Mustafa Al-Maragi explains the fragment of the verse above, namely: O you who believe in Allah and His Messenger, let some of you tell others what can protect yourselves from the fire of hell and keep you away from it, namely obedience to Allah and obeying all His commands. And you should teach your family the actions by which they can protect themselves from the fire of hell, and lead them to such things through advice and teaching.

Mothers should breastfeed their children for two full years, namely for those who want to perfect breastfeeding. And the father must feed and clothe mothers in a virtuous manner. Someone not burdened but according to ability levels. Let not a mother suffer misery because of her child and a father because of his child, and the heirs are also obliged to do so. If both of them want to wean (before two years) with their consent and deliberation, then there is no sin on either of them. And if you want your child to be breastfed by someone else, then there is no sin for you if you pay according to what is appropriate. Fear Allah and know that Allah is All-Seeing of what you do (Surah Al-Baqarah verse 233).

Ahmad Mustafa Al-Maragi stated that The paragraph above shows the law regarding breastfeeding for a mother. That verse obliges mothers, both those who are still wives and those who are divorced, to breastfeed their children for two full years

and not more than that. However, it is permissible for less than that period, if both parents see it as beneficial, and in this case, the matter is left to both of them (al-Maraghi 1986).

Surah An-Nisa' verse 9: Let them be afraid of those who in case they (die) leave behind them, weak offspring (whom) they are afraid of. So, fear Allah and speak with the right words (in terms of protecting the rights of your descendants).

The verse above explains the responsibility of parents to be careful when leaving offspring who are weak in all respects, both physically and spiritually. So parents should care for and educate their children so that they will grow and develop normally.

b. The law of *hadhanah* in Al-Hadith

Al-Hadith the second legal basis after the Qur'an, in the hadith of the Prophet there are also many instructions for parents to pay attention to their children, look after them, and direct them to the right path, as the words of the Prophet Muhammad *Ṣalla Allah 'Alayhi wa Sallamas* follows: From Abu Hurairah ra said: verily the Messenger of Allah *Ṣalla Allah 'Alayhi wa Sallam* said: every child who is born pure, his parents make him a Jew, Christian or Magian (HR. Bukhari).

This hadith suggests that every child born into the world is pure (fitrah), he has no sin, and whether the child is good or bad depends on the care of his parents. His parents also made him become a Jew, Christian, or Magian (Khair 2020).

A child's dependence on their parents is very large which will also have a big impact on their life. In another hadith, the Prophet also hinted at the obligations of parents towards their children as a trust from Allah, as follows: From Amr bin

Syu'aiba, his father and his grandmother, said: Tell your children to pray when they are seven years old and beat them for leaving prayer at the age of ten and separate their beds (HR. Abud Dawud).

The hadith above explains the obligation of parents to order their children to pray as a symbol of devotion to Allah *Subhānahu wa Ta'āla*. Rasulullah *Ṣalla Allah 'Alayhi wa Sallam* explains who has more rights to care for children, as follows: From Abdullah Bin Umar, a woman said, O Messenger of Allah, indeed my child is my stomach which is his place, my milk (breast blood) is his drinking water, and my lap is his shelter. However, his father divorced me and wanted to take him from my side. Rasulullah *Ṣalla Allah 'Alayhi wa Sallam* then said You have more rights over the child as long as you haven't remarried.

This hadith explains that the mother has more rights over the care or maintenance of her child than the father, provided the mother is not married to another man. If the mother is married to another man, the father is responsible for looking after the child. From several hadiths that the author has mentioned above, it can be understood that *hadhanah* is a child's right that is an obligation of both parents that must be fulfilled. If the child already has someone who will care for him if his parents divorce, then care is left to the child's choice (Aditama 2016).

Pillars and Conditions Hadhanah

Amir Syarifuddin explained that the pillars of *hadhanah* consist of two main components: parents who care for them (called *hadhin*) and children who are cared for (called *mahdhun*). This concept refers to the important role of parents in the care and education of children, especially after divorce. Several conditions must be met by caregivers, both fathers, and mothers,

to ensure that children get the best environment for their growth and development (Fatimawali, Mansyur, and Alhabsyi 2023).

Regarding the requirements for caregivers, both parents (father and mother) that is: (Stepani 2015).

The first requirement is being sensible. This means the caregiver must have common sense. An insane person, whether continuously or intermittently insane, does not have custody rights. However, if the illness only lasts for a short time, for example, one day a year, the parental rights are not invalidated because the illness is not permanent. This is important because caregivers must be able to make wise decisions and provide appropriate guidance to children. The second condition is freedom. A caregiver must be free and cannot be a slave. Even if her master gave permission, a female slave did not have custody rights. This confirms that the responsibilities and obligations in caring for children cannot be fulfilled by someone who does not have complete freedom over themselves.

The third condition is being Muslim. The nanny must be Muslim to care for Muslim children. This is because religious differences can lead to differences in values and principles taught to children, which can conflict with Islamic teachings. Therefore, an infidel does not have custody of a Muslim child. The fourth requirement is to have *'iffah* (respectable) and trustworthy qualities. The caregiver must have honorable and trustworthy qualities. People who are *fasiq*, or who do not adhere to religious teachings, are not considered fit to care for children. Although inner fairness does not have to be visible, it is enough to show real fairness in daily behavior. This is because children tend to imitate the behavior of those around them. If the

caregiver is cheating or dishonest, the child may imitate this behavior, which can damage the child's morals and character. Allah warns in Surah Al-Anfal verse 27 not to betray the trust entrusted, which emphasizes the importance of trust in raising children.

The fifth condition is living in the same area as the child. Parents must live in the same area as the child to ensure stability and consistency in upbringing. If one parent has to travel for certain purposes such as Hajj or trade, the child must remain with the parent who lives in the area until the traveler returns. If one parent wants to move, custody is usually given to the father, because it is considered more stable to look after the child in a familiar environment. The sixth condition is quiet or alone. This means that mothers who raise children who are *tamyiz* (able to differentiate between good and bad) must not marry a man who is not the child's mahram. However, if the mother marries a man who is the child's mahram, such as an uncle or cousin, and all parties agree, the mother's custody rights are not terminated. It aims to avoid situations that may be unsafe or uncomfortable for the child, ensuring that the child remains in a protected and stable environment.

This explanation illustrates how important it is to choose the right caregiver for the child, both in terms of mental, religious, and social environment, to ensure that the child can grow in an environment that supports his physical, mental, and spiritual development.

Child Custody Wages

According to Islam, the child's living costs are the responsibility of the father, both during the marriage and after

the divorce. If, after a divorce, a child who is still small and breastfeeding is under the care of the mother, and the period of iddah has expired, then the mother is entitled to receive wages for that care and breastfeeding. This is because he no longer receives support from the child's father. These wages must be given whether requested or not. As Allah says in Surah At-Thalaq Verse 6: Then if they breastfeed your (children) for you then give them their wages.

The amount of costs borne by the father for his child is adjusted to the father's ability, in accordance with the word of Allah in the letter At-Thalaq Verse 7: Let the person who is spacious (his sustenance) provide a living according to his ability, and the person whose sustenance is limited, let him provide a living from what (treasures) Allah has given him. Allah does not burden a person except (according to) what Allah bestows on him. Allah will give you spaciousness after narrowness.

If your father is unwell, it is because of his poor health and lack of experience, and your son has no heart. On the other hand, your mother is too weak to help her, unless she has a partner or friend who can help her in a mutually beneficial way, and her expenses or raw salary make a friend who can be trusted but not trusted. On the other hand, if parents gently teach their children not to worry about life's necessities because they are capable of taking care of them, then this is unacceptable and can only be a bad sign. At this time, children's education will end, namely for young children who can now work and live independently after reaching adulthood. On the other hand, for women, until they become pregnant, once a woman's child is pregnant, her care

needs will become the most important thing (Baidawi and Sunarto 2020).

Requirements for Children in Care

According to Zakiah Daradjat in her book, "A child is what he is until he can take care of himself and stand on his own." Therefore, *tamyiz* is measured not only by age but also by the child's ability to apply religious rules. Religious Courts Law no. 4 of 1979 defines a child as someone who has not reached 21 years and is not married. Abdurrahman Ghazali explains the child custody period as follows:(M.A. 2019).

The period from the birth of the baby to seven or eight years. A child of a certain age needs help from others for various things, such as eating, clothing, cleaning themselves, and even managing waking up and sleeping. The person who looks after him must have compassion, patience, and the desire for the child to be good (pious). These conditions only apply to women. Scholars do point out that mothers have greater rights over their children, and they then perform *hadhanah* (M.A 2019).

The *mumayyiz* period is from seven years until adulthood. A child is only able to differentiate between good and bad things that happen to him at this time, and his intellect has grown well. As a result, children already can make the best decisions. As a result, his decision will determine who has the right to care for him.

After the husband and wife divorced, Hasan Ayyub explained the structure of the family which had the right to care for children, because the first right to care was given to the mother. Fiqh experts conclude that the mother's family has more

rights over the child than the father's family. So the order of people who have the right to care for children is: (Arifin 2015).

- a. The child's mother
- b. Maternal grandmother and all the way up
- c. Paternal grandmother
- d. The child's siblings
- e. Mother's sister
- f. Father's half-sister
- g. A sibling's daughter
- h. The daughter of her father's sister
- i. Sisters with the same mother and blood
- j. Mother's sister who is the same mother as her (aunt)
- k. Mother's sister and father (aunt)
- l. Daughter of father's sister
- m. The daughter of a biological brother
- n. The daughter of her mother's brother
- o. The daughter of her father's brother
- p. Aunt who shares father's birth
- q. The aunt who shares a mother with father
- r. Aunt who is the same as Father
- s. Maternal aunt
- t. His father's aunt on his mother's side
- u. His maternal aunt on his father's side
- v. My paternal aunt,

from the letter tov by prioritizing what is involved in each of them.

If the child no longer has female relatives, including his mahram, or the child has one but is unable to do so *hadhanah* then

it moves to the male *ashabah* of the *muhrim* above, following the order in inheritance law. If nothing like the above then move to:

- a. The child's biological father
- b. Paternal grandfather and up
- c. Sibling brothers
- d. Father's brother
- e. The son of a sibling
- f. The son of the father's brother
- g. An uncle who is the same as my father
- h. The uncle who is the same as father
- i. His uncle's biological father
- j. Uncle who is the same as father

If there is no relative of the male *mahram*, or exists but cannot care for the child, then the right to care for the child is transferred

to her male *mahram* other than a close relative, namely:(Arifin 2015).

- a. Mother father
- b. Mother's brother
- c. The son of his mother's brother
- d. Uncle, mother and father
- e. The uncle is the same as my father
- f. His uncle is the same father as his father
- g. Uncle who is the same father as mother

Furthermore, if the young child has no relatives at all, then the judge can determine a woman who is capable and appropriate to care for and educate him.

Conclusion

In conclusion, *hadhanah* is a childcare process that includes care and education after divorce. In *hadhanah*, the position of the

mother is placed first in the line of custody of the child, with relatives from the mother's side taking precedence over relatives from the father's side. If there are no relatives who can care for the child, the judge has the responsibility to determine someone fit and capable of caring for and educate the child. Responsibility for child custody after divorce remains with both parents, and both must be given the right to care for the child unless they are unable to carry out this obligation. Parents' obligations to care for their children last until the children reach maturity and independence. Children are considered a gift from God that must be looked after and cared for properly so that they can grow into individuals who are beneficial to society.

Bibliography

- Aditama, Luky Firmansyah. 2016. 'TANGGUNG JAWAB HUKUM ORANG TUA TERHADAP ANAK SETELAH PERCERAIAN (Studi Kasus Tentang Tanggung Jawab Orang Tua Terhadap Anak Setelah Perceraian Di Sidoarjo)'. *NOVUM: JURNAL HUKUM* 3 (4): 61–70.
- Ali, Zezen Zainul, and Mega Puspita. 2023. *Pembaharuan Hukum Keluarga Di Asia Tenggara: Dari Negara Mayoritas Sampai Minoritas Muslim*. Yogyakarta: Jejak Pustaka.
- Antareng, Nurjana. 2018. 'Perlindungan Atas Hak Nafkah Anak Setelah Perceraian Menurut Perspektif Hukum Islam. Study Pengadilan Agama Manado'. *Lex et Societatis* 6 (4).
- Arifin, Abdul Wasik dan Samsul. 2015. *Fiqih Keluarga: : antara Konsep dan Realitas*. Deepublish.
- Auliya Ghazna Nizami. 2018. 'HAK PENGASUHAN ANAK DALAM PERSPEKTIF AL QUR'AN DAN HADITS CHILD CUSTODY RIGHTS IN QUR'AN AND HADITS PERSPECTIVES'. *Jurnal Ilmiah Pesantren*, 4 (1): 459–72.

- Azizah, Rina Nur. 2017. 'Dampak Perceraian Orang Tua Terhadap Perkembanganpsikologis Anak'. *Al-Ibrah* 2 (2): 152-72.
- Badruddin, HA. 2018. *Diklat Matakuliah Kompilasi Hukum Islam*.
- Baidawi, Ahmad, and Muhammad Zainuddin Sunarto. 2020. 'Hak Asuh Anak Dalam Perspektif Khi Dan Madzhab Syafi'i'. *HAKAM: Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam* 4 (1).
- Fatih, Muhammad. 2019. 'Konsep Ulama Dalam Pandangan Mufassir Indonesia: Studi Aspek-Aspek Keindonesiaan Dan Metodologi Tafsir al-Azhar Karya Hamka Dan Penafsirannya Terhadap Term "Ulama" Dalam al-Qur'an'. *Progressa: Journal of Islamic Religious Instruction* 3 (2): 67-78.
- Fatimawali, Fatimawali, Nurfauziah Mansyur, and Firdiansyah Alhabsyi. 2023. 'TINJAUAN HUKUM ISLAM TERHADAP HAK ASUH ANAK PASCA PERCERAIAN'. *Prosiding Kajian Islam Dan Integrasi Ilmu Di Era Society (KIIIES)* 5.0 2 (1): 37-41.
- Hifni, Mohammad. 2016. 'Hak Asuh Anak Pasca Perceraian Suami Istri Dalam Perspektif Hukum Islam'. *Bil Dalil: Jurnal Hukum Keluarga Islam* 1 (02): 49-80.
- Huda Muklis. 2011. 'HAK PENGASUHAN ANAK (HADANAH) PERSPEKTIF WAHBAH AZ-ZUHAILI'. Yogyakarta: UIN Sunan Kalijaga Yogyakarta.
- Ihwanudin, Nandang. 2016. 'Pemenuhan Kewajiban Pasca Perceraian Di Pengadilan Agama'. *Adliya: Jurnal Hukum Dan Kemanusiaan* 10 (1).
- Khair, Umul. 2020. 'Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian'. *JCH (Jurnal Cendekia Hukum)* 5 (2): 291-306.
- M Yusuf, MY. 2014. 'Dampak Perceraian Orang Tua Terhadap Anak'. *Jurnal Al-Bayan: Media Kajian Dan Pengembangan Ilmu Dakwah* 20 (1).

- M.A, Prof Dr H. Abdul Rahman Ghazaly. 2019. *Fiqh Munakahat*. Prenada Media.
- Mahmudah, Husnatul, Juhriati Juhriati, and Zuhrah Zuhrah. 2018. 'Hadhanah Anak Pasca Putusan Perceraian (Studi Komparatif Hukum Islam Dan Hukum Positif Indonesia)'. *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 2 (1): 57–88.
- Maraghi, Muhammad Mustafa al-. 1986. *Terjemah Tafsir Al-Maraghi*. Pustaka Al-Azhar, Kuala Lumpur.
- Putra, Aldi Jaya Mandala. 2020. 'Tinjauan Yuridis Terhadap Pemeliharaan Anak Dibawah Umur (Hak Hadhanah) Akibat Suatu Perceraian Berdasarkan Kompilasi Hukum Islam'. *Journal of Law (Jurnal Ilmu Hukum)* 5 (2). <http://ejurnal.untag-smd.ac.id/index.php/DD/article/view/4795>.
- Saebani, Beni Ahmad. 2021. 'Perkawinan Dalam Hukum Islam Dan Undang-Undang'. Institut Agama Islam Negeri Batusangkar. http://books.google.co.id/books?id=4oQOAQAAMAAJ&dq=intitle:Hukum+Perdata&hl=&source=gbs_api.
- Sormin, Ihwan, and Zezen Zainul Ali. 2023. 'The Comparative Study of the Protection of Women's Rights in Article 463 of the New Criminal Code with Law Number 36 of 2009 Concerning Health Perspective of Jaser Auda'. *MILRev : Metro Islamic Law Review* 2 (2): 186. <https://doi.org/10.32332/milrev.v2i2.7824>.
- Stepani, Stepiani. 2015. 'PEMENUHAN HAK ANAK PASCA PERCERAIAN (STUDI KASUS DI SULAWESI UTARA)'. *LEX ET SOCIETATIS* 3 (3).
- Tarmizi, Tarmizi, Yulia Pradiba, and Karmila Usman. 2023. 'Hak Asuh Anak (Hadhanah) Pasca Perceraian Serta Akibat Hukumnya'. *Journal Ilmu Hukum Pengayoman* 1 (1).
- Widiastuti, Reski Yulina. 2015. 'Dampak Perceraian Pada Perkembangan Sosial Dan Emosional Anak Usia 5-6

Tahun'. *Jurnal PG-PAUD Trunojoyo: Jurnal Pendidikan Dan Pembelajaran Anak Usia Dini* 2 (2): 76–86.