

## RESACRALIZATION OF CHILD CUSTODY AFTER DIVORCE IN ISLAMIC FAMILY LAW: BETWEEN THE PRINCIPLE OF MAŞLAHAH AND THE CO-PARENTING TREND

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### Abstrak

Artikel ini membahas upaya resakralisasi hak asuh anak pascaperceraian dalam hukum keluarga Islam melalui pendekatan asas masalah dan tren co-parenting sebagai paradigma baru dalam penataan relasi orang tua pascabubaranya ikatan perkawinan. Dalam tradisi fikih klasik, penentuan hak asuh anak (*ḥaḍānah*) cenderung didasarkan pada parameter biologis dan ketentuan baku, sementara dalam konteks sosial kontemporer, kebutuhan anak akan kehadiran kedua orang tua semakin diakui secara luas. Penelitian ini bertujuan untuk menggali bagaimana asas masalah dapat merekonstruksi hukum *ḥaḍānah* yang lebih responsif terhadap kepentingan terbaik anak, serta mengkaji kemungkinan integrasi konsep co-parenting dalam sistem hukum keluarga Islam Indonesia. Dengan menggunakan pendekatan normatif-kualitatif serta analisis terhadap putusan pengadilan agama, tulisan ini menunjukkan bahwa penguatan dimensi sakral dalam pengasuhan pascaperceraian tidak hanya menjaga nilai-nilai agama, tetapi juga memperluas ruang keadilan bagi anak. Hasil penelitian ini diharapkan menjadi kontribusi penting bagi pengembangan hukum keluarga Islam yang progresif dan berorientasi pada kemaslahatan anak.

**Kata Kunci:** Ḥaḍānah, Maşlahah, Co-Parenting, Perceraian, Hukum Keluarga Islam

### Abstract

This article examines the resacralization of child custody (*ḥaḍānah*) in Islamic family law post-divorce, employing the principle of *maşlahah* and the emerging global trend of co-parenting as complementary frameworks for reconstructing parental relations beyond marital dissolution. Classical Islamic jurisprudence tends to determine custody based on rigid biological and procedural norms, whereas contemporary social contexts increasingly acknowledge a child's psychosocial and spiritual need for the presence of both parents. This study aims to explore how *maşlahah* can serve as a normative basis to reformulate custody law in a child-centered and context-responsive manner, and to assess the potential incorporation of co-parenting within the Islamic legal system in Indonesia. Using a qualitative

*normative approach and analyses of religious court decisions, the findings suggest that restoring the sacred dimension of post-divorce parenting promotes not only spiritual values, but also expands justice for children. This research contributes to the development of progressive Islamic family law that prioritizes child welfare within both religious and legal paradigms.*

**Kata Kunci:** Ḥaḍānah, Maṣlaḥah, Co-Parenting, Divorce, Islamic Family Law

## A. Introduction

Divorce has become an increasingly prevalent social phenomenon across various parts of the world, including Muslim-majority countries such as Indonesia. Data from the Directorate General of the Religious Courts indicate that divorce cases handled by Religious Courts have risen significantly over the past five years, with the majority of claims initiated by wives. This phenomenon affects not only the spouses but also generates serious implications for children born within the marriage, particularly with regard to post-divorce care and custody arrangements.<sup>1</sup>

Within the framework of Islamic family law, child custody (*ḥaḍānah*) has long been discussed in classical fiqh literature. Scholars such as Ibn Qudāmah and al-Kāsānī generally assert that custody following divorce should be granted to the mother, provided that she has not remarried and remains capable of fulfilling caregiving responsibilities.<sup>2</sup> However, this approach tends to be normative in nature and does not always account for the psychosocial dynamics of children or the changing structure of modern families.<sup>3</sup>

Recent data indicate that divorce rates in Indonesia remain alarmingly high. According to publications by Statistics Indonesia (Badan Pusat Statistik/BPS) concerning marriage and divorce by province and causal factors, the total number of divorce cases nationwide in 2024 approached 400,000 incidents, with significant inter-

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<sup>1</sup> Umar Multazam, "The Concept of Child Custody (Hadhanah) After Divorce in the Perspective of Islamic Law," *Indonesian Journal of Islamic Law* 7, no. 1 (2024): 16–39, <https://doi.org/10.35719/ijil.v7i1.1956>.

<sup>2</sup> Khoiruddin Nasution and Syamruddin Nasution, "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (2021): 347–74, <https://doi.org/10.14421/ajis.2021.592.347-374>.

<sup>3</sup> Mulki Al-Sharmani and Sanna Mustasaari, "Islamic Family Law(s) in Finland: Reflections on Freedom of Religion from the Wellbeing Perspective," *Temenos - Nordic Journal of Comparative Religion* 58, no. 2 (2022): 217–38, <https://doi.org/10.33356/temenos.113886>.

provincial variation. This reality reinforces the urgency of incorporating empirical dimensions – particularly the social and psychological impacts on children – into the reinterpretation of *ḥaḍānah* law.<sup>4</sup>

As contemporary Islamic legal thought continues to evolve, there is a growing need to reconstruct the concept of *ḥaḍānah* so that it becomes more responsive to principles of justice and child welfare. One relevant approach is the principle of *maṣlaḥah*, which emphasizes public benefit and serves as a foundational principle in determining Islamic legal rulings when explicit textual evidence is absent. Thinkers such as al-Ghazālī and al-Shāṭibī have emphasized the centrality of *maṣlaḥah* in safeguarding the five fundamental objectives of Islamic law (*maqāṣid al-sharī'ah*): religion, life, intellect, lineage, and property.<sup>5</sup>

In practice, the principle of *maṣlaḥah* has been applied by judges in Indonesian Religious Courts when adjudicating child custody disputes. For instance, in cases where a mother changes her religion, judges may set aside rigid normative provisions in order to preserve the child's emotional stability and continuity of care.<sup>6</sup> This approach demonstrates that Islamic law possesses an inherent flexibility to adapt to social realities, provided that such adaptation remains within the framework of *maqāṣid al-sharī'ah*.

The issue of *ḥaḍānah* in Islamic family law cannot always be resolved through a strictly normative approach rooted in classical *fiqh*, particularly in specific cases such as the custody of twins following divorce. Studies on the custody of twin children indicate that custodial arrangements based solely on formal legal entitlement may disrupt children's psychological stability and weaken the emotional bonds between

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<sup>4</sup> Badan Pusat Statistik Indonesia, "Jumlah Perceraian Menurut Provinsi dan Faktor Penyebab Perceraian (perkara), 2024 - Tabel Statistik," accessed December 12, 2025, <https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTlZwRFVUMDkjMw==/jumlah-perceraian-menurut-provinsi-dan-faktor-penyebab-perceraian--perkara---2024.html?year=2024>.

<sup>5</sup> Mayadina Rohmi Musfiroh et al., "The Urgency of *Maslahah* in the Formulation of Fatwa and Legislation in Indonesia: An Analytical Study," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 8, no. 1 (2024): 80, <https://doi.org/10.30659/jua.v8i1.37242>.

<sup>6</sup> Nasaruddin Mera et al., "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): 3, <https://doi.org/10.22373/sjhk.v8i3.23809>.

siblings. Consequently, a *maṣlahah*-based approach becomes essential to ensure that the best interests of the child—especially emotional and social dimensions—remain central considerations in custody determinations.<sup>7</sup>

At the same time, global developments reveal the growing prominence of co-parenting as a post-divorce parenting model that emphasizes the active involvement of both parents in a child's life, even after the dissolution of marriage. This concept has been widely implemented in Western legal systems and has begun to attract attention among Muslim scholars as a potential alternative to the sole custody model that has traditionally dominated Islamic family law.<sup>8 9</sup>

Co-parenting offers a more egalitarian and child-centered approach to caregiving by prioritizing communication, cooperation, and consistency in parenting practices. From an Islamic perspective, these principles align closely with core values such as justice, compassion, and parental responsibility toward children. Accordingly, integrating the co-parenting concept into Islamic family law may constitute a progressive response to the challenges of post-divorce childrearing in the modern era.<sup>10</sup>

Nevertheless, the implementation of co-parenting within the context of Islamic law is far from straightforward. It requires an in-depth examination of normative, sociological, and psychological dimensions, as well as a careful analysis of relevant Religious Court decisions. Moreover, it is essential to consider how the principle of *maṣlahah* can function as a conceptual bridge between classical fiqh norms and the contemporary needs of children from divorced families.

Based on this background, this study aims to:

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<sup>7</sup> Ahmad Harisul Miftah and Nadia Selvia, "DI ANTARA KONSEPSI HADHANAH DAN TRADISI DALAM PENGASUHAN ANAK KEMBAR :," *Indonesian Journal of Shariah and Justice* 4, no. 2 (2024): 167-94, <https://doi.org/10.46339/ijsj.v4i2.139>.

<sup>8</sup> Akbar Kamarudin and Abdul Shukor, *Shari'ah Court's Decision and Respondent's View on Child Custody After Divorce in Kuala Lumpur and Selangor*, n.d.

<sup>9</sup> Arjunaidi Wan et al., "From Single Motherhood to Co-Parenthood: The Islamic Perspective on Amicable Divorce, Co-Parenting, and Post-Divorce Harmony," in *Muslim Women's Lived Experiences and Intersectional Identities: A Global Perspective*, ed. Puspa Melati Wan et al. (Springer Nature Switzerland, 2024), [https://doi.org/10.1007/978-3-031-75729-7\\_13](https://doi.org/10.1007/978-3-031-75729-7_13).

<sup>10</sup> Anang Wahid Cahyono, *ISLAMIC FAMILY LAW AND SOCIAL TRANSFORMATION: A STUDY ON MARRIAGE, DIVORCE, AND INHERITANCE IN THE SHARIA SYSTEM*, 4 (2024).

1. Analyze the concept of *ḥaḍānah* in classical fiqh and its challenges in modern social contexts;
2. Examine the application of the *maṣlaḥah* principle in determining child custody after divorce in Indonesia;
3. Explore the potential integration of the *co-parenting* concept into the Islamic family law system; and
4. Propose a resacralized model of child caregiving that integrates Islamic spiritual values with contemporary psychosocial approaches.

In this context, resacralization is understood as a process of restoring and reinterpreting sacred values—rather than merely serving as the antithesis of desacralization—manifested through the reinforcement of the spiritual dimension of post-divorce parenting. Through such a comprehensive understanding, the principle of the child's best interests can be effectively fulfilled by parents even after marital dissolution.

This study adopts a qualitative normative approach, utilizing literature review methods and analysis of Religious Court decisions. Data sources include classical fiqh texts, academic journal articles, and relevant legal documents. Accordingly, the findings are expected to provide both theoretical and practical contributions to the development of a more inclusive and child-centered Islamic family law framework.

## **B. The Concept of Child Care: From Classical Fiqh to Global Family Law Systems**

*Ḥaḍānah*, etymologically derived from the Arabic root *ḥaḍn* meaning “to embrace” or “to hold,” refers to the act of caring for and nurturing a child by parents or guardians following divorce. In classical Islamic jurisprudence, *ḥaḍānah* is understood as both a right and an obligation of the parents—primarily the mother—to care for a child who has not yet reached the age of *tamyīz* (discernment). The Shāfiʿī school, for instance, stipulates that the right of *ḥaḍānah* belongs to the mother as long as she has not remarried and remains capable of properly fulfilling caregiving responsibilities. Should

the mother fail to meet these conditions, custody is transferred to female relatives from the maternal line before eventually passing to the father.<sup>11</sup>

However, classical fiqh approaches to *ḥaḍānah* often remain normative and insufficiently attentive to contemporary social dynamics, particularly the increasing recognition of fathers' roles in the emotional and spiritual upbringing of children. In the Indonesian context, Article 105 of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI) provides that children who have not yet attained *mumayyiz* status fall under the care of the mother, while children who have reached *mumayyiz* age are granted the right to choose their custodial parent.

Recent developments in Islamic legal reform concerning *ḥaḍānah* have begun to accommodate more contextual and child-responsive approaches. For example, several decisions issued by the *Mahkamah Syar'iyah* (Sharia Courts) in Aceh have awarded child custody to fathers when mothers were deemed psychologically or socially unfit.<sup>12</sup> This practice reflects a shift away from a purely textual approach toward one grounded in *maṣlaḥah* and child-centered justice.

The theory of *maṣlaḥah* constitutes a pivotal approach within *uṣūl al-fiqh*, emphasizing that Islamic law fundamentally seeks to realize benefit and prevent harm. Al-Ghazālī defines *maṣlaḥah* as anything that preserves the five foundational objectives of Islamic law (*maqāṣid al-sharī'ah*): religion, life, intellect, lineage, and property.<sup>13</sup> Within the context of *ḥaḍānah*, the *maṣlaḥah* approach enables legal flexibility to respond to the child's needs and the parents' social circumstances. For instance, if custody by either parent no longer ensures the child's welfare, courts may

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<sup>11</sup> Aja Mughnia, "Konsep Hadhanah Perspektif Mazhab Syafi'i dan Implementasinya dalam Putusan Mahkamah Syar'iyah Kota Banda Aceh Nomor 314/Pdt G/2017/MS Bna," *El-Hadhanah: Indonesian Journal Of Family Law And Islamic Law* 1, no. 1 (2021): 43–62, <https://doi.org/10.22373/hadhanah.v1i1.1615>.

<sup>12</sup> Maulida Syahputri, "HADANAH AKIBAT PERCERAIAN PERSPEKTIF 4 MAZHAB DAN KOMPILASI HUKUM ISLAM," *Judge: Jurnal Hukum* 6, no. 01 (2025): 01, <https://doi.org/10.54209/judge.v6i01.959>.

<sup>13</sup> Abu Hamid Muhammad al-Ghazali, *Al-Mustashfa Min 'Ilm al-Ushul*, ed. Muhammad Sulaiman al-Asyqar (Mu'assasat al-Risalah, 1997).



assign custody to another party deemed more capable of fulfilling the child's best interests.<sup>14</sup>

Najm al-Dīn al-Ṭūfī goes even further by positioning *maṣlaḥah* as a legal source capable of overriding textual evidence (*naṣṣ*) when it conflicts with public interest.<sup>15</sup> Although controversial, this view opens significant space for reinterpretation of Islamic family law in ways that are more adaptive to social realities. In national legal practice, *maṣlaḥah* theory has been employed in various Religious Court decisions to assess children's psychological well-being, educational needs, and overall welfare.<sup>16</sup> Accordingly, *maṣlaḥah* serves as a highly relevant normative foundation for formulating post-divorce *ḥaḍānah* policies.

*Co-parenting* is a child-rearing model that actively and equitably involves both parents in caregiving responsibilities despite marital dissolution. This model emerged within Western family law systems as a response to the adverse effects of sole parenting on children.<sup>17</sup>

In fact, several post-divorce parenting arrangements exist—such as *shared parenting*, *co-parenting*, and *joint custody*—each with distinct characteristics that warrant clarification. Shared parenting emphasizes a relatively balanced division of physical parenting time between the father and mother, allowing children to maintain substantial daily interaction with both parents.<sup>18</sup> Co-parenting, by contrast, prioritizes the quality of cooperative relationships, focusing on communication, coordination, and joint decision-making in the child's best interests, regardless of how residential

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<sup>14</sup> Asmawi Asmawi, "RELEVANSI TEORI MASLAHAH DENGAN UU PEMBERANTASAN KORUPSI," *De Jure: Jurnal Hukum dan Syaria'iah* 1, no. 2 (2009), <https://doi.org/10.18860/j-fsh.v1i2.330>.

<sup>15</sup> Purwanto Purwanto, "KONSEP MASLAHAH MURSALAH DALAM PENETAPAN HUKUM ISLAM MENURUT PEMIKIRAN NAJMUDDIN AT-THUFI" (Skripsi, IAIN Metro, 2018).

<sup>16</sup> Anna Muwaffika, "KHI: UPAYA TRANSFORMASI HUKUM KELUARGA ISLAM KEDALAM SISTEM HUKUM NASIONAL," *ALWAQFU: Jurnal Hukum Ekonomi Dan Wakaf* 3, no. 1 (2025): 1, <https://jurnal.alwaqfu.or.id/index.php/alwaqfu/article/view/306>.

<sup>17</sup> Naylul Izzah Walkaromah, "Pola Asuh Co-Parenting Sebagai Perwujudan Konsep Mubadalah," *Bincang Muslimah*, October 31, 2024, <https://bincangmuslimah.com/keluarga/pola-asuh-co-parenting-sebagai-perwujudan-konsep-mubadalah-43457/>.

<sup>18</sup> Maghfirah Maghfirah and Gushairi Gushairi, "Konsep Shared Parenting Dalam Hadhanah Pasca Perceraian; Kajian Perundang-Undangan Perkawinan Islam Kontemporer," *Hukum Islam* 20, no. 2 (2020): 185–202, <https://doi.org/10.24014/jhi.v20i2.12169>.

time is allocated.<sup>19</sup> Joint custody, meanwhile, refers to a formal legal status granting both parents equal rights and authority in major decisions concerning the child's education, health care, and future, even when physical custody arrangements are unequal. Thus, shared parenting relates primarily to time allocation, co-parenting to relational dynamics between parents, and joint custody to the legal framework governing parental authority.

Conceptually, shared parenting, co-parenting, and joint custody represent three distinct yet interrelated approaches to post-divorce child care that operate at different analytical levels. Shared parenting primarily refers to the practical arrangement of caregiving time, emphasizing a relatively balanced distribution of the child's physical residence between both parents to maintain daily interaction and continuity. Co-parenting, by contrast, is not defined by the division of time or formal legal status but by the quality of the relational dynamics between parents, particularly their ability to communicate, cooperate, and jointly make decisions in the best interests of the child despite marital dissolution. Joint custody, meanwhile, constitutes a formal legal framework that grants both parents equal legal authority over major decisions concerning the child's education, health, and future, regardless of whether physical residence is equally shared. While joint custody may exist without effective co-parenting, and shared parenting may occur without equal legal authority, co-parenting functions as the substantive ethical core that determines whether either arrangement truly serves the child's emotional, psychological, and social well-being. Within the context of Islamic family law reform, this distinction is crucial, as co-parenting aligns most closely with the principles of *maṣlahah*, *mubādalāh*, and the protection of lineage (*hifẓ al-nasl*), whereas shared parenting and joint custody operate as instrumental and structural mechanisms that require contextual adaptation through a *maqāṣid al-sharī'ah*-oriented approach.

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<sup>19</sup> Sisca Nurul Fadila et al., "Kestabilan Emosi Anak Dalam Co-Parenting Studi Kualitatif Pada Anak Usia Dini," *Jurnal Pendidikan Tambusai* 9, no. 2 (2025): 21133–38, <https://doi.org/10.31004/jptam.v9i2.29865>.



Empirical research demonstrates that children raised within co-parenting arrangements tend to exhibit higher levels of emotional, academic, and social well-being compared to those raised exclusively by a single parent.<sup>20</sup> Moreover, co-parenting has been shown to reduce inter-parental conflict and enhance children's psychological stability.

Within the Islamic framework, the concept of co-parenting may be associated with the principles of *mubādalāh* (reciprocity) and *maṣlaḥah*. Islam does not explicitly prohibit the involvement of both parents in post-divorce childrearing. On the contrary, Qur'ān 2:233 instructs both parents to cooperate in breastfeeding and caring for their child. Jasser Auda, within his contemporary *maqāṣid* framework, underscores the importance of adopting multidimensional and systemic approaches to understanding Islamic law.<sup>21</sup> From this perspective, co-parenting can be viewed as an implementation of *maqāṣid al-sharī'ah*, particularly in safeguarding lineage (*ḥifẓ al-nasl*) and promoting child welfare.

In Indonesia, although co-parenting has not yet been explicitly regulated within the KHI, its practice has begun to emerge in several Religious Court decisions that recognize children's rights to receive affection and care from both parents.<sup>22</sup> This trend indicates that co-parenting holds significant relevance for the ongoing reform of Islamic family law toward a more child-justice-oriented paradigm.

### C. Analysis of the Resacralization of Ḥaḍānah

Resacralization is a socio-cultural process through which aspects, practices, institutions, or discourses that have previously weakened their religious elements – or have been perceived as secular – are restored or re-enriched with sacred or religious meaning. This process may take the form of a revival of religious influence (religious

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<sup>20</sup> Mohammad Nashiruddin Ashbahani, "KONSEP CO-PARENTING DITINJAU DARI MAQĀSHID HIFDZ AL-NASL JASSER AUDA" (undergraduate, Universitas Muhammadiyah Malang, 2025), <https://eprints.umm.ac.id/id/eprint/18342/>.

<sup>21</sup> Ġāsir 'Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, ed. Ġāsir 'Auda (The International Inst. of Islamic Thought, 2008).

<sup>22</sup> Dr Agus Hermanto et al., *PEMBARUAN HUKUM KELUARGA ISLAM KAJIAN TRANSDISIPLINER*, n.d.

revitalization) or a reinterpretation of spiritual values within domains that were formerly considered secular. In other words, resacralization is not merely a mechanical reversal of “desacralization”; rather, it involves reinterpretation, re-legitimation, or the reintegration of sacred elements into social, political, legal, and cultural spheres that have undergone secularization.<sup>23</sup>

Berger<sup>24</sup> and Luckmann conceptualize religion as a “sacred canopy” of meaning that produces social legitimacy and shields individuals from existential anxiety. When this canopy weakens, space emerges for new processes – namely, the reconstruction or reinforcement of sacred narratives – which may be understood as resacralization. Adapting their framework to the Islamic context entails examining how Muslim communities reconstruct Islamic “canopies of meaning” in response to modernity, globalization, and moral or political crises.

For resacralization to materialize within Islam, at least four indicators can be identified. First are individual indicators reflected in religious practices and beliefs. Second are institutional indicators manifested through balanced legal and political authority. Third are discursive and symbolic indicators expressed through meaningful religious narratives and symbols in the public sphere. Fourth are demographic and organizational indicators reflected in population dynamics and the vitality of religious organizations.

### ***1. The Role of Spirituality in Post-Divorce Parenting***

Post-divorce childrearing involves not only legal and social dimensions but also a spiritual dimension that is often neglected in judicial practice. In Islam, spirituality is not limited to ritual observance; it also constitutes a framework of meaning that shapes how parents perceive motherhood and fatherhood after divorce. Islamic spirituality provides a transformative coping mechanism through concepts such as *tawakkul* (trust in God), *hikmah* (wisdom), *ridā* (contentment), and *ṣabr*

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<sup>23</sup> Quan Gao, “Resacralization,” in *The SAGE Encyclopedia of the Sociology of Religion*, 2019, [https://sk.sagepub.com/ency/edvol/the-sage-encyclopedia-of-sociology-of-religion/chpt/resacralization#\\_](https://sk.sagepub.com/ency/edvol/the-sage-encyclopedia-of-sociology-of-religion/chpt/resacralization#_).

<sup>24</sup> Peter L. Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (Knopf Doubleday Publishing Group, 1990).

(patience), enabling individuals to integrate traumatic experiences into meaningful spiritual narratives.<sup>25</sup>

Research by Wall-Wieler indicates that mothers who lose custody of their children experience higher levels of depression and anxiety than mothers who lose children due to death.<sup>26</sup> In this context, spirituality functions as a psychological anchor that strengthens resilience and prevents emotional disintegration. Religious coping strategies – such as *dhikr*, Qur’anic contemplation (*tadabbur*), and *istighfār* – have been shown to enhance psychological well-being and post-traumatic adaptation.<sup>27</sup>

A phenomenological approach combined with social exchange theory analysis reveals that Islamic spirituality serves not merely as emotional consolation but also as a transformative framework enabling the reconstruction of maternal and paternal identities. These identities are no longer confined to legal dimensions but expand into deeper spiritual-transcendent realms. In practice, spirituality becomes the foundation that allows parents to remain emotionally and religiously present for their children, even when they no longer share a household.<sup>28</sup>

## ***2. Children’s Rights to Emotional and Religious Presence from Both Parents***

In Islam, children possess inalienable rights to affection, education, and spiritual guidance from both parents. Qur’ān 2:233 emphasizes the importance of cooperation between father and mother in childrearing, even after divorce. A child’s right to emotional and religious presence from both parents forms an integral part of *ḥifẓ al-nasl* within *maqāṣid al-sharī‘ah*, which stresses holistic protection of lineage.<sup>29</sup>

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<sup>25</sup> Naved Iqbal and Rasjid Skinner, “Islamic Psychology: Emergence and Current Challenges,” *Archive for the Psychology of Religion* 43, no. 1 (2021): 65–77, <https://doi.org/10.1177/0084672420983496>.

<sup>26</sup> Elizabeth Wall-Wieler et al., “Maternal Mental Health after Custody Loss and Death of a Child: A Retrospective Cohort Study Using Linkable Administrative Data,” *Canadian Journal of Psychiatry Revue Canadienne de Psychiatrie* 63, no. 5 (2018): 322–28, <https://doi.org/10.1177/0706743717738494>.

<sup>27</sup> Lídia Graça and Tânia Brandão, “Religious/Spiritual Coping, Emotion Regulation, Psychological Well-Being, and Life Satisfaction among University Students,” *Journal of Psychology and Theology* 52, no. 3 (2024): 342–58, <https://doi.org/10.1177/00916471231223920>.

<sup>28</sup> Siti Khadijah Zainal Badri and Nur Zahira Zulkarnain, “Spirituality and Personal Growth of Muslim Working Women: The Moderating Role of Family Supportive Supervision,” *Social Sciences & Humanities Open* 10 (January 2024): 101201, <https://doi.org/10.1016/j.ssaho.2024.101201>.

<sup>29</sup> ‘Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

Unfortunately, in Religious Court practice, these rights are often fragmented due to custody decisions that grant exclusive care to one parent. Children raised under sole custody arrangements face a heightened risk of emotional and spiritual deprivation, adversely affecting their psychosocial development.<sup>30</sup> Research by Asriyani demonstrates that children who lose access to one parent experience diminished psychological well-being and an increased risk of behavioral disorders.<sup>31</sup>

Within the framework of Islamic family law, the resacralization of *ḥaḍānah* entails restoring children's rights to emotional and religious engagement with both parents as an act of worship and spiritual responsibility. This can be realized through equitable visitation arrangements, open communication, and active parental involvement in children's religious education. Religious Courts should therefore incorporate these dimensions into *ḥaḍānah* rulings to ensure not only legal compliance but also the comprehensive fulfillment of *maqāṣid al-sharī'ah*.

### 3. Case Studies and Reflections on Religious Court Practices

To understand how the resacralization of *ḥaḍānah* may be operationalized, it is essential to examine Religious Court practices in Indonesia. A case study from the Bondowoso Religious Court demonstrates that judges may exercise judicial initiative to safeguard the rights of children and former spouses – even in contested divorces – by referring to Supreme Court Circular Letter (SEMA) No. 3 of 2018.<sup>32</sup> Decisions obligating child support and spousal maintenance despite the absence of explicit claims in the petitum indicate that judges have begun adopting *maṣlaḥah*-based and child-justice-oriented approaches.

Nevertheless, many court decisions still fail to consider children's rights to emotional presence from both parents. A study by Muchlis highlights that the

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<sup>30</sup> Yusril Yasin and Raden Rachmy Diana, "Psikologis Remaja Kehilangan Orang Tua dan Mahabbah Rumi," *TERAPUTIK: Jurnal Bimbingan dan Konseling* 8, no. 2 (2024): 188–96, <https://doi.org/10.26539/teraputik.823021>.

<sup>31</sup> Solatiyah Asriyani, "Pola Asuh Single Mom Dan Single Dad Terhadap Perkembangan Sosial Emosional Anak," *ResearchGate*, ahead of print, July 16, 2025, <https://doi.org/10.37985/murhum.v4i2.227>.

<sup>32</sup> Wardatul Hasanah, "Putusan Hakim Dalam Cerai Gugat Dan Implikasi Terhadap Hak Anak," *Al-Hakam: Jurnal Hukum Keluarga Islam* 9, no. 1 (2024): 55–70.

execution of *ḥaḍānah* rulings is often obstructed because the object of enforcement is a child rather than property. This condition necessitates a more humanistic and spiritually grounded approach to enforcement, including value-based mediation and family counseling rooted in Islamic ethics.<sup>33</sup>

Several rulings issued by the South Jakarta Religious Court have begun to apply the Compilation of Islamic Law as operative legal grounds despite its formal status as a Presidential Instruction. This practice illustrates the flexibility of the Islamic legal system in accommodating spiritual values and child-centered justice. Nonetheless, significant challenges remain in post-divorce enforcement and supervision, particularly in ensuring the sustained emotional and spiritual involvement of both parents in their children's lives.

#### **D. Integrating Co-Parenting into Islamic Family Law**

##### ***1. The Potential Application of Co-Parenting within National Law***

The co-parenting model, which emphasizes the active involvement of both parents in childrearing following divorce, has begun to attract attention within Indonesia's national legal system. Although co-parenting is not explicitly regulated in the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), its practical application has emerged in several Religious Court decisions that prioritize the best interests of the child as the primary guiding principle. A dissertation by Gita Febrita demonstrates that concepts such as split parenting and shared parenting have been applied in certain Supreme Court decisions, even though they have not yet crystallized into formal legislative norms.<sup>34</sup>

Within the framework of positive law, Law No. 35 of 2014 on Child Protection and Law No. 16 of 2019 on Marriage provide courts with discretionary space to

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<sup>33</sup> Muchlis Muchlis, "PERMASALAHAN EKSEKUSI HADHANAH ANAK," Blog Post, *Pta-Jakarta.Go.Id/*, March 2021, [https://pta-jakarta.go.id/filepdf/lainlain/rakerda/Permasalahan\\_Eksekusi\\_Hadhanah\\_Anak\\_oleh\\_Drs.\\_H.\\_Muchlis\\_S.H.\\_M.H.\\_Wakil\\_Ketua\\_PA\\_Jakarta\\_Pusat.pdf](https://pta-jakarta.go.id/filepdf/lainlain/rakerda/Permasalahan_Eksekusi_Hadhanah_Anak_oleh_Drs._H._Muchlis_S.H._M.H._Wakil_Ketua_PA_Jakarta_Pusat.pdf).

<sup>34</sup> Gita Febrita, "Penerapan Konsep Split Parenting Dan Shared Parenting Terhadap Hak Asuh Anak Pascaperceraian" (Disertasi, UIN Sultan Syarif Kasim Riau, 2025), <https://repository.uin-suska.ac.id/88610/2/DISERTASI%20GITA%20FEBRITA%20WATERMARK%20FINAL%20BAB%20GAB.pdf>.

consider children's psychological conditions and overall well-being when determining custody arrangements. This legal openness creates opportunities for integrating co-parenting as an alternative approach that is more responsive to children's developmental needs.

The co-parenting model is also consistent with the principle of the best interests of the child as recognized in the United Nations Convention on the Rights of the Child, which Indonesia ratified through Law No. 23 of 2002. In practice, co-parenting enables shared parenting time, open communication, and joint decision-making between fathers and mothers, ensuring that children continue to receive affection, care, and guidance from both parents despite marital dissolution.

## 2. A *Maqāṣid al-Sharī'ah* Perspective on Child Justice

The integration of *co-parenting* into Islamic family law can be examined through the framework of *maqāṣid al-sharī'ah*, particularly the principles of ḥifẓ al-nasl (protection of lineage) and ḥifẓ al-nafs (protection of life). According to Jasser Auda, *maqāṣid al-sharī'ah* functions not merely as a set of legal objectives but also as a methodological framework for assessing the relevance and effectiveness of law within contemporary social contexts.<sup>35</sup>

From a *maqāṣid* perspective, child justice encompasses the right to grow within an environment that is emotionally, spiritually, and socially healthy. Co-parenting supports this principle by ensuring that children do not lose access to affection, care, and guidance from either parent. Research by Hasbi Umar and Bahrul Ma'ani emphasizes that child protection in Islam operates simultaneously on *diyānī* (moral-spiritual) and *qaḍā'ī* (legal-judicial) levels, thereby integrating ethical responsibility with enforceable legal norms.<sup>36</sup>

Within contemporary *maqāṣid al-sharī'ah* discourse, justice is increasingly understood as a fundamental value that is not merely complementary but may also

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<sup>35</sup> 'Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

<sup>36</sup> M. Hasbi Umar and Bahrul Ma'ani, "Urgensi Hak Dan Perlindungan Anak Dalam Perspektif Maqashid Al-Syariah," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 17, no. 02 (2017): 02, <https://doi.org/10.30631/alrisalah.v17i02.64>.



be positioned as a *maqāṣid ḍarūriyyāt* in response to modern social needs. Several *maqāṣid* thinkers, such as Muḥammad al-Ghazālī and Lu'ayy Ṣāfi, argue that justice constitutes the primary foundation of Islamic civilization, while injustice serves as a principal cause of its decline. Consequently, justice deserves recognition as a core and universal objective of Islamic law across legal domains. This perspective is particularly relevant in Islamic family law, especially in post-divorce child custody determinations, where rigid applications of classical *fiqh* norms risk neglecting children's best interests. By positioning justice as a *maqāṣid ḍarūriyyāt*, the *maṣlaḥah* approach gains stronger normative legitimacy to reconstruct ḥaḍānah in a contextual and child-centered manner. Within this framework, the integration of co-parenting may be understood as a form of resacralization of family law – namely, an effort to revive the sacred values of justice, parental responsibility, and compassion in childrearing. Rather than representing a mere adoption of secular concepts, co-parenting thus becomes an actualization of the substantive objectives of Islamic law in addressing the challenges faced by modern families.<sup>37</sup>

Furthermore, *maqāṣid al-sharī'ah* emphasizes the importance of ḥifẓ al-'ird (protection of dignity), which is highly relevant for children affected by divorce. Co-parenting can mitigate the social and psychological stigma often experienced by children raised under sole custody arrangements. Accordingly, co-parenting should be understood not only as a practical parenting strategy but also as a reflection of Islam's spiritual and ethical values.

### ***3. Legislative Challenges and Future Prospects***

Despite its potential benefits, the integration of co-parenting faces significant legislative challenges. First, the absence of explicit legal norms regulating co-parenting within the KHI or the Marriage Law creates legal uncertainty. Second, cultural resistance to fathers' active involvement in childcare remains strong, particularly in societies shaped by traditional gender norms.

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<sup>37</sup> Husamuddin Mz et al., "KEADILAN SEBAGAI MAQĀSID AL-ḌARŪRIYYĀT DALAM KEBUTUHAN SOSIAL MODERN," *Indonesian Journal of Shariah and Justice* 3, no. 2 (2023): 247–68, <https://doi.org/10.46339/ijsj.v3i2.47>.

Additionally, the Religious Court system lacks effective post-divorce monitoring mechanisms to ensure the implementation of co-parenting arrangements. This limitation is exacerbated by resource constraints, including the shortage of family counselors and mediators trained in Islamic values. Research by Trisnadi and Andayani indicates that effective co-parenting requires robust institutional support, including specialized training for judges and legal practitioners in understanding children's post-divorce psychological dynamics.<sup>38</sup>

Nevertheless, prospects for future legislation remain promising. First, the ongoing trend toward reforming Islamic family law through transdisciplinary approaches opens space for incorporating co-parenting as a new normative framework. Second, growing support from religious organizations and academic circles for child justice grounded in *maqāṣid al-sharī'ah* may accelerate legislative reform.

Challenges in the application of *ḥaḍānah* are also evident in cases involving a parent's conversion after divorce. Research on child custody granted to fathers due to the mother's apostasy demonstrates that religious courts increasingly prioritize the child's welfare over rigid adherence to classical juridical norms. In this context, custodial arrangements that allow continued involvement of both parents—through visitation rights or limited forms of co-parenting—are considered more capable of safeguarding the child's psychological and emotional well-being.<sup>39</sup>

Third, the digitalization of Religious Court systems and enhanced public literacy in family law may serve as catalysts for broader implementation of co-parenting practices. For instance, the 2023 International Conference on Islamic Family

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<sup>38</sup> Melissa Catalina Trisnadi and Budi Andayani, "Program Pengasuhan Positif dengan Co-parenting untuk Menurunkan Penerapan Pengasuhan Disfungsional," *Gadjah Mada Journal of Professional Psychology (GamaJPP)* 7, no. 1 (2021): 74, <https://doi.org/10.22146/gamajpp.65280>.

<sup>39</sup> Muhammad Ali Al Awshat and Abd Rouf, "HADHĀNAH BAGI SUAMI AKIBAT ISTRI MURTAD PERSPEKTIF KAIDAH DAR' MAFĀSID : STUDI ANALISIS PUTUSAN," *Indonesian Journal of Shariah and Justice* 5, no. 1 (2025): 121–41, <https://doi.org/10.46339/ijsj.v5i1.181>.

Law (ICoIFL)<sup>40</sup> emphasized the importance of adapting Islamic family law to the digital era and contemporary challenges.

### E. Epilogue

Ultimately, the discourse on post-divorce child custody in Islamic family law should be situated within a broader ethical project of restoring the sacred meaning of parenthood beyond marital status. The resacralization of *ḥaḍānah* does not merely seek doctrinal reform or procedural adjustment, but rather aspires to re-anchor family law in a moral vision where justice, compassion, and shared responsibility constitute acts of devotion (*‘ibādah*) in themselves. By integrating *maṣlaḥah*, *maqāṣid al-sharī‘ah*, and co-parenting into a coherent framework, Islamic family law is afforded the opportunity to respond constructively to contemporary familial transformations while remaining faithful to its spiritual foundations. In this sense, resacralized child custody becomes not only a legal mechanism, but also a moral commitment to safeguarding the dignity, well-being, and holistic development of children as a trust (*amānah*) entrusted by God to both parents, regardless of the dissolution of marriage.

This study demonstrates that post-divorce child custody in Islamic family law cannot be understood merely as a legal-formal issue but must be approached as a multidimensional concern encompassing spiritual, emotional, social, and normative dimensions. While classical fiqh provides a foundational framework for *ḥaḍānah*, it requires reconstruction through the lenses of *maṣlaḥah* and *maqāṣid al-sharī‘ah* to remain relevant to contemporary social realities.

The resacralization of *ḥaḍānah* underscores the importance of both parents' spiritual and emotional presence in a child's life as a form of religious responsibility and worship. The co-parenting model – empirically shown to enhance children's well-

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<sup>40</sup> "Bicara Tantangan Kontemporer Penerapan Hukum Keluarga Islam Di Era Digital, Prodi HK Pascasarjana UINSI Hadiri ICoIFL," Berita, UINSI Samarinda, July 30, 2023, <https://www.uinsi.ac.id/2023/07/30/bicara-tantangan-kontemporer-penerapan-hukum-keluarga-islam-di-era-digital-prodi-hk-pascasarjana-uinsi-hadiri-icolfl/>.

being—can be integrated into Islamic family law through reinterpretations of reciprocity (*mubādalah*) and child-centered justice.

Analysis of Religious Court practices indicates that *maṣlaḥah*-based reasoning has begun to appear in several custody decisions, although it has yet to become an established legal norm. Accordingly, future reform of Islamic family law should prioritize the strengthening of child justice principles, the spirituality of parenting, and the active involvement of both parents in post-divorce childrearing.

Future research may adopt multidisciplinary approaches that bridge legal studies, psychology, and spirituality in examining post-divorce parenting. Longitudinal studies on the impact of parental spirituality on child development in Muslim families would further enrich the empirical understanding of *ḥaḍānah* resacralization. Similarly, legal psychology approaches aimed at developing child welfare indicators could contribute to the formulation of more holistic and responsive *ḥaḍānah* standards that address children's emotional and spiritual needs.

In addition, comparative studies between Indonesia's Islamic family law system and those of other Muslim-majority countries in adopting co-parenting arrangements would provide valuable insights. Qualitative analyses of judges' narratives in *ḥaḍānah* rulings are also necessary to identify patterns of *maṣlaḥah* reasoning and child justice values in Religious Court practice. Finally, a critical evaluation of the proposed Islamic Family Law Bill within the National Legislative Program (Prolegnas) is essential to ensure that *maqāṣid al-sharī'ah* principles and child rights protections are adequately incorporated into future national legislation.

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