

Reconstruction of Child Custody Rights After Divorce Based on Maqāṣid Al-Syarī'Ah and the Best Interest of the Child

Hendri Kroniko

hendri.kroniko@uin-suska.ac.id

Universitas Islam Negeri Sultan Syarif Kasim Riau

Efizal A

efizalanwar1@gmail.com

Institut Darul Qur'an Payakumbuh

Ali Mustafa

Elmuzthofa@gmail.com

Institut IMSYA Indonesia

Abstract

Divorce has a significant impact on the fulfillment of children's rights and well-being, while custody decisions are often normative and do not take into account the child's best interests. Therefore, this study aims to reconstruct the concept of post-divorce child custody by integrating the maqāṣid al-syarī'ah and the principle of the best interest of the child. The research method employed is a qualitative normative approach with a maqasid sharia perspective, based on a literature study. Primary data sources include classical fiqh books and contemporary Islamic legal literature that discuss hadith. Secondary data sources include scientific books, national and international journal articles, previous research results, and laws and regulations related to child custody after divorce, such as the Compilation of Islamic Law (KHI) and the Indonesian Marriage Law. Data were collected through documentation and analyzed using descriptive analytical techniques. Post-divorce child custody reconstruction needs to be built on the integration of the maqāṣid al-syarī'ah (the principles of Islamic law) and the principle of the best interest of the child as the primary basis for determining custody. This approach prioritizes the child's well-being, taking into account religious, psychological, emotional, educational, and social aspects. Thus, custody determination is not merely normative, but contextual and equitable. This is expected to result in more humane decisions oriented toward the child's protection and future.

Keywords: Child Custody, Maqashid Syariah, Best Interest Of The Child.

Abstrak

Perceraian berdampak signifikan terhadap pemenuhan hak dan kesejahteraan anak, sementara penetapan hak asuh sering kali masih bersifat normatif dan kurang mempertimbangkan kepentingan terbaik anak. Oleh karena itu, penelitian

ini bertujuan merekonstruksi konsep hak asuh anak pasca perceraian dengan mengintegrasikan *maqāṣid al-syarī'ah* dan prinsip *best interest of the child*. Metode penelitian yang digunakan adalah normatif kualitatif dengan pendekatan maqasid syariah, melalui jenis penelitian studi pustaka. Sumber data primer meliputi kitab-kitab fikih klasik serta literatur hukum Islam kontemporer yang membahas hadhanah. Dan Sumber data sekunder, mencakup buku-buku ilmiah, artikel jurnal nasional maupun internasional, hasil penelitian terdahulu, dan peraturan perundang-undangan yang berkaitan dengan hak asuh anak pasca perceraian, seperti Kompilasi Hukum Islam (KHI) dan Undang-Undang Perkawinan di Indonesia. Data dikumpulkan dengan dokumentasi dan dianalisa dengan teknik deskriptif analitis. Hasil penelitian menunjukkan bahwa Rekonstruksi hak asuh anak pasca perceraian perlu dibangun atas integrasi *maqāṣid al-syarī'ah* dan prinsip *best interest of the child* sebagai dasar utama penentuan pengasuhan. Pendekatan ini menempatkan kemaslahatan anak sebagai prioritas dengan mempertimbangkan aspek agama, psikologis, emosional, pendidikan, dan lingkungan sosial. Dengan demikian, penetapan hak asuh tidak semata bersifat normatif, tetapi kontekstual dan berkeadilan. Hal ini diharapkan mampu melahirkan putusan yang lebih humanis dan berorientasi pada perlindungan serta masa depan anak.

Kata Kunci: Hak Asuh Anak, Maqashid Syariah, Best Interest Of The Child.

A. Introduction

Over the past decade, the divorce rate in Indonesia has continued to rise in line with social, cultural, and economic changes. Data from the Religious Courts shows that the majority of divorce cases are filed by women, citing various factors.¹ This situation has profound impacts on families and raises legal issues, particularly regarding child custody.²

In the context of divorce, child custody (*ḥaḍānah*) is a crucial issue because children are the most vulnerable parties affected by parental conflict.³ The role of parents significantly determines a child's physical and psychological development, so the determination of custody rights must be oriented towards

¹ Habib Mumtaz Jr dkk., "Analisa Penyelesaian Sengketa Hak Asuh Anak Pasca Perceraian Melalui Litigasi," *Jurnal Locus Penelitian dan Pengabdian* 2, no. 7 (2023): hlm. 716., <https://doi.org/10.58344/locus.v2i7.1433>.

² Nibras Syafriani Manna dkk., "Ceraai Gugat: Telaah Penyebab Perceraian Pada Keluarga di Indonesia," *JURNAL AL-AZHAR INDONESIA SERI HUMANIORA* 6, no. 1 (2021): hlm. 11., <https://doi.org/10.36722/sh.v6i1.443>.

³ Siti Nurjanah, "Divorce and Its Impact on Custody of Minors Using Islamic Law Perspectives," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): hlm. 128., <https://doi.org/10.29240/jhi.v7i1.4156>.

the child's well-being.⁴ Therefore, it is necessary to examine the determination of child custody rights from an Islamic legal perspective and its relevance to modern social practices.

Islamic law regulates child custody with explicit normative provisions, based on, among other things, the child's best interests, the parents' circumstances, and their age.⁵ However, in contemporary social realities, challenges often arise in implementing these normative rules. Changes in societal patterns, gender equality,⁶ women's involvement in the public sphere, and the evolving perspective on children's rights in international law,⁷ make the process of determining custody more complex than simply applying normative rules. In the modern context, Islamic law needs to be interpreted contextually so that the implementation of ḥaḍānah remains compliant with sharia while also being responsive to the changing role of parents and the psychological needs of children.⁸

In the context of contemporary Islamic law, the maqasid sharia approach provides greater scope for reconstructing the concept of childcare. The principles of maqasid sharia, which are oriented towards protecting the soul (hifz al-nafs), intellect (hifz al-'aql), offspring (hifz al-nasl), and religion (hifz al-din)⁹ emphasize the importance of the child's welfare as the primary goal. Thus, optimizing the father's role in childcare is not only socially relevant but also has strong legitimacy under Islamic law.

Maqāṣid al-syarī'ah, as the fundamental objective of Islamic law, offers a flexible and contextual normative framework by emphasizing the protection of

⁴ Nasaruddin Mera dkk., "Child Custody Rights for Mothers of Different Religions: Maqāṣid al-Sharī'ah Perspective on Islamic Family Law in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 3 (2024): hlm. 1646., <http://dx.doi.org/10.22373/sjhh.v8i3.23809>.

⁵ Tarmizi dkk., "Hak Asuh Anak (Hadhanah) Pasca Perceraian Serta Akibat Hukumnya," *Jurnal Ilmu Hukum Pengayoman* 1, no. 1 (2023): hlm. 19.

⁶ Arfan Rizani dkk., "Rekonstruksi Konsep Hadanah dalam Fiqh Klasik dan Relevansinya Terhadap Kompilasi Hukum Islam," *Minhaj: Jurnal Ilmu Syariah* 6, no. 2 (2025): hlm. 242., <https://doi.org/10.52431/minhaj.v6i2.3934>.

⁷ Dian Rhamdan Hidayat, *Pemenuhan Hak Anak Pasca Perceraian Di Indonesia Berdasarkan Konvensi Hak Anak Dan Fiqh Hadhanah* (Institut Agama Islam Negeri (Iain) Syekh Nurjati, 2022), hlm. 7.

⁸ Muhammad Zainuddin Sunarto dan Diah Uswatun Hasanah, "Analisis Penjatuhan Hak Hadhanah Pada Perempuan Dalam Tinjauan Maqashid As-Syari'ah Analysis Of The Imposition Of Hadhanah Rights On Women In The Review Of Maqashid As-Syari'ah," *Rewang Rencang : Jurnal Hukum Lex Generalis*. 6, no. 2 (2025): hlm. 1., <https://doi.org/10.56370/jhlg.v6i2.823>.

⁹ Ach. Fauzan dan Moh. Hamzah, "Pendekatan Holistik Dalam Hak Asuh Anak Pasca Perceraian: Perspektif Maqāṣid Syarī'ah Al-Tahir Ibnu Asyur," *al-Rasikh: Jurnal Hukum Islam* 13, no. 1 (2024): hlm. 113., <https://doi.org/10.38073/rasikh.v13i1.1747>.

religion, soul, mind, descendants, and property, which is in line with the principle of the best interest of the child in modern law that prioritizes the interests of children in every legal decision. Therefore, this article aims to reconstruct the concept of child custody after divorce by integrating these two approaches, thereby ensuring a more just, humane, and welfare-oriented determination of custody for children as legal subjects who must be protected.

B. Research methods

This study uses a qualitative normative method, grounded in a *maqāṣid al-syarī'ah* approach, through a literature review of child custody (*ḥaḍānah*) from an Islamic legal perspective, drawing on both classical sources and contemporary thought. Primary data is obtained from *fiqh* books and modern Islamic legal literature. In contrast, secondary data includes scientific books, national and international journal articles, previous research results, and laws and regulations related to child custody after divorce, such as the Compilation of Islamic Law and the Marriage Law. Data collection is carried out through documentation techniques, classifying library materials according to normative provisions, positive legal regulations, and modern social dynamics, which are then analyzed descriptively and analytically to obtain a comprehensive understanding of the reconstruction of child custody based on *maqāṣid al-syarī'ah* and the principle of the best interest of the child.

C. Discussion and Research Results

The Concept of Child Custody (Hadhanah) in Classical Islamic Law and Positive Law in Indonesia

In Islamic law, *ḥaḍānah* is understood as the responsibility to care for, nurture, and educate a child who is not yet independent. Etymologically, the term means to nurture, educate, and protect.¹⁰ Imam Hanafi emphasized parenting until the child is mature,¹¹ while Imam Malik viewed it as fulfilling the child's basic needs or those of a child who is not yet capable.¹²

Imam Shafi'i defines *ḥaḍānah* as a form of care performed with full attention and affection, such as carrying or holding a child in one's lap.¹³ Imam Ahmad ibn Hanbal emphasized that care is a mother's right, especially for boys up

¹⁰ Ahmad Warson Munawir, *Kamus Arab Indonesia* (Pustaka Progresif, 1997), hlm. 578.

¹¹ Abu Hanifah bin Nu'man bin Tsabit Al-Taimi Al-Kufi, *Al-Jami' Al-Kabir* (Daar al-Kitab al-Arabi, 1982), hlm. 421.

¹² Ibnu Hajar Al-Haitami, *Tuhfatul Muhtaj Bi Syarh Al-Minhaj, Juz VI* (Maktabah At-Tijariyah Al-Kubra, 1994), hlm. 342.

¹³ Zainuddin bin Abdul Aziz al-Malibari, *Fathul-Mu'in Bi Syarhi Quratul-'Aini* (Daar al-Ma'arif, 2001).

to age 7.¹⁴ Meanwhile, in the encyclopedia of Islamic law, ḥaḍānah is understood as the care of children who are not yet mature in age and reason, including protection, fulfillment of needs, and education.¹⁵ Children are a trust in the hands of parents who, from birth, have the right to be cared for, nurtured, and educated until they become independent. In a divorce, protecting these rights requires a fair legal decision that ensures the child's interests are protected, even if the parents separate.¹⁶

The Quran and Hadith emphasize the importance of childcare as a trust in Islam. Surah Al-Baqarah, verse 233, highlights the mother's role in childcare, while Surah At-Tahrim, verse 6, emphasizes the parents' obligation to educate and guide them.¹⁷ The Prophet's hadith also reinforces a mother's right to childcare as long as she remains unmarried.¹⁸ These verses demonstrate that childcare is a significant trust in Islam.

In Islamic jurisprudence, custody rights are determined by emotional closeness and parenting ability, with the mother as the primary custodian according to the majority of scholars.¹⁹ If the mother is absent, custody passes to a female relative on the maternal side.²⁰ then to the father, and finally to a female relative on the paternal side.²¹ This sequence emphasizes the importance of continuity of affection and psychological stability in childcare. The differing opinions of scholars regarding the age limit for custody, such as the Hanafi, Shafi'i,

¹⁴ Abd al-Hamīd Al-Syarwānī, *Hawāsyī Al-Syarwānī Wa Ibn Qāsim Al-'Ubādī 'alā Tuhfat Al-Muhtāj* (Darul Kutub Ilmiyah, 2012).

¹⁵ Adelina Nasution dkk., "The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (2022): hlm. 496., <https://doi.org/10.22373/sjhk.v6i2.12758>.

¹⁶ Mera dkk., "Child Custody Rights for Mothers of Different Religions: Maqāṣid al-Sharī'ah Perspective on Islamic Family Law in Indonesia," hlm. 1649.

¹⁷ 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): hlm. 3., <https://doi.org/10.32678/geneologipai.v10i1.8418>.

¹⁸ Faisal Fauzan Ilyasa dkk., "Keutamaan Ibu dalam Hak Asuh Anak Perspektif Pendidikan: Analisis Hadits Tarbawi," *Al-Hikmah: Jurnal Agama dan Ilmu Pengetahuan* 22, no. 1 (2025): hlm. 93., [https://doi.org/10.25299/ajaip.2025.vol22\(1\).15850](https://doi.org/10.25299/ajaip.2025.vol22(1).15850).

¹⁹ Muhammad Afendi dan Imron Choeri, "Tinjauan KHI dan Hukum Islam Terhadap Putusan Hakim Tentang Batas Usia Hak Asuh Anak Pasca Perceraian," *Isti'dal: Jurnal Studi Hukum Islam* 11, no. 1 (2024): hlm. 100., <https://doi.org/10.34001/ijshi.v11i1.6296>.

²⁰ 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): hlm. 104., <https://doi.org/10.51675/jaksya.v2i1.176>.

²¹ Muhammad Alfi Syahrin dan Akmal Abdul Munir, "Hak Asuh Anak (Hadhanah) Dalam Sistem Hukum Keluarga Indonesia Dan Aljazair," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): hlm. 1947., <https://doi.org/10.61104/alz.v3i3.1660>.

and Maliki views, demonstrate the flexibility of Islamic law in adapting care to the child's emotional and educational needs.²²

The concept of ḥaḍānah is based on the benefit to children, which is in line with the maqāṣid al-syarī'ah, namely the protection of the soul, mind, religion, and offspring.²³ In KHI, custody can be transferred to the father or another party through a decision of the Religious Court if the caregiver is unable to guarantee the safety of the child.²⁴ This principle emphasizes that the child's interests are the primary consideration in determining custody rights.

In Indonesian religious court practice, child custody decisions are increasingly guided by the principle of benefit, taking into account psychological factors and parental abilities.²⁵ This approach aligns with the principle of tasharruf al-imām manūṭun bi al-maṣlaḥah, which emphasizes that every decision must be based on benefit.²⁶ Thus, custody is understood as an obligation to ensure optimal child development, while demonstrating the adaptive relevance of Islamic law to social dynamics without neglecting the maqāṣid al-syarī'ah.

The Compilation of Islamic Law regulates child custody rights for Muslims, prioritizing mothers as caregivers for children who are not yet legally married. In contrast, children who are legally married are given the freedom to choose their parents, as stipulated in Articles 105 and 156 of the Compilation of Islamic Law.²⁷ This provision is reinforced by the Child Protection Law, which affirms that every child has the right to be cared for by their parents, provided this does not threaten their safety and well-being, and requires parents to care for, educate, and protect

²² Ahmad Baidawi dan Muhammad Zainuddin Sunarto, "Hak Asuh Anak Dalam Perspektif Khi Dan Madzhab Syafi'i," *HAKAM: Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam* 4, no. 1 (2020): hlm. 63., <https://doi.org/10.33650/jhi.v4i1.1928>.

²³ Savvy Dian Faizzati, "Hak Asuh Anak (Hadhanah) bagi Ibu yang Menikah lagi Prespektif Maqashid Syari'ah," *Afkaruna: International Journal of Islamic Studies (AIJIS)* 1, no. 2 (2024): hlm. 279., <https://doi.org/10.38073/aijis.v1i2.2471>.

²⁴ Bagus Ary Darmawan dkk., "Analisis Hak Asuh Anak Dalam Putusan Pengadilan Agama Lahat Nomor 685/Pdt.G/2022/PA.LT: Perspektif Maqâsid Al-Syarī'ah Muhammad Thâhir Ibn Âsyûr," *Konsensus : Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 1, no. 4 (2024): hlm. 325., <https://doi.org/10.62383/konsensus.v1i4.297>.

²⁵ Maryati Maryati, "Dasar Pertimbangan Hakim Menetapkan Hak Asuh Anak Kepada Suami Selaku Pemohon pada Pengadilan Agama Jambi," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3 (2021): hlm. 1307., <https://doi.org/10.33087/jiubj.v21i3.1740>.

²⁶ Khairazka Essaura dkk., "Tinjauan Kaidah Tasharruf Al-Imam 'Ala Ar-Ra'iiyyah Manuthun Bi Al-Maslahah Dalam Penentuan Biaya Haji (Studi Analisis Keputusan Presiden Nomor 7 Tahun 2023)," *Jurnal Inovasi Hukum dan Kebijakan* 5, no. 4 (2024): hlm. 308.

²⁷ Nur Triyono dan Asmuni Asmuni, "The Implementing Joint Custody Post Divorce In Indonesia: A Philosophical Viewpoint," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023): hlm. 317., <https://doi.org/10.18860/j-fsh.v15i2.24370>.

children according to their potential.²⁸ This is in line with the principle of the best interest of the child, also recognized in the Convention on the Rights of the Child.²⁹ Thus, Indonesian regulations reflect efforts to harmonize Islamic legal norms with the universal principle of the best interests of the child, as recognized in the Convention on the Rights of the Child.

Religious Courts play a central role in determining child custody after divorce by assessing the suitability of parents based on moral, economic, and psychological aspects for the benefit of the child.³⁰ Although the Compilation of Islamic Law (KHI) normatively prioritizes the mother as the caregiver, judges have the authority to deviate from this provision if it is proven not to guarantee the child's welfare, in line with the principle of *tasharruf al-imām manūṭun bi al-maṣlaḥah*.³¹ In the context of modern social dynamics, judicial practice demonstrates the responsiveness of Islamic family law, such as granting custody to the father when the mother does not have sufficient time to care for the child or revoking custody rights from a father who commits violence.³² which reflects the synergy between positive law and classical *fiqh* for the protection and future of children. The Child Protection Law expands custody protections through the involvement of state institutions and civil society.³³, ensuring that its regulations harmonize with the Compilation of Islamic Law (KHI), the Marriage Law, and the Child Protection Law, all of which are based on the welfare and best interests of the child.

²⁸ Pasal 26 ayat (1) UU Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan atas UU Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

²⁹ Laurensius Arliman, "Perlindungan Anak Oleh Masyarakat Ditinjau Dari Mazhab Sejarah Di Dalam Penerapan Prinsip The Best Interest Of The Child Pada Kehidupan Anak Di Indonesia," *Era Hukum: Jurnal Ilmiah Ilmu Hukum* 15, no. 1 (2017): hlm. 141., <https://doi.org/10.24912/era%20hukum.v15i1.668>.

³⁰ Bagus Ary Darmawan dkk., "Analisis Hak Asuh Anak Dalam Putusan Pengadilan Agama Lahat Nomor 685/Pdt.G/2022/PA.LT," hlm. 325.

³¹ Essaura dkk., "Tinjauan Kaidah Tasharruf Al-Imam 'Ala Ar-Ra'iyah Manuthun Bi Al-Maslahah Dalam Penentuan Biaya Haji (Studi Analisis Keputusan Presiden Nomor 7 Tahun 2023)," hlm. 308.

³² Brazilia Emanuel Rajamuda Napitupulu dan Ni Made Ari Yulianti Griadhi, "Pengaturan Hak Asuh Anak Pada Kasus Perceraian Akibat Kekerasan Dalam Rumah Tangga (KDRT)," *Ethics and Law Journal: Business and Notary* 2, no. 3 (2024): hlm. 141., <https://doi.org/10.61292/eljbn.227>.

³³ Laurensius Arliman S, "Peran Komisi Perlindungan Anak Indonesia Untuk Mewujudkan Perlindungan Anak," *Jurnal Hukum Respublica* 17, no. 2 (2018): hlm. 196.

Maqāṣid al-Syarī'ah Principles in Child Protection

Analysis of the maqāṣid al-syarī'ah (Islamic law) regarding paternal childcare after divorce is essential in the development of contemporary Islamic law, because the primary objective of hadhanah is the welfare of the child, not merely the determination of rights based on the gender of the parent.³⁴ The principles of ḥifẓ al-nasl, ḥifẓ al-'aql, and ḥifẓ al-nafs emphasize the need for a father's role in protecting, educating, and raising children, even in divorce. Although Indonesian positive law, through the Marriage Law and the Compilation of Islamic Law (KHI), tends to prioritize mothers as caregivers of minors.³⁵ the maqāṣid al-syarī'ah approach encourages a more flexible interpretation so that the rights and role of fathers are not marginalized, in line with the principle of the best interests of the child in the Child Protection Law.³⁶

Maqāṣid al-syarī'ah serves as a methodological approach to interpreting law contextually and oriented towards the welfare of the child. Within the framework of ḥifẓ al-'aql, the father's role is crucial in the education, formation of reason, and moral development of children, so it cannot be neglected after divorce.³⁷ Although Indonesian positive law has strengthened child protection, its implementation still tends to position mothers as the primary caregivers and fathers as merely financially responsible.³⁸ Therefore, a reinterpretation of the law is needed that prioritizes the child's best interests by recognizing the father's integral role in childcare.

The proportional approach to child custody emphasizes that children require a balanced role from both fathers and mothers in their upbringing, education, and protection, even if their parents are divorced.³⁹ From the perspective of the maqāṣid al-syarī'ah (laws of Islamic law), particularly the ḥifẓ al-nafs (laws of the nafs), the presence of a father is crucial in preventing a child's

³⁴ Lilis Setiawati dkk., "Penguasaan Kakek pada Hak Asuh Anak di Bawah Umur dalam Perspektif Maqashid Syariah," *Jurnal At-Tahdzib* 11, no. 2 (2023): hlm. 49., <https://doi.org/10.61181/at-tahdzib.v11i2.312>.

³⁵ Triyono dan Asmuni, "The Implementing Joint Custody Post Divorce In Indonesia," hlm. 317.

³⁶ Pasal 26 ayat (1) UU Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan atas UU Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

³⁷ Hidayatul Ulya dkk., "Penguasaan Hak Asuh Anak di bawah Umur kepada Bapak," hlm. 104.

³⁸ Siti Istiyati dkk., "Gambaran Peran Ayah dalam Pengasuhan," *Profesi (Profesional Islam) : Media Publikasi Penelitian* 17, no. 2 (2020): hlm. 13., <https://doi.org/10.26576/profesi.v17i2.22>.

³⁹ Ismail Busa dan Muh. Arif, "Konsep Relasi Anak dan Orang Tua," *Early Childhood Islamic Education Journal* 1, no. 1 (2020): hlm. 41., <https://doi.org/10.58176/eciejournal.v1i1.21>.

psychological vulnerability following the loss of a parental figure. Therefore, the analysis of *maqāṣid al-syarī'ah* contributes significantly to the development of family law by encouraging a reinterpretation of Islamic law in line with the Child Protection Law, so that custody is not understood solely as a parental right, but rather as an effort to realize the welfare and future of children through a more just and contextual legal construction.

The Concept of Best Interest of the Child in Modern Law

The principle of the Best Interest of the Child is a fundamental concept in child protection law, emphasizing that every decision concerning a child must prioritize their welfare and optimal development, taking into account both the positive and negative impacts of the decision on the child or children concerned.⁴⁰ The concept of Best Interest of the Child is a fundamental moral principle that places the child's interests as the primary consideration in every decision concerning them. This principle also limits the authority of adults so that they do not act beyond the child's interests and protection.⁴¹

In Indonesian national law, the principle of the best interests of the child is affirmed in Law Number 35 of 2014 concerning Child Protection, which guarantees children the right to live, grow, develop, participate fully, and be protected from violence and discrimination. This principle is applied across various legal policies and practices, including juvenile justice, adoption, education, and health.⁴² as an adjustment to international standards for child protection. The assessment of the child's best interests is carried out comprehensively across psychological, emotional, educational, and social-environmental aspects, which are interrelated to ensure that every legal decision truly supports the child's optimal welfare and development.⁴³ All of these indicators are interrelated in ensuring that the decisions taken truly advance the

⁴⁰ Yazid Nashrullah dan Endah Hartati, "Pengaruh Prinsip Best Interest of Child Dalam Penentuan Hak Asuh Anak Pada Kasus Perceraian Menurut Hukum Perdata (Analisis Terhadap Putusan-Putusan Pengadilan)," *Lex Patrimonium* 2, no. 2 (2023): hlm. 4.

⁴¹ Princess Preet Kaur Kalra dan Mehak Mahapatra, "Critical Analysis of the Best Interest of Child Theory," *International Journal of Law Management & Humanities* 4, no. 4 (2021): hlm. 382.

⁴² Azka Syifaul Maula, "Kajian Normatif terhadap Relevansi Pasal 105 Kompilasi Hukum Islam dengan Prinsip Kepentingan Terbaik bagi Anak dalam Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak," *Studia: Journal of Humanities and Education Studies* 1, no. 2 (2025): hlm. 2.

⁴³ Agus Darwanta, "Penerapan Prinsip Terbaik Untuk Anak (The Best Interest Of The Child) Dalam Pemenuhan Hak Anak Di Lembaga Pembinaan Khusus Anak," *Reformasi Hukum* 24, no. 1 (2020): hlm. 70., <https://doi.org/10.46257/jrh.v24i1.83>.

child's overall welfare. The principle of the best interests of the child is a multidisciplinary paradigm that serves as a benchmark for protecting children's rights and demands collective responsibility from all stakeholders.

Child Custody Reconstruction After Divorce

The classical textual-normative approach to Islamic jurisprudence is often criticized for overemphasizing the formal aspects of the text without considering the child's social and psychological conditions after divorce, resulting in custody decisions often based solely on general principles without comprehensively assessing the caregiver's suitability. In the context of an increasingly complex modern society, this approach is considered less adaptive and relevant.⁴⁴ Therefore, the integration of maqāṣid al-syarī'ah with the principle of the best interest of the child is an essential basis for the reconstruction of child custody, as it places the protection of the child's soul, mind, and offspring as the primary goal, in line with modern child protection standards. Therefore, custody decisions are not based solely on legal texts but also consider the child's interests comprehensively and contextually.⁴⁵

The paradigm shift from "parental rights" to "children's interests" is a crucial indicator in the renewal of Islamic family law. While classical fiqh places parents as the primary holders of rights, modern law positions children as legal subjects with independent interests. This principle is also reflected in religious court practices in Indonesia, which now more often consider the child's psychological well-being than the parents' formal rights.⁴⁶ This new orientation demonstrates an epistemological shift from a patriarchal paradigm to one based on child welfare.

A child custody reconstruction model that adapts to social realities requires multidisciplinary engagement between law, psychology, and gender studies. This reconstruction not only prioritizes substantive justice for children but also considers social dynamics, including parenting patterns, economics, and the environment. This approach reflects the transformation of Islamic jurisprudence (fiqh) to better respond to contemporary contexts.

⁴⁴ Nur Muhammad Safii, "The Role of Islamic Family Law in Modern Child Custody Cases: Balancing Sharia Principles with Contemporary Needs," *Journal of Islamic Family Law* 1, no. 1 (2025): hlm. 2., <https://doi.org/10.59784/jifl.v1i1.5>.

⁴⁵ Hidayatul Ulya dkk., "Penguasaan Hak Asuh Anak di bawah Umur kepada Bapak," hlm. 104.

⁴⁶ Umul Khair, "Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian," *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (2020): hlm. 296., <https://doi.org/10.33760/jch.v5i2.231>.

D. Conclusion

Based on the discussion in this article, it can be concluded that the reconstruction of child custody after divorce must be built through the integration of maqāṣid al-syarī'ah and the principle of best interest of the child, so that the determination of custody is not only based on classical fiqh norms or positive legal formalities, but is oriented towards protecting the child's soul, mind, religion, descendants, and future as a whole. This approach provides concrete parameters in assessing the suitability of custody through psychological, emotional, educational, and social environmental aspects, so that it is hoped that it will produce decisions that are more adaptive, just, and based on the interests of the child as a legal subject who must be protected according to Islamic values and the demands of modern family law.

References

- Afendi, Muhammad, dan Imron Choeri. "Tinjauan KHI dan Hukum Islam Terhadap Putusan Hakim Tentang Batas Usia Hak Asuh Anak Pasca Perceraian." *Isti'dal: Jurnal Studi Hukum Islam* 11, no. 1 (2024): 92–107. <https://doi.org/10.34001/ijshi.v11i1.6296>.
- Al-Haitami, Ibnu Hajar. *Tuhfatul Muhtaj Bi Syarh Al-Minhaj, Juz VI*. Maktabah At-Tijariyah Al-Kubra, 1994.
- Al-Kufi, Abu Hanifah bin Nu'man bin Tsabit Al-Taimi. *Al-Jami' Al-Kabir*. Daar al-Kitab al-Arabi, 1982.
- Al-Syarwānī, Abd al-Hamīd. *Hawāsyī Al-Syarwānī Wa Ibn Qāsim Al-'Ubādī 'alā Tuhfat Al-Muhtāj*. Darul Kutub Ilmiyah, 2012.
- Arliman, Laurensius. "Perlindungan Anak Oleh Masyarakat Ditinjau Dari Mazhab Sejarah Di Dalam Penerapan Prinsip The Best Interest Of The Child Pada Kehidupan Anak Di Indonesia." *Era Hukum: Jurnal Ilmiah Ilmu Hukum* 15, no. 1 (2017). <https://doi.org/10.24912/era%20hukum.v15i1.668>.
- Arliman S, Laurensius. "Peran Komisi Perlindungan Anak Indonesia Untuk Mewujudkan Perlindungan Anak." *Jurnal Hukum Respublica* 17, no. 2 (2018).
- Bagus Ary Darmawan, M. Reza Saputra, dan Jaenal Aripin. "Analisis Hak Asuh Anak Dalam Putusan Pengadilan Agama Lahat Nomor 685/Pdt.G/2022/PA.LT: Perspektif Maqāṣid Al-Syarī'ah Muhammad Thāhir Ibn Āsyūr." *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 1, no. 4 (2024): 319–35. <https://doi.org/10.62383/konsensus.v1i4.297>.

- Baidawi, Ahmad, dan Muhammad Zainuddin Sunarto. "Hak Asuh Anak Dalam Perspektif Khi Dan Madzhab Syafi'i." *HAKAM: Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam* 4, no. 1 (2020). <https://doi.org/10.33650/jhi.v4i1.1928>.
- Darwanta, Agus. "Penerapan Prinsip Terbaik Untuk Anak (The Best Interest Of The Child) Dalam Pemenuhan Hak Anak Di Lembaga Pembinaan Khusus Anak." *Reformasi Hukum* 24, no. 1 (2020): 60–76. <https://doi.org/10.46257/jrh.v24i1.83>.
- Essaura, Khairazka, Refki Saputra, dan Abdul Rochim. "Tinjauan Kaidah Tasharruf Al-Imam 'Ala Ar-Ra'iyah Manuthun Bi Al-Maslahah Dalam Penentuan Biaya Haji (Studi Analisis Keputusan Presiden Nomor 7 Tahun 2023)." *Jurnal Inovasi Hukum dan Kebijakan* 5, no. 4 (2024).
- Faizzati, Savvy Dian. "Hak Asuh Anak (Hadhanah) bagi Ibu yang Menikah lagi Prespektif Maqashid Syari'ah." *Afkaruna: International Journal of Islamic Studies (AIJIS)* 1, no. 2 (2024): 278–93. <https://doi.org/10.38073/aijis.v1i2.2471>.
- Fakhri, Akhmad, Ratu Zahwa Sayyidina, dan Shahnaz el Jasmine. "Peran Ayah sebagai Orang Tua Tunggal dalam Mengasuh Anak: Perspektif Gender dalam Keluarga." *Prosiding Seminar Nasional Pendidikan Non Formal*, no. 1 (2023).
- Fauzan, Ach., dan Moh. Hamzah. "Pendekatan Holistik Dalam Hak Asuh Anak Pasca Perceraian: Perspektif Maqāsid Syarī'ah Al-Tahir Ibnu Asyur." *al-Rasikh: Jurnal Hukum Islam* 13, no. 1 (2024): 111–26. <https://doi.org/10.38073/rasikh.v13i1.1747>.
- Harahap, Shoibatul Aslamiah. "Pemenuhan Hak Asuh Anak Akibat Perceraian Orang Tua." *I'tiqadiyah: Jurnal Hukum dan Ilmu-ilmu Kesyariahan* 1, no. 3 (2024): 288–300. <https://doi.org/10.63424/itiqadiyah.v1i3.131>.
- Hidayat, Dian Rhamdan. *Pemenuhan Hak Anak Pasca Perceraian Di Indonesia Berdasarkan Konvensi Hak Anak Dan Fiqh Hadhanah*. Institut Agama Islam Negeri (Iain) Syekh Nurjati, 2022.
- Hidayatul Ulya, Fawzia, Fashi Hatul Lisaniyah, dan Mu'amaroh Mu'amaroh. "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>.
- Ilyasa, Faisal Fauzan, Muhammad Nurfaizi Arya Rahardja, Akhmad Rudi Masrukhin, Mailinda Anis Zulaiha, dan Elan Sumarna. "Keutamaan Ibu

- dalam Hak Asuh Anak Perspektif Pendidikan: Analisis Hadits Tarbawi." *Al-Hikmah: Jurnal Agama dan Ilmu Pengetahuan* 22, no. 1 (2025): 90–104. [https://doi.org/10.25299/ajaip.2025.vol22\(1\).15850](https://doi.org/10.25299/ajaip.2025.vol22(1).15850).
- Ismail Busa, dan Muh. Arif. "Konsep Relasi Anak dan Orang Tua." *Early Childhood Islamic Education Journal* 1, no. 1 (2020): 27–43. <https://doi.org/10.58176/eciejournal.v1i1.21>.
- Istiyati, Siti, Rosmita Nuzuliana, dan Miftahush Shalihah. "Gambaran Peran Ayah dalam Pengasuhan." *Profesi (Profesional Islam) : Media Publikasi Penelitian* 17, no. 2 (2020): 12–19. <https://doi.org/10.26576/profesi.v17i2.22>.
- Kalra, Princess Preet Kaur, dan Mehak Mahapatra. "Critical Analysis of the Best Interest of Child Theory." *International Journal of Law Management & Humanities* 4, no. 4 (2021).
- Khair, Umul. "Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian." *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (2020): 291. <https://doi.org/10.33760/jch.v5i2.231>.
- Malibari, Zainuddin bin Abdul Aziz al-. *Fathul-Mu'in Bi Syarhi Quratul-'Aini*. Daar al-Ma'arif, 2001.
- Manna, Nibras Syafriani, Shinta Doriza, dan Maya Oktaviani. "Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga di Indonesia." *JURNAL AL-AZHAR INDONESIA SERI HUMANIORA* 6, no. 1 (2021): 11. <https://doi.org/10.36722/sh.v6i1.443>.
- Maryati, Maryati. "Dasar Pertimbangan Hakim Menetapkan Hak Asuh Anak Kepada Suami Selaku Pemohon pada Pengadilan Agama Jambi." *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3 (2021): 1299. <https://doi.org/10.33087/jiubj.v21i3.1740>.
- Masyhadi, Ahmad, dan Muhammad Aly Mahmudi. "Hak Asuh Anak Pasca Perceraian Perspektif Hukum Islam dan Hukum Positif Indonesia." *AL FARUQ: Jurnal Hukum Ekonomi* 3, no. 2 (2024). <https://doi.org/10.58518/al-faruq.v3i2.3011>.
- Maula, Azka Syifaul. "Kajian Normatif terhadap Relevansi Pasal 105 Kompilasi Hukum Islam dengan Prinsip Kepentingan Terbaik bagi Anak dalam Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak." *Studia: Journal of Humanities and Education Studies* 1, no. 2 (2025).
- Mera, Nasaruddin, Marzuki, M.Taufan B, Sapruddin, dan Andi Intan Cahyani. "Child Custody Rights for Mothers of Different Religions: Maqāṣid al-Sharī'ah Perspective on Islamic Family Law in Indonesia." *Samarah: Jurnal*

- Hukum Keluarga dan Hukum Islam* 8, no. 3 (2024). <http://dx.doi.org/10.22373/sjkh.v8i3.23809>.
- Mumtaz Jr, Habib, Yahya Saepul Uyun, Encep Rifqi, Nurrohman Syarif, dan Usep Saepullah. "Analisa Penyelesaian Sengketa Hak Asuh Anak Pasca Perceraian Melalui Litigasi." *Jurnal Locus Penelitian dan Pengabdian* 2, no. 7 (2023): 715–26. <https://doi.org/10.58344/locus.v2i7.1433>.
- Munawir, Ahmad Warson. *Kamus Arab Indonesia*. Pustaka Progresif, 1997.
- Napitupulu, Brazilia Emanuel Rajamuda, dan Ni Made Ari Yulianti Griadhi. "Pengaturan Hak Asuh Anak Pada Kasus Perceraian Akibat Kekerasan Dalam Rumah Tangga (KDRT)." *Ethics and Law Journal: Business and Notary* 2, no. 3 (2024): 156–63. <https://doi.org/10.61292/eljbn.227>.
- Nashrullah, Yazid, dan Endah Hartati. "Pengaruh Prinsip Best Interest of Child Dalam Penentuan Hak Asuh Anak Pada Kasus Perceraian Menurut Hukum Perdata (Analisis Terhadap Putusan-Putusan Pengadilan)." *Lex Patrimonium* 2, no. 2 (2023).
- Nasution, Adelina, Pagar Pagar, dan Asmuni Asmuni. "The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (2022): 890. <https://doi.org/10.22373/sjkh.v6i2.12758>.
- Nurjanah, Siti. "Divorce and Its Impact on Custody of Minors Using Islamic Law Perspectives." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 119. <https://doi.org/10.29240/jhi.v7i1.4156>.
- Rivai, Muhammad Abu, Muhammad Yusriel Amien, dan Bayu Rizky Fachri Zain. "Penyelesaian Sengketa Hak Asuh Anak Pasca Perceraian Menurut Perspektif Gender, Hukum Islam, dan Hukum Positif Di Pengadilan Agama Jember Tahun 2023-2024." *Al-Usariyah: Jurnal Hukum Keluarga Islam* 3, no. 2 (2025): 193–218. <https://doi.org/10.37397/al-usariyah.v3i2.833>.
- Rizani, Arfan, Ermanita Permatasari, Abd. Basit Misbachul Fitri, dan Sandi Ferdy Yulianto. "Rekonstruksi Konsep Hadanah dalam Fiqh Klasik dan Relevansinya Terhadap Kompilasi Hukum Islam." *Minhaj: Jurnal Ilmu Syariah* 6, no. 2 (2025). <https://doi.org/10.52431/minhaj.v6i2.3934>.
- Rustiawan, Hafid 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>.

- Safii, Nur Muhammad. "The Role of Islamic Family Law in Modern Child Custody Cases: Balancing Sharia Principles with Contemporary Needs." *Journal of Islamic Family Law* 1, no. 1 (2025): 31–38. <https://doi.org/10.59784/jifl.v1i1.5>.
- Setiawati, Lilis, Habib Ismail, Ahmad Muhklishin, Mufid Arsyad, dan Rakhmat. "Penguasaan Kakek pada Hak Asuh Anak di Bawah Umur dalam Perspektif Maqashid Syariah." *Jurnal At-Tahdzib* 11, no. 2 (2023): 44–51. <https://doi.org/10.61181/at-tahdzib.v11i2.312>.
- Subaini, Siti Iraini, dan Danil Putra Arisandy. "Rada'ah Perspektif Al-Qur'an Surat Al-Baqarah Ayat 233: (Sudut Pandang Ilmu Kesehatan)." *Basha'ir: Jurnal Studi Al-Qur'an Dan Tafsir* 2, no. 1 (2022): 1–6. <https://doi.org/10.47498/bashair.v2i1.857>.
- Sunarto, Muhammad Zainuddin, dan Diah Uswatun Hasanah. "Analisis Penjatuhan Hak Hadhanah Pada Perempuan Dalam Tinjauan Maqashid As-Syari'ah Analysis Of The Imposition Of Hadhanah Rights On Women In The Review Of Maqashid As-Syari'ah." *Rewang Rencang : Jurnal Hukum Lex Generalis* 6, no. 2 (2025). <https://doi.org/10.56370/jhlg.v6i2.823>.
- Syahrin, Muhammad Alfi, dan Akmal Abdul Munir. "Hak Asuh Anak (Hadhanah) Dalam Sistem Hukum Keluarga Indonesia Dan Aljazair." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025). <https://doi.org/10.61104/alz.v3i3.1660>.
- Tarmizi, Yulia Pradiba, dan Karmila Usman. "Hak Asuh Anak (Hadhanah) Pasca Perceraian Serta Akibat Hukumnya." *Jurnal Ilmu Hukum Pengayoman* 1, no. 1 (2023).
- Triyono, Nur, dan Asmuni Asmuni. "The Implementing Joint Custody Post Divorce In Indonesia: A Philosophical Viewpoint." *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023): 313–29. <https://doi.org/10.18860/j-fsh.v15i2.24370>.
- Wicaksana, Dika Hikmah, Resfa Klarita Trasaenda, Indira Yekti Widya Pramesti, Amanda Feby Sabrina, Gema Mutiara Insani, dan Ramadhani Dwi Aryanti. "Pertimbangan Hukum Dalam Hak Asuh Anak Pasca Perceraian." *Media Hukum Indonesia (MHI)* 2, no. 3 (2024). <https://doi.org/10.5281/ZENODO.12179892>.