

The Triad of State, Law, and Religious Failure in Protecting Children's Rights After Divorce: An Empirical Legal Study in Urban Communities in Pekanbaru

Tiara Nurafifa Shafeena¹, Muhammad Hafis², Jumni Nelli³, Juliani Syafitri⁴

^{1,2}UIN Sunan Kalijaga Yogyakarta, Indonesia, ³UIN Sultan Syarif Kasim Riau, Indonesia,

⁴Universitas PTIQ Jakarta, Indonesia

Corresponding author: *tiaranurafifa19@gmail.com

Abstract

Based on data from the Central Statistics Agency in 2023, one in three children no longer receive their basic rights after their parents' divorce. In Delima District, Pekanbaru—which has the highest divorce rate in Riau Province at 18.5%—72% of mothers reported difficulty in financing their children's education, while 45% of children experienced emotional disturbances. Therefore, this article aims to examine the reality of children's rights after divorce in the urban area of Pekanbaru, focusing on the following questions: Why are children's rights (especially alimony and education) in urban areas such as Pekanbaru often neglected after divorce? What systemic failures hinder this? And what is the social reality when it comes to fulfilling children's rights? Using a qualitative-phenomenological approach through descriptive case studies, this research involved six main informants, plus two religious affairs officials and two religious leaders who were selected purposively. Data were collected through in-depth interviews and analyzed using thematic analysis techniques. The results show that the neglect of children's rights after divorce in Pekanbaru (especially in the Delima subdistrict) is caused by a triadic failure: the state (absence of a safety net for children who are victims of divorce), the law (inconsistency in alimony regulations, weak enforcement of court decisions, high litigation costs), and religious institutions (failure to encourage fathers to fulfill their responsibilities in accordance with Islamic mandates). This failure also reflects the weak enforcement of Islamic family law principles, particularly in the implementation of *hadhanah* and *nafkah* obligations as stipulated in the KHI and the Marriage Law, which have not been able to guarantee comprehensive protection for children. This is compounded by the persistent patriarchal culture that makes ex-wives reluctant to fight for their children's rights. These findings call for policy reform based on an integrated child rights framework that bridges formal law, religious values, and community mechanisms, as well as the deconstruction of patriarchal culture in the enforcement of children's rights.

Keywords: Family Law, Children's Rights, Neglect, Divorce, Indonesia.

Abstrak

Berdasarkan data Badan Pusat Statistik tahun 2023, satu dari tiga anak tidak lagi menerima hak-hak dasarnya pascaperceraian orang tuanya. Di Kecamatan Delima Pekanbaru yang memiliki tingkat perceraian tertinggi di Provinsi Riau sebesar 18,5%—72% ibu melaporkan kesulitan menutupi biaya pendidikan anaknya, sementara 45% anak mengalami tekanan emosional. Untuk itu, artikel ini ingin mengkaji realitas hak-hak anak pascaperceraian di wilayah urban Pekanbaru, dengan fokus pada pertanyaan. Mengapa hak-hak anak (khususnya nafkah dan pendidikan) di wilayah urban seperti Pekanbaru pasca perceraian sering terabaikan, kegagalan sistemik seperti apa yang menghambat, dan bagaimana realitas sosial yang ada apabila dikaitkan dengan pemenuhan hak-hak anak. Dengan menggunakan pendekatan kualitatif-fenomenologis melalui studi kasus

deskriptif. Penelitian ini melibatkan enam informan utama, ditambah 2 pejabat kantor urusan agama, dan 2 tokoh agama yang dipilih secara purposive. Data dikumpulkan melalui wawancara mendalam dan dianalisis dengan teknik analisis tematik. Hasil penelitian menunjukkan bahwa pengabaian terhadap hak anak pasca perceraian di Pekanbaru (khususnya kecamatan Delima) disebabkan oleh kegagalan triadik: negara (absensi *safety net* bagi anak korban perceraian), hukum (inkonsistensi regulasi nafkah, lemahnya eksekusi putusan, biaya litigasi tinggi), dan institusi agama (gagal mendorong tanggung jawab ayah sesuai mandat Islam). Kegagalan ini juga mencerminkan lemahnya penegakan prinsip-prinsip hukum keluarga Islam, terutama dalam pelaksanaan kewajiban hadhanah dan nafkah sebagaimana diatur dalam KHI dan Undang-Undang Perkawinan, yang belum mampu menjamin perlindungan yang komprehensif bagi anak-anak. Ditambah dengan masih kentalnya budaya patriarki yang membuat mantan istri enggan memperjuangkan hak anak. Temuan ini membuka reformasi kebijakan berbasis *integrated child rights framework* yang menjembatani hukum formil, nilai agama, dan mekanisme komunitas, serta mendesak dekonstruksi budaya patriarki dalam penegakan hak anak.

Kata Kunci: Hukum Keluarga, Hak Anak, Pengabaian, Perceraian, Indonesia.

Introduction

In Indonesia, about half of divorce cases end in parental neglect, especially after the separation.¹ Data from the Central Statistics Agency (BPS, 2023)² shows that one in three children no longer receive their basic rights, such as access to education and financial security for their future. In Delima Village, Pekanbaru, which has the highest divorce rate in Riau Province at 18.5%, the impact of this condition is very striking. As many as 72% of single mothers reported difficulties in fulfilling their children's educational expenses, while 45% of children experienced emotional deprivation because they no longer interacted with their fathers. Isis Hanafy and Bernard Marc stated that ignoring this situation not only reflects a disregard for the law, but also indicates a serious social problem.³ Furthermore, Nupur Kukrety and Daniela Knoppik⁴ said that this is a humanitarian crisis that has the potential to destroy the future of children as the next generation of the nation.

¹ Jie Ren, "A Study on the Causes and Effects of Indonesian Children's Neglect through Computer Analysis of Big Data," in *2020 International Conference on Artificial Intelligence and Education (ICAIE)* (IEEE, 2020), 160–63, <https://doi.org/10.1109/ICAIE50891.2020.00044>. Lihat juga Kamaruddin Kamaruddin, "Widows' Rights and Customary Law: Addressing Responsive Law to Divorce Cases of Tolaki Community in Indonesia," *Mazahib* 22, no. 2 (December 7, 2023): 283–308, <https://doi.org/10.21093/mj.v22i2.6154>.

² Badan Pusat Statistik (BPS), *Statistik Perceraian dan Kondisi Anak di Indonesia 2023* (Jakarta, 2023).

³ Isis Hanafy and Bernard Marc, "Child Neglect," in *Encyclopedia of Forensic and Legal Medicine* (Elsevier, 2025), 596–605, <https://doi.org/10.1016/B978-0-443-21441-7.00031-5>.

⁴ Nupur Kukrety and Daniela Knoppik, "Leaving No One behind: A Case for Inclusive Social Protection for Displaced Children," *International Social Security Review* 76, no. 4 (October 27, 2023): 63–87, <https://doi.org/10.1111/issr.12349>.

The fulfillment of children's rights after divorce is actually an important indicator of the success of the welfare state program promoted by the Indonesian government.⁵ Although the law provides protection for children's rights after their parents' separation, in practice, many children still experience a lack of care. The reality on the ground shows a significant gap between the law and its practice.⁶ Five key informants interviewed in this study described how fathers, as the responsible parties, did not fulfill their responsibilities, both in terms of providing financial support and emotional guidance for their children. They chose to hand over full custody to their ex-wives (the mothers) and did not want to be bothered with child care issues.

Therefore, theoretically, the failure to fulfill children's rights after divorce reflects the dysfunction of the welfare state principle (Law No. 39/1999) in the Indonesian family law system. At the macro level, the state has failed to provide a safety net for children affected by divorce through inclusive education/health assistance programs. At the macro level, religious institutions (such as religious courts and majelis taklim) have not been optimal in encouraging fathers (husbands) to fulfill their responsibilities as mandated by the courts.⁷ The disparity between the promise of the law (law in books) and reality (law in action) confirms the thesis of structural violence,⁸ in which the state and the legal system indirectly perpetuate injustice through weak enforcement mechanisms and gender-unresponsive policy design.⁹

This neglect reflects a failure to fulfill children's basic rights due to various factors, including parents' perspectives on their respective roles after divorce and weak law enforcement mechanisms.¹⁰ When children's rights are not fully fulfilled, serious consequences arise: children feel a lack of love and balanced attention from both parents.¹¹ On the other hand, the economic and psychological burdens often have to be borne solely by mothers who must work hard to meet

⁵ Gushairi, "Perlindungan Hukum Hak Anak Akibat Perceraian: Dalam Proses Mediasi Di Pengadilan Agama," pa-rangkasbitung.go.id, 2021, <https://pa-rangkasbitung.go.id/publikasi-artikel/arsip-artikel/419-perlindungan-hukum-hak-anak-akibat-perceraian-dalam-proses-mediasi-di-pengadilan-agama>.

⁶ Diana S. Rosenstein, "Custody Conflict as a Developmental Trauma," *The Psychoanalytic Study of the Child* 77, no. 1 (December 31, 2024): 26–40, <https://doi.org/10.1080/00797308.2023.227940>.

⁷ Orpa J. Nubatonis et al., "The Fulfilment of Children's Rights Post-Divorce A Study at the Legal Aid Institution of the Indonesian Women's Association for Justice (LBH APIK) –East Nusa Tenggara (NTT)," *Journal of Law and Sustainable Development* 11, no. 11 (November 23, 2023): e1533, <https://doi.org/10.55908/sdgs.v11i11.1533>.

⁸ Johan Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research* 6, no. 3 (September 1, 1969): 167–91, <https://doi.org/10.1177/002234336900600301>.

⁹ Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023), <https://doi.org/10.1080/23311886.2023.2206347>.

¹⁰ Rahmat Hidayat et al., "Review of Maqāsid Al-Syarī'ah Concerning the Fulfillment of Child Rights Post-Divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 2 (December 31, 2022): 213–28, <https://doi.org/10.30631/alrisalah.v22i2.1254>.

¹¹ Adriana DICU, "The Family Environment Of Children With Divorced Parents And Their Emotional Disturbances," *Anthropological Researches And Studies* 14, no. 1 (2024): 438–51, <https://doi.org/10.26758/14.1.29>.

their children's needs without support from their ex-husbands.¹² Based on the results of preliminary interviews in this study, it was found that in Delima Village, Binawidya District, Pekanbaru City, there were a number of cases in which children's rights after divorce were neglected. This situation causes children to be neglected, especially in terms of fulfilling their basic rights.

This study was conducted to identify the factors causing children's rights to be unfulfilled after divorce, particularly by examining the extent to which the implementation of laws and regulations related to Islamic Family Law is applied in cases occurring in the region. The author assumes that one of the main causes of this problem is the ignorance of most women (wives) regarding the rights they should obtain after divorce. As a result, many of them experience economic difficulties because they do not receive financial support from their ex-husbands. This is reinforced by a statement from one of the neighborhood association (RW) heads in Delima Village, who explained a case of a mother who was abandoned by her husband without providing financial support for himself or his child. Upon further investigation, it turned out that the couple had not officially processed their divorce through the Religious Court, so the divorce was not legally valid. As a result, the woman had to struggle on her own to provide for herself and her child. In desperate circumstances, she often borrowed money from the neighborhood association leader for daily necessities such as paying for electricity, buying food, and providing milk for her child.¹³

Normatively, regulations regarding the fulfillment of children's rights after divorce in Indonesia have been well regulated in national law and Islamic law. Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning marriage stipulates in Article 41 that the father remains obliged to bear the costs of child maintenance and education after divorce.¹⁴ This provision is reinforced by Law No. 35 of 2014 on Child Protection, which requires the state, parents, and society to guarantee the survival and development of children.¹⁵ In the context of Islamic law, Articles 105 and 156 of the Compilation of Islamic Law (KHI) affirm the father's

¹² Kimberly McErlean and Jennifer L. Glass, "How Do Households Fare Economically When Mothers Become Their Primary Financial Support?," *Journal of Family and Economic Issues* 45, no. 2 (June 25, 2024): 395–409, <https://doi.org/10.1007/s10834-023-09922-y>.

¹³ Results of an interview with Mr. Faisal, one of the neighborhood association leaders in Delima Village, on 21 Januari 2024

¹⁴ Undang-Undang Nomor 1 Tahun 1974 jo. Undang-Undang Nomor 16 Tahun 2019 tentang Perkawinan,

¹⁴ Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak, diakses melalui [Situs Resmi Kementerian Hukum dan HAM](https://peraturan.go.id/), <https://peraturan.go.id/> tanggal 11 November 2025.

¹⁵ Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak, diakses melalui [Situs Resmi Kementerian Hukum dan HAM](https://peraturan.go.id/), <https://peraturan.go.id/> tanggal 11 November 2025.

obligation to provide for the child's maintenance and education, as well as the mother's right to custody (hadhanah).¹⁶ However, these regulations often do not work effectively in judicial and social practice, as seen in the cases in Pekanbaru that are the locus of this study.

Previous studies have highlighted the problems of fulfilling children's rights after divorce in Indonesia, but the majority are still fragmented in their sectoral analysis and have not revealed the root causes of systemic failures that are triadic in nature. A study by Ahmad Sayuti,¹⁷ examines the normative aspects of child custody based on the decision of the Pekanbaru Religious Court, focusing on positive legal analysis, jurisprudence, and child protection principles according to the law. This study focuses on a normative approach and does not discuss in depth the sociological dynamics that develop in urban communities such as the city of Pekanbaru. A study in Pekalongan by Syukrawati et al.¹⁸ identified a gap between court decisions and the reality in society, caused by low legal knowledge and weak enforcement. However, this study still focuses on the legal-empirical realm (the gap between law and society) without delving into the simultaneous roles and failures of state actors and religious institutions. In contrast, research by Kasim et al.¹⁹ in Aceh describes the success of the Sharia Court, which is supported by a strong socio-cultural structure, creating a highly contextual model of “success” that cannot be equated with the dynamics of a heterogeneous urban community such as Pekanbaru.

Furthermore, studies by Hidayat & Efrinaldi²⁰ in rural Mesuji and Abdullah et al.²¹ in Lombok both confirm the high rate of child support neglect, with the dominant factors being paternal negligence and poverty. However, both studies tend to stop at the level of describing the problem and offering technical solutions (such as legal awareness campaigns). The recent findings

¹⁶ Instruksi Presiden (Inpres) Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam, diakses melalui Situs Resmi Database Peraturan BPK RI, <https://peraturan.bpk.go.id/Details/293351/inpres-no-1-tahun-1991> tanggal 11 November 2025.

¹⁷ Ahmad Sayuti, “Hak Asuh Anak Pasca Perceraian: Studi Terhadap Putusan Pengadilan Agama Pekanbaru Perspektif Undang-Undang Perlindungan Anak” (Universitas Islam Negeri Sultan Syarif Kasim Riau, 2023), <http://repository.uin-suska.ac.id/id/eprint/72101>.

¹⁸ Syukrawati Syukrawati et al., “Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis,” *Al-Ahkam* 34, no. 1 (April 30, 2024): 121–46, <https://doi.org/10.21580/ahkam.2024.34.1.20624>.

¹⁹ Fajri M Kasim et al., “The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective,” *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (December 31, 2022), <https://doi.org/10.15408/ajis.v22i2.28747>.

²⁰ Hidayat et al., “Review of Maqāsid Al-Syarī’ah Concerning the Fulfillment of Child Rights Post-Divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency.”

²¹ Abdullah Abdullah et al., “Fulfillment of The Living Rights of Children the Victims of Divorce in the Muslim Community of Lombok, Indonesia,” *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (July 1, 2024): 253–71, <https://doi.org/10.22373/ujhk.v7i1.22281>.

of Turnip et al.²² from the Cirebon Religious Court do provide good examples of the application of co-parenting and the *maslahah* approach, but these studies, like Kasim's study in Aceh, are still court-centric and optimistic, focusing on cases that were successfully mediated, without critically examining why in a broader context (such as in Pekanbaru) this model has failed to be adopted and applied systematically. On the other hand, the research by Suriani et al.²³ at the Unaaha Religious Court confirms a bleaker trend that is in line with the initial findings of our research: out of 493 divorce cases, only 22 (4.5%) included the fulfillment of women's and children's rights. This study reveals that judges rarely use their *ex officio* authority, and even when they do, the fulfillment of rights almost always depends on counterclaims or mediation agreements, rather than judicial initiative. This is strong empirical evidence of the “failure of the state (through the judiciary)” and “failure of the law (in proactive enforcement)” that we refer to in this study.

Previous studies have been slow to recognize the fact that in urban areas such as Pekanbaru, where kinship ties are loose and life is complex, the failure of the state (in supervising enforcement), the failure of the law (in providing effective sanctions), and religious failure (in reinforcing values of responsibility at the community level) actually reinforce each other (mutually reinforcing), creating a cycle of ongoing child rights violations. Therefore, this article is not merely intended to add new empirical data, but to introduce a triadic analytical framework of “State, Legal, and Religious Failure” that is still absent from existing academic discourse. Unlike previous studies that were partial either looking only at the failure of the judiciary (Suriani et al.), capturing only limited successes (Turnip et al.), or highlighting only cultural and economic factors (Hidayat & Efrinaldi; Abdullah et al.) this study simultaneously and integratively investigates: (1) State Failure: The ineffectiveness of the state through the courts and social services in ensuring the execution of decisions and providing a social safety net for children who are victims of divorce, as reflected in the powerlessness of mothers to execute decisions; (2) Legal failure: The absence of concrete law enforcement mechanisms and the deterrent effect of existing legal regulations (KHI, Child Protection Law), which are exacerbated by high litigation costs and regulatory inconsistency; and (3) Religious Failure: The fading social-religious function of community leaders and *majelis taklim* (religious study groups) in upholding the values of obedience to provide for children, which has been drowned out by urban materialistic values and patriarchal distortions. Thus, the novelty of

²² Ibnu Radwan Siddik Turnip et al., “Implementing the Concept of Co-Parenting in Divorce Cases: An Analysis Using the *Maslahah* Approach,” *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 20, 2024): 463–84, <https://doi.org/10.29240/jhi.v9i2.10117>.

²³ Suriani Suriani et al., “The Fulfillment of Women’s and Children’s Rights Post-Divorce in Judicial Decisions of the Unaaha Religious Court,” *Jurnal Ilmiah Al-Syir’ab* 22, no. 1 (June 30, 2024): 95, <https://doi.org/10.30984/jis.v22i1.2904>.

this study lies in its holistic-integrative approach that unravels the systemic interrelationships and cycles of failure between these three domains, while offering an “Integrated Child Rights Framework” model that is not only curative but also preventive by involving all pillars synergistically. Through an in-depth juridical-empirical approach in the urban locus of Pekanbaru, this study aims to provide substantive criticism of the Indonesian family law system while recommending transformative evidence-based policy.

Research Methods

This study uses a qualitative approach with a phenomenological design through descriptive case studies that focus on subjective experiences.²⁴ This approach was chosen because it allows researchers to delve into the subjectivity of the life experiences of mothers as the main actors, while descriptive case studies are effective in revealing the complexity of the specific context of urban areas. The research location was in the city of Pekanbaru, Riau Province, which represents an urban Muslim community with developing socio-religious dynamics compared to other cities in Riau Province. In addition, Pekanbaru also has the highest number of divorces filed in the Religious Court. Informants were selected purposively based on the following criteria: (1) Muslim women who are caregivers of children after divorce, (2) legally divorced, either through divorce by repudiation or divorce by lawsuit at the Pekanbaru Religious Court, (3) legally divorced for more than one year, and (4) women who are willing to be interviewed in depth. The informants for this study also included two officials from the Marpoyan subdistrict Religious Affairs Office and two community leaders.

Data was collected through semi-structured interviews with six key informants, plus KAU officials and religious leaders. The interviews focused on six informants who were caregivers for children after divorce, exploring their experiences in caring for and fulfilling the children's rights, including their financial, educational, and emotional needs. Data validity was ensured through source triangulation and member checking. Data analysis followed the stages of reduction, presentation, and interpretation, using a phenomenological case study approach.²⁵ The findings of this study are expected to serve as a basis and strategic review for stakeholders, thereby opening up space for policy reform based on an integrated child rights framework that bridges formal law,

²⁴ Qualitative research with a phenomenological approach is a research method that aims to deeply understand individuals' subjective experiences, explore the meaning of the phenomena they experience, and reveal the essence of those life experiences. This method focuses on how participants experience and interpret things, using non-numerical data such as interviews and observations. See Suharsimi Arikanto, *Prosedur Penelitian Suatu Pendekatan Praktek* (Jakarta: PT. Rineka Cipta, 2002), 26.

²⁵ Matthew B. Miles dan A. Michael Hubberman, *Analisis Data Kualitatif*, Terj. Tjejep Robendi Robidi (Jakarta: UI Press, 1992), 14.

religious values, and community mechanisms, as well as urging the deconstruction of patriarchal culture in the enforcement of children's rights.

Results and Discussion

Post-Divorce Problems: The Right to Continue Life and Economic Despair

Based on interviews with five key informants in this study, it was found that the majority of divorced mothers had to struggle on their own to meet their children's needs. For example, Mrs. Surtini, who divorced in 2022, worked as an ironer at a laundry business to meet her children's daily needs because her ex-husband did not provide any financial support. Although she experiences economic difficulties, her basic needs and those of her children are still met, albeit in a modest manner. Meanwhile, the father does not show any responsibility for his children and tends to simply wash his hands of his obligations. However, despite this, Mrs. Surtini continues to fulfill her role as a mother to the fullest, without any financial or emotional support from her ex-husband.²⁶

A similar situation was experienced by Mrs. Dewi, who said, *"After the divorce, even before I filed for divorce at the Religious Court, my ex-husband had already stopped providing for the children's needs. Not only did he fail to provide for them, he didn't even ask about their well-being once a week."*²⁷ Although she worked as a laundry worker, she still felt overwhelmed to meet all the needs of her family (herself and her three children) on her own, especially since her ex-husband never provided any support, either in the form of material assistance or emotional visits to their children.

Mrs. Nurela faced an ironic situation after being abandoned by her ex-husband in 2016. Although the divorce proceedings began that year, she only filed for divorce in 2020 in order to meet the administrative requirements for her children's schooling and to register for poverty assistance. As a seamstress, she has struggled to raise her children on her own. *"I have to do whatever it takes to support my children, even if it means working hard and applying for poverty assistance so they can go to school,"* she emphasized. She did this because her ex-husband rarely provided for their children, giving only around Rp. 600,000/month, which *"was only enough for books, and even that was not enough. My ex-husband did not provide any other child support."*²⁸

Unlike the two previous informants, Mrs. Nursiyanti was the only one who had a good relationship with her ex-partner. She acknowledged that her ex-husband continued to provide

²⁶ Surtini, "Interview with Ibu Surtini," 25 Januari 2024, RT 003/RW 006, Delima Village, Binawidya Subdistrict, Pekanbaru.

²⁷ Dewi, "Interview with an Ibu Dewi," 29 Januari 2024, RT 003/RW 006, Delima Village, Binawidya Subdistrict, Pekanbaru.

²⁸ Nurela, "Interview with Ibu Nurela," 29 Januari 2024, RT 003/RW 006, Delima Village, Binawidya Subdistrict, Pekanbaru.

financial support and affection to the children. *“Alhamdulillah, the children's father remains responsible. We work together to fulfill their educational needs and rights, both materially and It can be said from the field data obtained from five informants that in four cases, the mother became the party who bore full responsibility for fulfilling the rights of children after divorce, while the father did not carry out his obligations, both financially and educationally. Based on the analysis of Fatonah, et al,*²⁹ this condition clearly contradicts the provisions of national law Law No. 1 of 1974 jo. Law No. 16 of 2019 Article 41 states that “both the father and mother are obliged to care for and educate their children, and the father is responsible for all costs of maintenance and education of the children. If he is unable to do so, the court may determine that the mother is also responsible”. According to Article 41 of Law No. 16 of 2019 concerning Marriage, even if there is a divorce, both the father and mother still have an obligation to care for and educate their children.³⁰ In addition, Article 156(c) of the Compilation of Islamic Law (KHI) emphasizes that fathers are obliged to provide for their minor children, including maintenance and education costs, and the court may determine this obligation according to the father's ability (Law No. 1/2019 Article 41 and KHI Article 156c). This fact is also supported by legal literature that highlights the legal consequences of negligence in the obligation of hadhanah. Law No. 16/2019 provides strict consequences in the form of revocation of custody rights for parents who neglect their obligations.³¹

Field findings reveal the dilemma of implementing age limits for child support due to regulatory inconsistencies. Article 149 (d) of the Compilation of Islamic Law (KHI) explicitly limits child support obligations to children up to the age of 21, while Article 41 of the Marriage Law requires the fulfillment of children's rights “until they are independent.” This legal inconsistency is exploited by some fathers to stop providing support when their children enter higher education (as in the case of Mrs. Erni, whose child is 17 years old). In fact, the philosophical basis for this is reinforced by QS. Al-Baqarah: 233, which emphasizes the obligation of financial support until “complete weaning” (*ḥawlaini kāmilain*), a concept that is implemented in contemporary interpretations to include financial maturity, not just biological age.³²

²⁹ Fatonah, Amalia, and Abas, “Judicial Consideration Of Child Custody To Father Under Article 105 Of Indonesian Compilation Of Laws.”

³⁰ Muhammad Hafis, *Konkritisasi Aturan Munakabat Di Indonesia (Keselarasan Antara “Hukum Islam” Dan “Hukum Nasional”)* (Yogyakarta: PT Penamuda Media, 2024), 94-97.

³¹ Luluk Septanar Triyanita dan Paramita Prananingtyas, “Hak Anak Akibat Perceraian Berdasarkan Undang-Undang Perkawinan Dan Kompilasi Hukum Islam,” *Notarius* 16, no. 2 (2023): 850–60, <https://doi.org/10.14710/nts.v16i2.39312>.

³² Abd. Holik and Moch. Nurcholis, “The Dialectics of Child Marriage and the Age of Maturity for Marriage: A Qur’anic Exegesis,” *Hikmatuna: Journal for Integrative Islamic Studies* 9, no. 2 (December 11, 2023): 180–89, <https://doi.org/10.28918/hikmatuna.v9i2.1338>.

The implications of this inconsistency are systemic. This was conveyed by Halimah (2023), who showed with evidence that 72% of the decisions of the Pekanbaru Religious Court did not include a clause on higher education in determining child support.³³ This practice indirectly ignores maqashid syariah, especially hifzh al-'aql (protection of reason).³⁴ This is in line with the study conducted by Rahmat et al.,³⁵ which found that ignoring the principle of maqashid sharia, especially the protection of reason (hifzh al-'aql), is problematic. Higher education is a crucial instrument for achieving economic independence, so its omission in court decisions has the potential to perpetuate social vulnerability.

The phenomena in the field that the author has described above also prove the asymmetry of responsibility after divorce: studies such as Feni Agustina³⁶ and the results of in-depth interviews conducted in the field show that the burden of child support shifts entirely to the mother, while fathers often neglect their legal obligations. The systemic impact is complex: multidimensional poverty and impeded access to education for children trigger long-term deprivation of welfare. In the city of Pekanbaru, the locus of the study, urban economic factors, poor family communication, and low literacy/legal awareness interact to exacerbate the situation of uncertainty regarding the sustainability of children's lives after divorce.

Empirically, the narratives of Mrs. Surtini, Mrs. Dewi, Nurela, and Erni reveal the harsh reality of life after divorce in supporting children. This proves that the ideal legal system does not work well in reality, thus reinforcing the recommendation that there is a need for effective law enforcement, more decisive execution of decisions, as well as education on children's rights and easy access to legal advocacy for mothers after divorce. Therefore, more systematic efforts are needed from the state to ensure the implementation of child support obligations in accordance with legal provisions, including effective monitoring and law enforcement mechanisms so that children's rights are not neglected after divorce.

³³ Siti Halimah, "Pemenuhan Hak-Hak Anak Pasca Perceraian Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Di Pengadilan Agama Kota Pekanbaru" (Universitas Lancang Kuning, 2023), <http://repository.unilak.ac.id/id/eprint/4805>.

³⁴ Azni Azni et al., "Pseudo-Maṣlaḥah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts," *Jurnal Ilmiah Peuradeun* 13, no. 2 (May 30, 2025): 1399–1420, <https://doi.org/10.26811/peuradeun.v13i2.2047>.

³⁵ Hidayat et al., "Review of Maqāsid Al-Syarī'ah Concerning the Fulfillment of Child Rights Post-Divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency."

³⁶ Feni Agustina, "Fulfilling Children's Rights Through Post-Divorce Relationships: An Investigation from Bima," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (June 30, 2023): 158–79, <https://doi.org/10.14421/ahwal.2023.16108>. Novi Mayangsari and Muhammad Hafis, "Persepsi Keluarga Sakinah Bagi Pasangan Suami Istri Yang Belum Memiliki Anak (Studi Kasus Di Dusun Lebanisuko Desa Lebanisuko Kecamatan Wringinanom Kabupaten Gresik)," *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)* 4, no. 2 (December 30, 2022): 265–84, <https://doi.org/10.33474/jas.v4i2.19007>.

The weak enforcement of children's rights is rooted in the failure of non-litigious mediation. Although Article 115 of the KHI mandates mediation through the Sharia Arbitration Board, none of the informants were aware of this mechanism. In fact, the 32 majelis taklim (religious study groups) in Delima Village (2023 village data) have the potential to become a space for sulh (peace). The case of Mrs. Surtini proves the ineffectiveness of litigation: the court costs of Rp3.5 million exceeded her monthly income. This finding reinforces Galtung's theory of structural violence, in which the state allows a legal system that is inaccessible to poor groups.³⁷

Therefore, this dynamic reflects the state's failure to implement the welfare state principle (Law No. 39/1999). At the macro level, the government does not provide a safety net; at the micro level, religious institutions fail to encourage fathers to fulfill their responsibilities as commanded by Islam (Q.S. Al-Baqarah: 233). This situation shows that the state has not succeeded in carrying out its role in protecting and ensuring the welfare of its citizens, as it should according to the welfare state principle mandated in Law No. 39 of 1999 concerning Human Rights.³⁸ At the national policy level (macro), the government has not provided adequate social safety nets for children who are victims of divorce, such as regular assistance or affordable education and health facilities. Meanwhile, at the community level (micro), religious institutions have also not been optimal in educating and encouraging fathers to remain responsible for providing for their children, even though this is a direct command in Islamic teachings as stated in the Qur'an, Surah Al-Baqarah, verse 233. As a result, many children are economically and emotionally neglected after their parents divorce.³⁹

In Islamic law, providing for children is an absolute obligation of the father, regardless of the status of his relationship with the child's mother.⁴⁰ This is confirmed in Surah Al-Baqarah verse 233. This means that divorce does not release the father from this responsibility. This provision is also explained in the Compilation of Islamic Law (KHI) Article 149 letter (d), which states that one of the legal consequences of divorce is the obligation of the former husband to

³⁷ Galtung, "Violence, Peace, and Peace Research."

³⁸ Daniel L Hatcher, "Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State," *Wake Forest Law Review* 42 (2007): 1029–86, http://scholarworks.law.ubalt.edu/all_fac?utm_source=scholarworks.law.ubalt.edu%2Fall_fac%2F290&utm_medium=PDF&utm_campaign=PDFCoverPages.

³⁹ Muhammad Uswah Ushalli et al, "Reconstructing Child Custody Post-Divorce In Islamic Family Law: A Best Interest Of The Child-Based Approach In The Contemporary Era," *Journal of Social and Economics Research* 6, no. 2 (November 16, 2024): 145–68, <https://doi.org/10.54783/jsr.v6i2.649>.

⁴⁰ Muhammad Johari and Hafis, *Hukum Keluarga Islam: Dalam Kajian Fiqih Mu'asyarah Zaujiah* (Yogyakarta: PT Penamu da Media, 2024), 71.

provide for the child until the age of 21.⁴¹ If the father deliberately neglects to provide for the child after divorce, both Islamic and national law consider this a serious offense. Both emphasize the importance of the father's responsibility for the child's welfare.⁴² Therefore, comprehensive and consistent law enforcement is necessary to address such violations.

Based on what the author has demonstrated above, overall, the findings in four of the five core cases in this study located in the city of Pekanbaru (in Delima Village) prove that the neglect of children's rights after divorce is not merely a violation of private law, but a form of structural violence criticized by Galtung through three systemic failures: First, the absence of a welfare state guarantee in the context of fulfilling children's rights after divorce as mandated by law. Second, the impotence of the law in enforcing the father's nafakh obligation must be clearly and explicitly re-regulated, both in the KHI, legislation, and in the decisions of the Religious Court judges. Third, there is a need to recontextualize the principle of masqashid syaraih (especially hifzh al-nasl/child protection) in the practice of religious courts.⁴³ On the other hand, transformative solutions must go beyond a purely litigation-based approach by establishing a community-based support system that bridges legal norms with the socio-religious reality of urban communities in Pekanbaru.

Cultural and Legal Barriers in the Implementation of Children's Rights after Divorce in Delima District, Pekanbaru City

Cultural and legal barriers to the implementation of children's rights after divorce in urban areas are complex and multidimensional.⁴⁴ Therefore, overcoming cultural and legal barriers to the implementation of children's rights after divorce in urban areas requires a multifaceted approach that includes legal reform, public education, and cultural change.⁴⁵ For example, a study by Turni et al.⁴⁶ states that the importance of implementing mandatory regulations that ensure

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

⁴² Istiqomah Sinaga, Asmuni Asmuni, and Dhiauddin Tanjung, "Whole of Government: An Effective Strategy for Ensuring Child Support Post-Religious Court Rulings," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 2 (October 15, 2024): 329–44, <https://doi.org/10.19109/nurani.v24i2.24714>.

⁴³ Lihat Muhammad Hafis and Johari Johari, "Maqasid Al-Syariah Sebagai Problem Solver Terhadap Penetapan Hak Asuh Anak Pasca Perceraian," *Jurnal Ilmiah Universitas Batanghari Jambi* 22, no. 3 (October 31, 2022): 1522, <https://doi.org/10.33087/jiubj.v22i3.2420>.

⁴⁴ Syukrawati et al., "Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis."

⁴⁵ Ekaterina Alekhina, "RETRACTED: Legal Protection of the Rights of the Child as Part of the Process of Parental Divorcing: Psychological Aspects," ed. J. Kokoreva et al., *E3S Web of Conferences* 420 (September 4, 2023): 06004, <https://doi.org/10.1051/e3sconf/202342006004>.

⁴⁶ Turnip et al., "Implementing the Concept of Co-Parenting in Divorce Cases: An Analysis Using the Masalahah Approach."

children's rights are included in all divorce decisions can provide a stronger legal basis for protecting these rights.

In the context of urban communities such as Pekanbaru City, particularly in Delima Village, the implementation of children's rights after divorce still faces various challenges. Based on interviews with five key informants, it was revealed that limited legal knowledge and strong cultural norms are major obstacles to fulfilling children's rights. This ignorance has a serious impact on their attitude, which tends to be resigned to the neglect of children's rights by their ex-husbands. Mothers choose not to file a claim or lawsuit because they consider the legal process to be too complicated, expensive (with court fees ranging from Rp2–5 million), and lengthy (taking up to 6–12 months). In addition, social stigma, such as “mothers who file a lawsuit will be considered as destroying the family,” makes them choose to remain silent. In this context, legal illiteracy is a major obstacle. They are also hindered by economic limitations and other psychosocial burdens. Moreover, there are cultural narratives that contribute to this passive attitude. Mothers tend to remain silent and take on the role of single mothers without demanding their children's rights in court due to social pressure and stigma. As stated by the first informant, Mrs. Surtini, she admitted that at the time of her divorce, she did not understand the legal rules governing children's rights after divorce. This ignorance is also related to the lack of information about the types of children's rights guaranteed by law in Indonesia.⁴⁷

A similar sentiment was expressed by Mrs. Dewi, who stated, *“I only have a general understanding of child protection regulations, but I don't understand specifically how these provisions can be accessed and implemented.”* This limited knowledge has resulted in these mothers not taking legal action against their ex-husbands, even though their children's rights have been neglected.⁴⁸ Furthermore, Mrs. Nurela even honestly stated that, “I don't know about the legal regulations regarding children's rights. Even if I did, I would not take legal action because I think the process is complicated, costly, and time-consuming, which is not worth it considering my child's daily needs.” This statement shows that even though there is an awareness of the importance of children's rights, practical factors such as costs, complex legal procedures, and feelings of helplessness are the main obstacles for mothers to formally fight for these rights.⁴⁹ A similar attitude was also shown by Mrs. Erni, who stated that she was not aware of any regulations regarding the fulfillment of children's rights after divorce. Although she has been fulfilling her

⁴⁷ Surtini, “Interview with Surtini,” 25 Januari 2024.

⁴⁸ Dewi, “Interview with Dewi,” 29 Januari 2024.

⁴⁹ Nurela, “Interview with Nurela,” 29 Januari 2024.

child's needs independently, she admits that her ex-husband no longer cares about the child's condition.⁵⁰ Meanwhile, Mrs. Nursiyanti, as the last informant, stated that she was generally aware that there were regulations on children's rights, but she did not know the practical application of these laws. This illustrates that although there is minimal awareness, a substantive understanding of the function of the law has not been fully developed.⁵¹

Based on what the author has demonstrated above, quoting Alfadi et al,⁵² the main obstacles faced by mothers after divorce in fighting for their children's rights are a combination of legal illiteracy and a culture of resignation formed by social pressure and lack of access to legal aid. Society tends to assume that after divorce, mothers must be completely independent and are not entitled to “beg” their ex-husbands for their children's rights. This narrative is reinforced by a study by Tomás Cano and Pablo Gracia,⁵³ which states that patriarchal culture normalizes paternal neglect after divorce, and even considers it normal for mothers not to make demands in order to preserve the family's honor. Ironically, Article 56(d) of the Compilation of Islamic Law explicitly states that all child support and maintenance costs are the responsibility of the father until the child reaches adulthood. However, in reality, the law is only a formal symbol without strong enforcement. The law becomes a “toothless tiger,” unable to uphold justice when the legal system is not friendly to vulnerable groups. This condition is a tangible form of structural violence, in which ex-husbands take advantage of their wives' ignorance of the law to shirk their responsibilities.⁵⁴

This is in line with the analysis presented by Zulham Wahyudani, et al.⁵⁵ in their article “Dismantling the Patriarchal Culture and Optimizing Gender Equality in Marriage Law,” which

⁵⁰ Erni, “Interview with Erni,” 25 Januari 2024.

⁵¹ Nursiyanti, “Interview with Nursiyanti,” 25 Januari 2024.

⁵² Jihan Alfadia, Muhamad Abas, and Zarisnov Arafat, “Legal Protection Of Children After Divorce Divorce Related To Act Number 16 Of 2019 Amendment To Act Number 1 Of 1974 Concerning Marriage (Decision Study Number 1145/Pdt.g/2020/PA.Krw),” *Justisi: Jurnal Ilmu Hukum* 8, no. 2 (September 5, 2023): 132–44, <https://doi.org/10.36805/jjih.v8i2.5774>.

⁵³ Tomás Cano and Pablo Gracia, “The Gendered Effects of Divorce on Mothers’ and Fathers’ Time with Children and Children’s Developmental Activities: A Longitudinal Study,” *European Journal of Population* 38, no. 5 (December 10, 2022): 1277–1313, <https://doi.org/10.1007/s10680-022-09643-2>. Yernati Ulfazah et al., “The Dynamics Of Islamic Family Law In The Modern Era: An Analysis Of Taghayyur Al-Fatwā And Al-Muḥāfaẓah In The Changing Marriage Agreement Provisions In Indonesia,” *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 7, no. 1 (March 5, 2025): 77–94, <https://doi.org/10.20885/mawarid.vol7.iss1.art5>.

⁵⁴ Mahendra Ridwanul Ghoni and Pujiyono Pujiyono, “Perlindungan Hukum Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Implementasi Diversi Di Indonesia,” *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (August 28, 2020): 331–42, <https://doi.org/10.14710/jphi.v2i3.331-342>; Muhammad Hafiz, Jumni Nelli, and Adikza Nurul Islam, “Barometer Pembagian Wasiat Wajibah Bagi Anak Angkat: Realisasi Keadilan, Analisis Perkara No. 1914/Pdt. G/2018. PA. Pbr,” *Ayy-Syir’ab: Jurnal Ilmu Syariah Dan Hukum* 57, no. 1 (June 15, 2023): 27–50, <https://doi.org/10.14421/ajish.v57i1.1280>.

⁵⁵ Zulham Wahyudani dkk., “Dismantling the Patriarchal Culture and Optimizing Gender Equality in Marriage Law,” *Jurnal Anida: Studi Gender Dan Anak* 4, no. 2 (2023): 16–29, <https://doi.org/10.32505/anifa.v4i2.6841>.

states that "Legal reform for women aims to strengthen women's bargaining position in the legal sphere, while encouraging women's participation in development in order to combat various forms of discrimination against women. However, the main problem faced is the gap in women's participation due to inequalities in the social and cultural structures of society. This means that the law for women aims to strengthen their bargaining position, but is still faced with the main problem of inequalities in the social and cultural structures of society. In this context, patriarchal culture not only creates discrimination against women, but also results in unequal responsibilities in child care, especially after divorce.

Petrus Salestinus Mite⁵⁶ also reinforces the above argument, stating that patriarchal culture not only creates gender inequality, but is also the structural root of the cycle of violence and neglect experienced by women and children, including in the context of post-divorce. By examining how patriarchal norms operate through customary systems, laws, and even religious interpretations in Nagekeo society, the study shows that violence and neglect against women and children are often normalized as part of the social order. In this regard, it is evident that the issues addressed in this study in Pekanbaru do not occur in a vacuum, but are part of a structural pattern that has also been identified in various other regions in Indonesia.

This situation shows that cultural and legal barriers to the implementation of children's rights after divorce are not only a matter of weak law enforcement or the limited role of religious courts, but also the strong patriarchal values embedded in the culture of urban communities such as Pekanbaru. This culture creates a situation in which paternal neglect is not considered a form of violation or structural violence, but rather something normal, even "socially acceptable." Combining the findings of the two articles, it can be concluded that a normative juridical approach alone is not sufficient to overcome the obstacles to fulfilling children's rights after divorce. It is also necessary to deconstruct the patriarchal culture that has placed the entire burden of childcare on mothers and allowed men to escape their responsibilities without adequate social consequences. Only with simultaneous cultural and legal paradigm shifts can the fulfillment of children's rights after divorce be truly realized in a fair and equitable manner. Overall, these findings indicate that the main problems in fulfilling children's rights after divorce stem not only from weak economic conditions but also from mothers' lack of understanding of children's rights from a legal perspective. Doubts and obstacles in accessing legal channels further exacerbate the situation. The imbalance of roles in parenting between fathers and mothers is a common pattern,

⁵⁶ Petrus Salestinus Mite, "Patriarchy and the cycle of violence: deconstructing the normalization of violence against women and children in Nagekeo," *International Journal of Politics and Sociology Research* 13, no. 1 (t.t.): 11–21.

where mothers bear most of the responsibility in limited circumstances due to the normalization of this culture.

Therefore, the findings of legal illiteracy and a culture of resignation in Pekanbaru are not merely a matter of access to the law, but rather a symptom of the distortion of Islamic values by patriarchy. In fact, maqashid sharia places hifzh al-nasl (protection of offspring) as the main goal of the family.⁵⁷ Ironically, local norms have reduced this principle to merely the fulfillment of material needs, while children's rights to holistic care (QS. Luqman: 13-19) are ignored. In the religious Delima sub-district, this distortion is exacerbated by the absence of religious scholars as mediators of conflict (KHI Article 115) and informal fatwas that normalize the neglect of fathers (husbands have paid the dowry, so they no longer need to take care of their children).⁵⁸

Islamic Family Law in Post-Divorce Practice: Idealism versus Reality

Normatively, Article 105 of the Compilation of Islamic Law (KHI) stipulates that custody of children who have not reached the age of discernment (under 12 years old) rests with the mother after divorce.⁵⁹ In reality, this provision is applied quite consistently. All sources in this study stated that they did not face any obstacles in obtaining custody rights. Young children remain with their mothers without any dispute over custody between the father and mother. This reflects social acceptance of these fiqh rules, especially in urban areas such as Pekanbaru City. However, there is a gap between the idealism of Islamic family law and the social reality on the ground. When it comes to children's rights to education and health services, many ex-husbands are negligent in fulfilling their obligations.

From an Islamic perspective, responsibility for children is not limited to physical care, but also includes fulfilling their basic needs, such as education and health. This is in line with the command in Q.S. At-Tahrim: 6. In interpreting this verse, Ali bin Abi Thalib said: "What is meant by protecting the family from the fire of hell is teaching and educating them." Thus, teaching, nurturing, and educating children is heaven; while neglecting these activities means hell.

⁵⁷ Abu Ishaq Al-Syatibiy, *Al-Muwafaqat Fi Usul Al-Syari'at*, Juzu' 3 (ttp: Dar Ibn 'Affan, 1997). Lihat juga Muhammad Hafis dan Jumni Nelli, *Hukum Keluarga Islam Indonesia: Konsep Masalah Terhadap Perkembangan Hukum Keluarga Islam Di Indonesia* (Yogyakarta: Deepublish, 2023), 47-54.

⁵⁸ MF (nama samaran), Tokoh Ulama, "Wawancara dengan Ibu Surtini," 25 Januari 2024.

⁵⁹ Fawzia Hidayatul Ulya dkk., "Penguasaan Hak Asuh Anak di bawah Umur kepada Bapak," *The Indonesian Journal of Islamic Law and Civil Law* 2, no. 1 (2021): 101-17, <https://doi.org/10.51675/jaksya.v2i1.176>; Muh Rizki, "Anak Angkat Sebagai Penghalang Penetapan Ahli Warits Perspektif Maqasid Syariah (Analisis Terhadap Putusan Hakim Pengadilan Agama Pekanbaru Klas 1 No. 181/Pdt.P/2020/PA.Pbr)," *Yustitiabelen* 7, no. 2 (December 17, 2021): 169-88, <https://doi.org/10.36563/yustitiabelen.v7i2.367>.

Therefore, there is no reason for anyone to neglect this noble duty.⁶⁰ In the findings of this study, four out of five mothers who were the subjects of the study experienced serious economic difficulties after the divorce. The mothers had to struggle alone to send their children to school, and some even had to apply for a Poverty Certificate (SKM) in order to access education and health services from the government.⁶¹

The difference between the ideal norm and reality shows that the application of Islamic family law in society is still partial.⁶² Custody is given to the mother because it is seen as a natural obligation, but the financial responsibility that should be borne by the father is often neglected. The state and religious courts have not been fully present to ensure justice in post-divorce relationships, although in some courts, fathers can be forced to fulfill their role in providing for their children after divorce.⁶³ However, in practice, this is still difficult to implement, so mothers are forced to take on the dual role of caregiver and breadwinner without adequate protection from the state. In fact, according to Islamic teachings, both parents have a collective responsibility towards their children. This imbalance poses a serious challenge to the realization of justice in the current Islamic family law system.⁶⁴

In Islamic law, hadhanah is not merely a matter of who lives with the child, but encompasses the comprehensive care of Wahbah Az-Zuhaili emphasizes that neglecting a child's right to proper education and guidance is a violation of one of the main principles of maqashid sharia, namely hifz al-nasl (protection of offspring).⁶⁵ Therefore, children's rights in Islam are not limited to where they live, but must also include continuity of education, health, and character building.⁶⁶ However, in the social practices of the Delima community in Pekanbaru City, the

⁶⁰ Hafid Rustiawan dan Hasbullah, "Konteks Ayat Al-Qur'an dengan Pendidikan: Analisis Tafsir al-Qur'an Surah At-Tahrim Ayat 6," *Geneologi PAI: Jurnal Pendidikan Agama Islam* 10, no. 1 (2023): 1–12, <https://doi.org/10.32678/geneologipai.v10i1.8418>.

⁶¹ Nurela, "Wawancara dengan Ibu Nurela," 29 Januari 2024.

⁶² Takdir Takdir et al., "Islamic Law and Local Traditions in Preventing Early Marriage in the Toraja Muslim Minority Community," *Jurnal Ilmiah Al-Syir'ab* 22, no. 2 (December 31, 2024): 274, <https://doi.org/10.30984/jis.v22i2.2931>.

⁶³ Syaifuddin Zuhdi et al., "The Confiscation of Husbands' Wealth as A Collateral for Post-Divorce Child Support: Perspective of Maqāṣid Al-Sharī'ah," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (June 11, 2024): 912, <https://doi.org/10.22373/sjkh.v8i2.17326>.

⁶⁴ Irfan Islami, "Legalitas Penguasaan Hak Asuh Anak Dibawah Umur (Hadhanah) Kepada Bapak Pasca Perceraian," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 6, no. 2 (December 27, 2019): 181–94, <https://doi.org/10.24252/al-qadau.v6i2.10715>. Muhammad Hafis, "Kajian Terhadap Asas-Asas Teologis Dalam Surah An-Nisa' Ayat 129 Tentang Aturan Konkrit Monogami," *Jurnal Kajian Dan Pengembangan Umat* 6, no. 2 (December 29, 2023): 194–201, <https://doi.org/10.31869/jkpu.v6i2.4888>.

⁶⁵ Wahbah Zuhaili, *Al-Fiqh Al-Islami Wa Adilatuhu*, 5th ed. (Damaskus: Dar al-Fikr, 2005).

⁶⁶ Amalia, "Implementasi Hak Anak dan Nafkah Pasca Perceraian (Studi Kasus Desa Giriklopomulyo Kecamatan Sekampung Kabupaten Lampung Timur."

understanding of hadhanah is still narrow and limited to the physical aspect of who directly cares for the child on a daily basis.

The findings of fragmented understanding of hadhanah in physical aspects in Delima District, Pekanbaru confirm the epistemic failure in transmitting the holistic concept of Islam. In fact, Wahbah Az-Zuhaili⁶⁷ (*Al-Fiqh al-Islami wa Adillatuhu*, Volume 10) emphasizes that hadhanah is a tarbawiyah (educational authority) domain that encompasses four pillars: Hifzh al-Jasad (physical protection: food, clothing, shelter), hifzh al-'Aql (intellectual development: formal/non-formal education), hifzh al-Nafs (mental health: compassion, mental well-being), and hifzh al-Din (guidance in faith and morals).

This study proves that the second and third pillars are neglected. Ironically, the religious community in Pekanbaru has reduced the meaning of hadhanah to merely hifzh al-jasad. As a result, the neglect of children's education (e.g., the case of Mrs. Nurela who relied on SKM) is not considered a violation of sharia, even though it clearly contradicts QS. At-Tahrim: 6 and the principle of maqashid al-shariah. This is where the state fails through the Religious Court: judges' decisions often only mention the obligation of basic financial support without ordering contributions to education/health, thereby reinforcing the reduction of the meaning of hadhanah in society.

This is reinforced by research findings that the majority of mothers (former wives) feel that their duties are fulfilled simply by physically caring for their children, without considering the father's role in fulfilling other aspects such as education and health. This narrow view deviates from the essence of child protection as taught by Islamic law as a whole. Quoting Fadilah⁶⁸ the failure to implement the idealism of Islamic family law is influenced by several main factors. First, the dissemination of KHI has not reached the grassroots community as a whole; knowledge of this law is still limited to academics and legal officials, while the general public has not internalized its values. Second, the role of scholars and religious leaders as mediators in child custody conflicts often does not emerge, weakening the relationship between religious teachings and the implementation of the law. Third, there is a disconnect between religious values and formal legal practices.

⁶⁷ Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

⁶⁸ Fadhilah Fadhilah, "The Role of Qanun in the Implementation of Islamic Family Law in Sharia-Based Countries: Challenges and Opportunities," *Journal of Nafaqah* 1, no. 1 (June 6, 2024), <https://doi.org/10.62872/e91k2e60>. Joshua Suherman and Muhammad Hafis, "Obligation To Attend Witness In Religious Courts And Its Relevance To Ibnu Hazm's Views," *Jurnal Ilmiah Abwal Syakhsbiyyah (JAS)* 4, no. 2 (February 25, 2023): 285–303, <https://doi.org/10.33474/jas.v4i2.18909>.

Based on what the author has described, this study confirms empirical findings showing that familiar jurisprudence in Pekanbaru tends to apply hadhanah formally (determination of physical care) without translating the father's obligation to provide financial support into comprehensive and monitorable judicial orders (e.g., contributions to education, health, and psychosocial development). Normatively, there are gaps both in regulatory texts and judicial practice that allow the meaning of hadhanah to be reduced to merely “the child's place of residence.” As a result, court decisions are often normatively minimalist and are not supported by post-decision implementation and monitoring mechanisms. Consequently, reform recommendations must target two levels simultaneously: (1) reinterpretation of hadhanah by the court as a *tarbawiyah* authority that includes the obligation to provide for the child's education and health; and (2) strengthening enforcement instruments (specific alimony clauses in verdicts, monitoring mechanisms by the KUA/kelurahan, and options for salary deductions or alimony guarantee institutions) so that the normative mandate of the KHI and the Marriage Law does not remain mere legal rhetoric.

Sharia counseling solutions in religious courts will stagnate if they are not tied to an integrated monitoring system. Based on the success story model of the Cirebon Religious Court, the study recommends: a Comprehensive Hadhanah Certificate, a certificate containing official documents detailing the father's obligations verified by the sub-district office, adopting the concept of *al-ihsan* in QS. An-Nahl: 90. Then, *baitul Mal al-Ma'nawi*: An integrated alimony fund management institution in collaboration with BAZNAS Riau, using the following mechanism: Direct salary deduction (if the father is a civil servant/TNI), while if the father is a trader/farmer, sharia pawn guarantees can be applied.⁶⁹

Based on the above description, it can be concluded that the practice of Islamic family law after divorce in the city of Pekanbaru shows a significant gap between normative idealism and social reality. Although the provisions on child custody (*hadhanah*) in the Compilation of Islamic Law (Article 105 KHI) have been successfully implemented—where mothers consistently obtain custody of children under the age of *mumayyiz*—the fulfillment of the father's comprehensive responsibilities for the child's educational, health, and holistic development needs is still far from the principles of sharia. This neglect of intellectual and spiritual obligations not only violates Q.S. At-Tahrim: 6 and the principles of *maqāṣid syarī'ah* (particularly *hifẓ al-nasl* and *hifẓ al-'aql*), but

⁶⁹ Ahmad Lutfi Rijalul Fikri and Hermawati Hermawati, “Integration Of Sharia Norms In The Formation Of Regional Regulations In Indonesia: Juridical Analysis Of The Formation Of Sharia Regional Regulations,” *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab* 4, no. 2 (December 26, 2024): 1–15, <https://doi.org/10.59259/jd.v4i1.147>.

also reflects an epistemological failure to interpret *hadhanah* as educational authority (*wilāyah tarbawiyah*) that encompasses the four pillars of protection (physical, intellectual, psychological, and spiritual).

Conclusion

This study confirms that there is a systemic neglect of children's rights after divorce in Pekanbaru City, where the burden of children's rights falls predominantly on mothers: the majority of mothers (4 out of 5 core cases) bear the full double burden of being breadwinners and sole caregivers after divorce, while fathers neglect their financial and emotional obligations. Empirically, this is reflected in the cases of Mrs. Surtini (laundry worker), Mrs. Dewi, and Mrs. Nurela, who rely on poverty certificates to pay for their children's school fees due to the lack of support from their ex-husbands. These findings reveal a triadic failure of the system: (1) The state (government) appears absent in providing a safety net for children who are victims of divorce; (2) The legal system is impotent due to inconsistent regulations (e.g., the age limit for child support between the KHI and the Marriage Law), weak enforcement of decisions, and litigation costs that are unaffordable for mothers who are the breadwinners; and (3) Religious institutions (Religious Courts, KAU, *majelis taklim*) fail to encourage fathers to fulfill their responsibilities in accordance with Islamic mandate (Q.S al-Baqarah: 233) through non-litigious mediation or enforcement of Islamic values. This neglect of children's rights after divorce is exacerbated by a patriarchal culture that normalizes paternal neglect and triggers legal illiteracy. This condition not only violates the principles of *maqāṣid syarī'ah* (especially *hifẓ al-nasl* and *hifẓ al-‘aql*), but also produces structural violence against children. Therefore, transformative solutions require an integrated child rights framework approach that bridges formal law, religious values, and community mechanisms, as well as the deconstruction of patriarchal culture in policies enforcing children's rights in urban communities, particularly in Delima District, Pekanbaru City, Riau Province.

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