



Islam, Adat, and State: Examining the Phenomenon of Child Custody After Divorce in Padang Lawas Regency

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Abstract

This research is motivated by the phenomenon of childcare by fathers after divorce in Padang Lawas County. This phenomenon raises the interest of researchers to further examine child custody by fathers after divorce. The research method used is field research with a qualitative approach. Researchers collected primary data through interviews with traditional leaders and fathers caring for their children after divorce. The data obtained was then analyzed using descriptive analysis techniques, which involved collecting data through interviews and documentation and systematic data processing to describe and interpret existing phenomena. The results show that although customs in Padang Lawas County give custody to the father, it is essential to consider the provisions of the compilation of Islamic law and the broader principles of Islamic law. Child custody should focus on the best interests of the child, ensuring their physical, emotional, and mental development. Both parents have equal rights unless there are compelling reasons to the contrary, and they must work together to maintain the child's stability. Children have the right to adequate education and healthcare, as well as to maintain a good relationship with both parents, even if only one has primary custody.

Keywords: Child Custody Rights, Childcare, Islamic law, Post-Divorce

Abstrak

Penelitian ini dilatarbelakangi oleh fenomena pengasuhan anak oleh ayah pasca perceraian di Kabupaten Padang Lawas. Fenomena ini menimbulkan ketertarikan peneliti untuk meneliti lebih lanjut mengenai pengasuhan anak oleh ayah pasca perceraian. Metode penelitian yang digunakan adalah penelitian empiris dengan pendekatan kualitatif. Sumber data diperoleh dari wawancara dengan tokoh adat dan ayah yang mengasuh anak pasca perceraian. Data yang diperoleh kemudian dianalisis dengan menggunakan teknik analisis deskriptif, yaitu dengan mengumpulkan data melalui wawancara dan dokumentasi serta pengolahan data secara sistematis untuk menggambarkan dan menginterpretasikan

fenomena yang ada. Hasil penelitian menunjukkan bahwa meskipun adat istiadat di Kabupaten Padang Lawas memberikan hak asuh anak kepada ayah, namun penting untuk mempertimbangkan ketentuan dalam Kompilasi Hukum Islam dan prinsip-prinsip hukum Islam yang lebih luas. Hak asuh anak harus berfokus pada kepentingan terbaik bagi anak, memastikan perkembangan fisik, emosional, dan mental mereka. Kedua orang tua memiliki hak yang sama kecuali ada alasan kuat yang bertentangan, dan mereka harus bekerja sama untuk menjaga stabilitas anak. Anak-anak memiliki hak untuk mendapatkan pendidikan dan perawatan kesehatan yang memadai, serta untuk mempertahankan hubungan yang baik dengan kedua orang tua meskipun hanya salah satu dari orangtua yang memiliki hak asuh terhadap anak.

Kata Kunci: Hak Asuh Anak, Penitipan anak, Hukum Islam, Pasca Perceraian

Introduction

Marriage in Islam is not an inviolable bond or one that makes divorce easy; instead, divorce is allowed only in cases of emergency and necessity as a last resort when the marriage cannot be saved.¹ Divorce is considered valid if continuing the marriage brings more harm and unhappiness while separating can bring greater happiness.² Sayyid Sabiq emphasized that divorce is allowed in emergencies, showing that Islam is concerned with the welfare of the individual and allows divorce to avoid more significant harm.³

The breakup of a marriage not only separates husband and wife but also has a significant negative impact on children,⁴ as they lose the opportunity to experience the love and attention of both parents. Divorce can result in children feeling deprived of the emotional support that is necessary for their growth and development. Affection from both parents is significant in children's character and psychological well-being.⁵ Parents should remain committed to providing excellent and loving care even when they are no longer together to ensure that children have a supportive environment for their development.

In Islam, child custody is known as *Hadhanah*, which is the right and responsibility to care for and educate children, both male and female, or those who lack sound minds⁶. *Hadhanah* includes children's physical, emotional, and moral care until they reach adulthood and are of sound mind. Children who are mature and of sound mind are not

¹ Muhazir Muhazir and Azwir Azwir, "Divorce Bureaucracy in the Sharia Space: Examining Practices in Langsa City, Aceh," *At-Ta'fikir* 17, no. 1 (September 30, 2024): 44–55, <https://doi.org/10.32505/at.v17i1.9491>.

² Mohammad Hifni, "Hak Asuh Anak Pasca Perceraian Suami Istri Dalam Perspektif Hukum Islam," *Bil Dalil : Jurnal Hukum Keluarga Islam* 1, no. 2 (2016): 51.

³ Sayyid Sabiq, *Fiqh Sunnah* (Jakarta: Pustaka Al-Kautsar, 2015): 176.

⁴ Durotun Nafisah et al., "Comparative Analysis of Islamic Family Law and Normative Law: Examining the Causes of Divorce in Purwokerto, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 854., <https://doi.org/10.22373/sjhk.v8i2.16825>.

⁵ Nasaruddin Mera et al., "Child Custody Rights for Mothers of Different Religions: Maqāsid al-Shari'ah Perspective on Islamic Family Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1649., <http://dx.doi.org/10.22373/sjhk.v8i3.23809>.

⁶ Ibrahim Muhammad Al-Jamal, *Fiqhul MAR'ah al-Muslimah, Penerjemah Anshori Umar Sitanggang, Dkk* (Semarang: Asy-Syifa, 1981): 450.

included in those in need of hadhanah, as they are considered capable of taking care of themselves and making decisions independently.

In Indonesia, child custody is regulated in detail in Marriage Law No. 1 of 1974 Article 41, which is updated with Marriage Law No. 16 of 2019 regarding the impact of divorce, stating that In the event of divorce, both mothers and fathers remain obliged to maintain and educate their children by prioritizing the interests of the child; in the event of a dispute, the court will decide on custody. The father is responsible for the child's education and maintenance costs, but if he cannot do so, the court may determine that the mother shares in the costs. In addition, the court may require the ex-husband to provide livelihood expenses and set certain obligations for the ex-wife.⁷

Article 105 of the Compilation of Islamic Law stipulates that the maintenance of children who are not yet 12 years old is the right of the mother. In contrast, children with mumayyiz (the ability to distinguish good and bad) can choose between the two parents to determine the holder of maintenance rights. The father generally bears the cost of child maintenance.⁸

In general, the right to maintenance of minors tends to be given to the mother, as young children are more in need of maternal love and attention. This consideration is based on the fact that mothers are usually more attached to the home and have more time to care for children. In contrast, fathers often have to work outside the house to meet the family's needs, so giving the right of maintenance to the mother is considered more prudent.⁹

When the right of child maintenance is given to the mother, the father should provide maintenance to his children. The amount of maintenance that the father must provide is determined based on his ability and income. This aims to ensure the children have sufficient financial support to meet their needs, even though they live with the mother. The determination of maintenance must be fair and proportional, considering the father's economic condition to ensure the welfare of the children is maintained.

Divorce is a complex social phenomenon that often has a significant impact on all parties involved, especially children.¹⁰ In Padang Lawas County, the issue of child custody after divorce is a topic that requires special attention. In Indonesian law, child custody is generally given to the mother, but it does not rule out the possibility that the father can also obtain custody based on specific considerations.

In Padang Lawas District, child custody is often awarded to the father, although, in a legal context, custody usually goes to the mother. In societies that adhere to the patrimonial system, such as in several areas including Padang Lawas Regency, there is a belief that the

⁷ Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, Jakarta, Indonesia : Lembaran Negara Republik Indonesia Tahun 1974, Pasal 41.

⁸ Tim Redaksi, *Kompilasi Hukum Islam* (Bandung: Nuansa Aulia, 2009): 78.

⁹ F.J. Mank, *Psikologi Perkembangan, Pengantar Dalam Berbagai Bagiannya*, (Yogyakarta: Gajah Mada University Press, 1992).

¹⁰ Maimun Maimun et al., "The Dynamics of Family Law in Indonesia: Bibliometric Analysis of Past and Future Trends," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (April 27, 2024): 520., <https://doi.org/10.22373/sjhk.v8i1.21890>.

father has more rights to child custody because the child takes his surname, and the father is also responsible for providing for the child's livelihood and needs.¹¹

The phenomenon of fathers gaining child custody after divorce is interesting to highlight because it differs from the general custom, where the mother is usually the primary caregiver.¹² Communities in this region show a unique pattern, where, in some cases, child custody is awarded to the father. This phenomenon reflects the distinctive social and legal dynamics in Padang Lawas District.

Several articles have studied the same topic, like Review Of The Legal Implications Of Divorce On Child Custody Arrangements¹³, The Concept of Child Custody (Hadhanah) After Divorce in the Perspective of Islamic Law¹⁴, Rechtvinding in Resolving Child Custody Disputes,¹⁵ Post-Divorce Adjustment and Social Relationships¹⁶, dan Making sense out of uncertainty: cognitive strategies in the child custody decision-making process¹⁷. The key difference in the author's article is its focus on the interaction between Islamic law, local customs, and the role of the state in resolving child custody cases after divorce in Padang Lawas Regency. While other articles may explore normative legal aspects or the general perspective of Islamic jurisprudence, this article highlights the unique local phenomenon of how these three systems interact in social and legal practices at the local level.

The method used in this research is field research with a juridical-sociological approach, combining normative legal analysis with a social study of how the law is applied in society. The primary data sources for this research include interviews with traditional leaders, fathers who have custody of their children after divorce, and their former wives. The secondary data sources consist of the Compilation of Islamic Law, books, journals, and other materials relevant to the research. To collect data, the author used interview techniques and

¹¹ Siti Kholijah Siregar, *Hadhanah Dan Nafkah Istri Pasca Perceraian Di Luar Pengadilan Di Desa Batang Bulu Tanggal Kecamatan Lubuk Barumun Kabupaten Padang Lawas*. (Padangsidempuan: Fakultas Syariah dan Ilmu Hukum IAIN Padangsidempuan, 2015): 46.

¹² Elimartati Elimartati, "Hukum Istri Mencari Nafkah Dalam Tinjauan Maqashid Syariah," *ISLAM TRANSFORMATIF: Journal of Islamic Studies* 2, no. 2 (December 27, 2018): 233., <https://doi.org/10.30983/it.v2i2.757>.

¹³ Ellon Belwan Cornelius Mau and Tontji Christian Rafael, "Review Of The Legal Implications Of Divorce On Child Custody Arrangements," *Jurnal Poros Hukum Padjadjaran* 5, no. 2 (2024): 231., <https://doi.org/10.23920/jphp.v5i2.1639>.

¹⁴ 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., <https://doi.org/10.35719/ijil.v7i1.1956>.

¹⁵ Ahmad Muhamad Mustain Nasoha, Adi Sulistiyono, and Mudhofir Mudhofir, "Rechtvinding in Resolving Child Custody Disputes," in *Proceedings of the International Conference on Law, Economic & Good Governance (IC-LAW 2023)*, ed. Abdul Kadir Jaelani et al., vol. 827, Advances in Social Science, Education and Humanities Research (Paris: Atlantis Press SARL, 2024): 359., https://doi.org/10.2991/978-2-38476-218-7_60.

¹⁶ Elizabeth Krumrei et al., "Post-Divorce Adjustment and Social Relationships: A Meta-Analytic Review," *Journal of Divorce & Remarriage* 46, no. 3-4 (January 1, 2007): 145., https://doi.org/10.1300/J087v46n03_09.

¹⁷ Josimar Antônio De Alcântara Mendes and Thomas C. Ormerod, "Making Sense out of Uncertainty: Cognitive Strategies in the Child Custody Decision-Making Process," *Frontiers in Psychology* 15 (July 15, 2024): 7., <https://doi.org/10.3389/fpsyg.2024.1387549>.

document studies. The data were analyzed using a qualitative approach, focusing on the triangulation of Islamic law, customary law, and the role of the state. The analysis focused on how these three legal systems interact and influence decisions regarding child custody.

Child Custody Rights in Indonesia After Divorce

In Indonesia, there are many complex and diverse family law issues. Some of the key issues include marriage, divorce, child custody and protection for victims of domestic violence. One serious issue is early marriage, where many cases involve minors, which can have adverse effects on their physical and mental health. In addition, divorce is also becoming an increasing problem in the country, adding complexity to child custody arrangements and the resolution of related cases.¹⁸

Divorce proceedings often face various challenges that make them complicated and time-consuming. One of the main issues that arise is the uncertainty and conflict around the division of property, which is joint property acquired during the marriage and child custody. Meanwhile, child custody becomes a sensitive issue involving considerations of the child's welfare, emotional needs, and each parent's ability to fulfil parenting responsibilities.¹⁹ This process affects not only the economic life of the divorcing couple but also the psychological and emotional well-being of the children involved, often prolonging the duration and complexity of the divorce process.²⁰

Disputes over child custody in divorce cases often involve several crucial issues, including determining the child's residence, visitation rights, and parental financial responsibilities. Residence determination revolves around where the child will live after the divorce, which should consider the child's comfort and stability.²¹ Visitation rights are regulated to ensure that the parent who does not get primary custody still has the opportunity to interact with the child without disrupting the child's routine. In addition, financial responsibility includes sharing costs for the child's needs, such as education and health, which should be arranged relatively based on the financial capabilities of each parent. These three aspects are interrelated and require careful resolution to ensure the welfare of children after divorce.²²

¹⁸ Mies Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5, no. 2 (November 2018): 14., <https://doi.org/10.1017/als.2018.9>.

¹⁹ Siti Nurjanah, "Divorce and Its Impact on Custody of Minors Using Islamic Law Perspectives," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (May 30, 2022): 120., <https://doi.org/10.29240/jhi.v7i1.4156>; Muhazir Muhazir, Azwir Azwir, and Zubir Zubir, "Legal Institutions in Resolving Divorce Cases in Aceh," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 May (May 30, 2024): 211–30, <https://doi.org/10.29240/jhi.v9i1.8529>.

²⁰ Maimun et al., "The Dynamics of Family Law in Indonesia," 521.

²¹ Hotnidah Nasution and Ahmad Rifqi Muchtar, "Access to Justice for Women and Children in Divorce Cases in the Indonesian Religious Courts," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020): 363., <https://doi.org/10.15408/ajis.v20i2.15702>.

²² Ahmad Rajafi, "Sanksi Pidana pada Hukum Keluarga di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (November 28, 2019): 300., <https://doi.org/10.24090/mnh.v13i2.3029>.

Divorce brings significant legal consequences, especially concerning child custody.²³ According to Article 45 of the Marriage Law, parents should maintain and educate children even if their marriage ends. However, custody disputes often have to be resolved through the courts. In 2021, the Indonesian Child Protection Commission recorded several child-related cases that included 306 cases of custody battles, 492 cases of prohibiting access to parents, 423 cases of problematic parenting or parent/family conflicts, 408 cases of fulfillment of maintenance rights, and 398 cases of problematic parenting. These figures demonstrate the complexity and frequency of custody issues that require legal attention and resolution.²⁴

A lack of communication, awareness and parental responsibility often causes child custody disputes. The inability to communicate effectively between parents can exacerbate conflict, while a lack of understanding about the legal and emotional obligations of parenting adds to the tension. In addition, parents' inability or unpreparedness to fulfil their financial and emotional responsibilities is often a significant cause of custody disputes.²⁵

In Indonesia, child custody dispute settlements generally tend to apply the sole custody principle, whereby custody of the child is awarded to one of the parents upon divorce. This principle means that one parent, usually the mother or father, is legally recognized as the primary custody holder. In contrast, the parent who does not hold primary custody may only have limited visitation or access rights.²⁶

The Marriage Law in Indonesia does not precisely and in detail regulate joint custody. The Marriage Law, especially Law No. 1 Year 1974, which has been updated with Law No. 16 Year 2019, focuses more on the general principles regarding the obligation of parents to maintain and educate children, as well as the division of joint property after divorce. Although this law regulates child custody in general, it does not provide in-depth details regarding the mechanism of joint custody, where both parents simultaneously have responsibility for the upbringing of children after divorce. As a result, decisions on joint custody often rely on court interpretations and local policies, as well as individualized considerations based on the child's best interests.²⁷

The Compilation of Islamic Law, which is often referenced by judges in making child custody decisions, sets out specific provisions regarding the age and capacity of the child. According to the Compilation of Islamic Law, if the child has not reached the age of

²³ Asni Asni, "Putusan Serta Merta dalam Perkara Hadhanah di Pengadilan Agama dalam Rangka Perlindungan Anak," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (June 11, 2021): 73., <https://doi.org/10.24090/mnh.v15i1.4115>.

²⁴ Tiara Ananda Rahman and Wardani Rizkianti, "Penyelesaian Sengketa Hak Asuh Anak Setelah Perceraian: Perbandingan Antara Indonesia dan Inggris," *JURNAL USM LAW REVIEW* 7, no. 1 (March 29, 2024): 349., <https://doi.org/10.26623/julr.v7i1.8801>.

²⁵ Rahman and Rizkianti, hlm. 349.

²⁶ Meliani Meliani and Indra Budi Jaya, "Pelaksanaan Hak Asuh Bersama Terhadap Anak Di Bawah Umur : Analisis Norma Hukum," *FASTABIQ: JURNAL STUDI ISLAM* 3, no. 1 (July 21, 2022): 60., <https://doi.org/10.47281/fas.v3i1.87>.

²⁷ Rika Saraswati, Emanuel Boputra, and Yuni Kusniati, "Pemenuhan Hak Anak Di Indonesia Melalui Perencanaan Pengasuhan, Pengasuhan Tunggal Dan Pengasuhan Bersama," *Veritas et Justitia* 7, no. 1 (June 28, 2021): 201., <https://doi.org/10.25123/vej.v7i1.4066>.

mumayyiz (not yet 12 years old), custody is generally given to the mother. However, once the child reaches the age of mumayyiz or 12, the child has the right to choose which parent they want to live with, either the mother or the father.²⁸

The Phenomenon of Child Custody by Fathers After Divorce in Padang Lawas Regency

An intact family is every individual's dream, but divorce is the only way to go when there is no middle ground. There are several causes of divorce first: First, couples with lower levels of education tend to divorce more often than those with higher education. Second, conflicts due to economic difficulties in the household are usually the main cause of divorce. Third, different understandings of religious teachings related to marriage often trigger disputes. Fourth, lack of access to health resources, such as clean water, sanitation and medical professionals, plays a vital role in divorce. Finally, an unsupportive social environment can exacerbate the challenges faced by married couples.²⁹

When divorce occurs, the impact is felt, especially in terms of child custody, which ideally involves both parents. Children crave attention and affection from both parents, especially young ones. However, custody is often only awarded to the mother or father, leaving one party with a more limited role in the child's daily life.

Child custody after divorce is usually a complex and challenging issue, especially in areas with solid norms and culture. In Padang Lawas District, the phenomenon of child custody by fathers after divorce is interesting to highlight because it differs from the general custom where mothers are usually the primary caregivers. The community in this region shows a unique pattern, where, in some cases, the child's custody is given to the father. This phenomenon reflects the unique social and legal dynamics in Padang Lawas District. For example, the divorce between SH (husband) and PH (wife) revealed unique custody dynamics in Padang Lawas District. After the divorce, SH immediately took his three children back to his parents' house. This happened because they lived at SH's in-laws' house during the marriage. SH's decision to bring her children to her parent's home demonstrates a pattern where the father takes over the primary parenting role post-divorce.³⁰

SH also explained that he could support the three children, which was one of the essential reasons for the custody decision. Furthermore, in the customary consultation held due to their divorce, the Hatobangan (traditional leader) confirmed that the children should go with their father. This decision was based on the customary view that children are their fathers' heirs. However, the mother's right to meet and interact with the children was recognized and respected.³¹

PH, the wife of SH, stated that it is customary in society for children to be raised by the father in the event of a divorce. She accepted this willingly because, in her view,

²⁸ Rahman and Rizkianti, "Penyelesaian Sengketa Hak Asuh Anak Setelah Perceraian," 349.

²⁹ Nafisah et al., "Comparative Analysis of Islamic Family Law and Normative Law: Examining the Causes of Divorce in Purwokerto, Indonesia," 849.

³⁰ SH, Interview with the Head of Husband, May 25, 2024

³¹ Setiawan, Interview with the Head of Hatobangan/tokoh adat, 29 May 2024

remarrying would be difficult or even impossible if her three children lived with her, given the many responsibilities she would have to bear as a mother with three children.³²

AS (husband) and BI (wife) also expressed the same thing. AS explained that he divorced his wife after ten years of marriage and had two sons aged nine and seven. After the divorce, BI immediately returned to her parents' house, leaving their two children with AS. With this condition, AS became responsible for his children's livelihood and welfare.³³

AS explained that after the divorce, he did not allow his wife to meet the children at any time, but only at certain times, such as during Eid, Islamic holidays, or critical traditional events. This decision was made so that the children could focus on the care and education provided by AS, who felt able to maintain and raise his children without the presence of his ex-wife. Nonetheless, this restriction still provides opportunities for the mother to interact with the children at critical moments, maintaining a balance between the children's need to maintain a relationship with their mother and the focus on stable parenting by the father.³⁴

BI explained that although she wanted to take her two children with her after the divorce, economic reasons prevented her from doing so. During her marriage to AS, BI did not work and only took care of the house and children, leaving her without the financial means to support them. Therefore, she gave up custody of her children to her husband, considering her limited income.³⁵

Based on the interview results, a man named PUH is divorced and has three children—two over seven years old and one four years old—whom he cares for himself. The paternal grandmother occasionally helps take care of the four-year-old child. PUH stated that child custody is fully his responsibility without any time limit, including providing alimony. Since the divorce, his ex-wife has never visited or met with their children.³⁶

Based on interviews with several interviewees, including AH, HL, MH, and RAH, there is a pattern of child care after divorce where the father generally takes over custody. AH cares for her 5-year-old child, sometimes assisted by her parents.³⁷ HL also takes care of her 6-year-old daughter.³⁸ After the divorce, MH took her child to her parents' house, as she felt she had more rights to the child³⁹. After seven years of marriage and a subsequent divorce, RAH takes care of her 5 year old child, with the responsibility of providing for her child until her child gets married.⁴⁰

The author highlights two reasons why wives prefer their children to be raised by their ex-husbands after divorce. First, local customs still prioritize men in terms of child support responsibilities, so husbands are seen as more entitled to provide care. Second, the

³² PH, Interview with wife, 25 May 2024

³³ AS, Interview with the Head of Husband, 2 June 2024

³⁴ AS, Interview with the Head of Husband, 2 June 2024

³⁵ BI, Interview with wife, 3 June 2024

³⁶ PUH, Interview with the Head of Husband, 9 June 2024

³⁷ AH, Interview with the Head of Husband, 10 June 2024

³⁸ HL, Interview with the Head of Husband, 10 June 2024

³⁹ MH, Interview with the Head of Husband, 10 June 2024

⁴⁰ RAH, Interview with the Head of Husband, 11 June 2024

majority of women in the area are not in good financial conditions, making them feel unable to support their children after divorce, which makes the fathers a more realistic option.

From the phenomenon of child custody by the father after divorce, there are several reasons why the father has custody, as follows:

First, Heirs: In customary law and some legal systems, a child is considered the father's heir. This means the father has greater rights than the mother regarding custody and financial responsibility for the child. As an heir, the child is entitled to support from the father to fulfil daily needs and education expenses.

Secondly, responsibility in marriage and divorce is generally placed on the father, making him the party who plays an essential role in the household. This includes childcare after divorce. In Padang Lawas District, the man's position in the marriage structure is considered the most important, so when a divorce occurs, the husband is entitled to custody of their children. In this community, the father is deemed to have the primary responsibility for taking care of and providing for the children, as well as fulfilling other obligations related to the welfare of the children after divorce. This reflects local cultural and social norms that place men in a dominant position in the family, both during marriage and after separation.

Third, customs in Padang Lawas Regency are essential in determining child custody after divorce. In this region, a long-standing custom is still applied today, where childcare is usually given to the father after divorce. This tradition has existed for a long time, although this custom's exact origin and timing have yet to be discovered. This custom reflects local cultural norms that place fathers in a primary position regarding childcare, making it the primary responsibility after separation. This custom influences decisions in divorce proceedings, where child custody is often awarded to the father based on long-standing traditions.

Historically speaking, the concept of *Hashanah*, where the husband takes over the care of the children after divorce, emerged from a combination of local customary law and Islamic teachings applied within the local cultural context. The father's role is prioritized in terms of providing for the family and caring for the children, although in some cases, extended family members, such as grandparents, assist with these responsibilities. The strong influence of Batak Mandailing customs in this area further reinforces the dominance of men in family matters and child custody. However, a small portion of society is beginning to recognize the importance of the mother's role in child development, especially for young children.

Legal Perspective on Child Custody Rights by Fathers after Divorce

They are known that divorce often occurs due to disharmony in the household. Marriage, a halal matter, has a noble purpose to protect oneself and one's lineage and build a harmonious family. However, the reality is that not all marriages can run smoothly and last until the end of life. Various factors such as differences of opinion, prolonged conflicts, economic problems, and other incompatibilities can cause husband and wife relationships to become disharmonious. As a result, some couples decide to end their marriage through

divorce as a way out of unresolvable conflicts. However, this step often significantly impacts all parties involved, especially children.⁴¹

After a divorce, the problem is who has the right to custody the child. In Islam, custody rights are referred to as khadanah, namely child custody rights known as hadhanah. Etymologically, hadhanah comes from the Arabic "hadhana-yahdhinu-hadhanan," which means nurturing, caring, educating, and embracing.⁴² Imam Syafi'i mentioned that khadanah is placing something close to the ribs, similar to carrying or putting something on the lap.⁴³

In the encyclopedia of Islamic law, hadhanah is a verb that describes dependent care due to young age or immature mind. This care includes various efforts to fulfil children's basic needs, protect them from harm, provide education and knowledge, and take responsibility for their development in multiple aspects of life. Hadhānah is not only limited to the child's physical care but also includes moral and spiritual responsibilities to ensure the child grows up in an environment that is safe, healthy, and supportive of optimal development.⁴⁴

In Islam, the legal basis for khadanah is in Surah a-At-Tahrim verse 6:

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

Meaning: O you who believe, protect yourselves and your families from the fire of hell whose fuel is man and stone; its guardians are angels who are harsh, challenging, and obey Allah in what He commands them and always do what is commanded.(Q.S At-Tahrim: 6).

Taking care of the family has a much deeper meaning than taking care of animals or plants. In this context, taking care of the family emphasizes the religious dimension of protecting family members from wrongdoing and helping them to avoid hellfire. This responsibility includes moral and spiritual guidance and ensuring that each family member lives according to religious teachings. While caring for animals and plants focuses on fulfilling their physical needs, caring for a family involves comprehensive attention to physical, emotional and spiritual well-being, which is absent in caring for animals or plants.⁴⁵

Furthermore, in Islam, the issue of child custody has been regulated, as found in Surah al-Baqarah verse 233:

⁴¹ Desri Ari Enghariano, "Pandangan Hukum Ali As-Shobuni Tentang Perceraian," *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan dan Keperdataan* 7, no. 2 (April 4, 2022): 262., <https://doi.org/10.24952/almaqasid.v7i2.4732>.

⁴² Ahmad Warson Munawir, *Kamus Arab Indonesia* (Surabaya: Pustaka Progresif, 1997): 578.

⁴³ Zainuddin bin Abdul Aziz al-Malibari, *Fathul-Mu'in Bi Syarhi Quratul-'Aini* (Beirut: Daar al-Ma'arif, 2001).

⁴⁴ Jumni Nelli, "Analisis Tentang Kewajiban Nafkah Keluarga Dalam Pemberlakuan Harta Bersama," *Al-Istinbath: Jurnal Hukum Islam* 2, no. 1 (n.d.): 195., <https://doi.org/10.29240/jhi.v2i1.195>.

⁴⁵ Adelina Nasution, Pagar Pagar, and 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 (December 31, 2022): 897., <https://doi.org/10.22373/sjhc.v6i2.12758>.

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّمَ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِّنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا اتَّيْتُمْ بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

Meaning: Mothers should suckle their children for two whole years for those who wish to complete breastfeeding. And the father must feed and clothe the mother in a fair manner. A person is not burdened except according to his ability. Let not a mother suffer affliction on account of her child, nor a father on account of his child, nor shall the inheritance be obliged to do likewise. If they wish to wean (before two years) with mutual consent and consultation, there is no sin on either of them. And if you want your children to be nursed by others, there is no sin on you if you provide payment according to what is appropriate. Fear Allah and know Allah sees what you do (QS Al-Baqarah: 233).

It shows that both parents must care for their children until they grow and develop correctly. Allah SWT commands parents to take care of children who are not yet mumayyiz, children who have not reached the age or ability to distinguish between right and wrong.⁴⁶ This command emphasizes the importance of the role of parents in providing attention, guidance, and proper education so that children can grow up in a loving environment in accordance with religious teachings.

The Qur'anic verses that form the basis of hadhanah law emphasize the importance of parents' responsibility in nurturing and caring for their children. The verses provide an understanding that hadhanah is concerned with safeguarding children's lives in the world and preparing them for life in the hereafter. Nurturing and caring for children is a parental obligation that includes fulfilling children's physical, emotional, and spiritual needs.⁴⁷

In raising children, parents are not only responsible for providing food, clothing, and shelter but also for providing knowledge and education in accordance with religious teachings. This education includes moral and ethical values to help children become responsible, faithful, and noble. Thus, these Qur'anic verses emphasize that hadhanah is a mandate that parents must carry out with full awareness and commitment, ensuring that children grow up in an environment that supports and guides them towards a good life in this world and the hereafter.

Customs are habits that have been going on for a long time and are still applied today. In Padang Lawas Regency, one of the customs that is still strong is granting child custody to the father after divorce. This tradition has been going on for a long time and is still maintained and implemented by the local community until now. In these customs, the father is considered the most entitled party to care for the children after divorce, and this decision is often respected and followed without much debate. This custom reflects the traditional values and views of the Padang Lawas community regarding the role and

⁴⁶ Ibnu Rozali, "Konsep Memberi Nafkah bagi Keluarga dalam Islam," *Jurnal Intelektualita: Keislaman, Sosial dan Sains* 6, no. 2 (December 18, 2017): 189–202, <https://doi.org/10.19109/intelektualita.v6i2.1605>.

⁴⁷ Elimartati, "Hukum Istri Mencari Nafkah Dalam Tinjauan Maqashid Syariah."

responsibilities of fathers in the family. It shows how customs can influence parenting practices in post-divorce situations.⁴⁸

The interview with SH revealed that she married PH in 2010 and divorced in 2013. At the time of the divorce, they had three children who have since been cared for by SH. SH explained that according to the customs in Binanga, the father has the right to care for his children. In their custom, the children are considered the successors of the father's clan, so custody traditionally goes to the father. In addition, the children's grandmother is still alive and can assist SH in caring for them, reinforcing the customary decision to place parenting responsibility on the father. This tradition emphasizes the importance of the father's role and lineage in looking after and caring for the children post-divorce.⁴⁹

Thus, childcare given to the father after divorce in Padang Lawas Regency adheres to the patrilineal system, where the father's position is more dominant than the mother's position. In this community, married women come to the man's house without bringing anything, so the children are the father's responsibility. Traditions and customs in Padang Lawas Regency are deeply rooted in the fact that the father automatically holds child custody in the event of a divorce. This is based on the belief that fathers have significant responsibility for their children in terms of care and financing. In addition, children are seen as the successors of their father's clan, reinforcing why fathers hold custody. Therefore, a father must provide for and care for his children after divorce.

The author observes several reasons why child custody is given to the father in Padang Lawas Regency after divorce. Firstly, children are considered the father's heirs, so they must live with the father even though they are not yet *mumayyiz*. Secondly, a father is responsible for providing for his children. Therefore, children must live with their fathers even though they have not reached their age or ability to distinguish right from wrong (*Mumayyiz*). Third, in the community of Binanga Village, the care of children by the father has become a custom that has been going on for a long time and is still practised today. This custom reflects the view that fathers have a dominant role and great responsibility in caring for and raising their children.

The phenomenon of child custody by the father after divorce that occurs in Padang Lawas Regency is contrary to the provisions in the Compilation of Islamic Law (KHI). Based on Article 105 KHI, child custody (*hadhanah*) for children who are not yet *mumayyiz*, that is, children who have not reached the age or ability to distinguish between right and wrong, should be given to the mother. This is because mothers can provide the love, attention, and intensive care children need at an early age.

Although custody is in the hands of the mother, the father still has a great responsibility towards the children. The father is obliged to provide maintenance, which includes basic needs such as food, clothing, and shelter, as well as education and health costs for the child. The father must fulfil this obligation until the child matures and can stand alone or independently meet his needs. When the child has reached the age of *mumayyiz*, which is generally considered around 12, the child is free to choose who they will live with.

⁴⁸ Zulkifli, Interview with the Head of *tokoh adat*, 29 May 2024.

⁴⁹ SH, Interview with the Head of Husband, 25 May 2024

This means that the child can decide to live with his or her mother or father based on his or her judgment. This choice of the child should be respected and followed by both parents, keeping in mind the welfare and best interests of the child.

In the context of Padang Lawas District, local customs give custody to the father, even for children who are not yet mumayyiz. This practice may be based on a solid patrilineal system, where the father is the head of the family and the main person in charge. However, to align with the provisions of KHI and the principles of child welfare, communities and stakeholders need to consider the broader requirements of Islamic law and support policies that ensure children get the best care during their critical developmental period.

In Padang Lawas Regency, the community increasingly considers the solution of shared responsibility between husband and wife in raising children during divorce. Although, according to tradition, fathers are considered to have more rights to child custody due to lineage factors and responsibility for living expenses, awareness of the importance of the mother's role in child development is also recognized. By dividing parenting responsibilities proportionally, both fathers and mothers can play an active role in meeting children's emotional, physical, and educational needs. This approach not only helps maintain the balance of child development but also lightens the burden on both parents while creating more harmonious cooperation for the welfare of children amid divorce.

Conclusion

The determination of child custody after divorce in Padang Lawas Regency is influenced by the dynamic interaction between Islamic law, local customs, and state regulations. Although the Compilation of Islamic Law and the Indonesian Marriage Law serve as formal foundations, local customary norms continue to play a significant role in resolving custody disputes. The decision-making process often involves mediation between traditional leaders, religious scholars, and the courts, creating a unique and contextual approach. This reflects that custody practices in the region are adapted to the complex social, cultural, and legal realities of the local community

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