



Childcare in Islamic Families After Divorce: A Study of the Division of Parental Responsibilities Based on Fiqh Al-Usrah

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Abstract: This research is based on the reality that divorce in Muslim families often raises issues in childcare, particularly regarding the division of responsibilities between parents after the divorce. From an Islamic perspective, this issue can be resolved by consulting Fiqh al-Usrah, which provides guidance on the rights and obligations of parents towards their children, particularly in the context of divorce. This research aims to analyze how parental responsibilities for childcare are divided after divorce, based on the principles of Fiqh al-Usrah, and how these principles are applied in the daily lives of Muslim families. The method used is a literature review with a normative approach, analyzing classical and contemporary fiqh texts on divorce, child custody, and the division of parental responsibilities. In addition, this research also explores the application of these principles through case studies in society. The results show that Fiqh al-Usrah provides a clear legal basis for the division of parental responsibilities, with child custody usually given to the mother, while the father remains obligated to provide child support and education. This research also found variations in the application of this principle in society, depending on local interpretations of Islamic law and existing social practices.

Keywords: child custody; childcare; divorce; family law; Islamic law; parental responsibilities.

Introduction

Divorce is a social reality that has far-reaching consequences for the continuity of family life, particularly for children within the family. The termination of a marriage not only marks the severance of the legal relationship between husband and wife but also raises a variety of subsequent issues concerning the family's continued functioning after the divorce. In Muslim families, divorce is often understood as an issue with interrelated legal, social, psychological, and moral dimensions. These issues become even more complex when the divorcing couple has children, because the responsibility for fulfilling children's rights does not end with the end of the marriage. Children's needs for care, education, protection, affection, and economic support must continue to be met by both parents. This situation places the issue of post-divorce childcare as one of the most crucial aspects in discussions of Islamic family law. Parents' responsibilities to their children remain even when they no longer live together in the same household, so clear regulations are needed regarding the division of these responsibilities to ensure the best interests of the children are continuously assured in their daily lives (Safii & Kaur, 2025).

At a certain stage of development, children begin to express their preferences, considerations, and desires regarding the environment in which they will live after their parents'

divorce. In family law practice, the age of twelve is often used as an indicator for providing children with more space to express choices regarding parenting. This situation makes the issue of custody of adolescent children have different characteristics than the care of early childhood. Data shows that by 2025, an estimated fifteen to twenty percent of all divorce cases involving adolescents will relate to the division of custody between the two parents. Of the estimated 280,000 to 315,000 divorce cases, approximately 42,000 to 63,000 cases are estimated to involve children aged twelve and above. This situation demonstrates the possibility of more flexible decision-making regarding parenting, taking into account the child's maturity level and expressed wishes. This phenomenon demonstrates that the issue of childcare after divorce cannot be understood solely through a normative approach, but also requires attention to the child's psychological development and social needs, which continue to change with age (Badan Pusat Statistik, 2025).

In Islamic teachings, the family occupies a fundamental position as the primary foundation for establishing social order. Family harmony is seen as crucial for maintaining social order and the continuity of religious values in daily life. Islam places great emphasis on regulating family relationships, including the rights and obligations inherent in each family member. Divorce is recognized in Islamic law as a mechanism that can be pursued when efforts to maintain a household no longer yield benefits. However, divorce is not considered the preferred option, but rather a last resort after various efforts at reconciliation and repair of the relationship have been undertaken. This view demonstrates the need for caution in responding to marital dissolution, as the impact is felt not only by the divorcing couple but also by the children who are part of the family. Attention to the well-being of children is crucial, given that they are the most vulnerable to the consequences of changes in family structure resulting from divorce. In this context, protecting children's welfare is a primary goal that must be maintained in every divorce resolution process (Mustafid et al., 2025).

The principle of child protection occupies a crucial place in the study of Islamic jurisprudence (Fiqh al-Usrah), a branch of Islamic jurisprudence specifically addressing family issues. Fiqh al-Usrah provides a normative framework for relationships between family members, including the division of parental responsibilities toward children before and after divorce. From this perspective, children are viewed as a trust whose rights must be fulfilled regardless of changes in the parents' relationship status. Discussions on child care after divorce encompass various aspects, from custody and maintenance, education, character development, to meeting economic needs. Complex issues often arise when ex-husbands and ex-wives differ in their views regarding the form of care they deem most appropriate for their children. This situation often gives rise to debates about who has the greater right to carry out daily caregiving functions. In both social and legal practice, this issue is one of the most frequently raised issues after divorce because it is directly related to the child's future and long-term quality of life.

From an Islamic legal perspective, children are recognized as subjects entitled to optimal protection, care, and development. These rights cannot be disregarded simply because the marital relationship between parents has ended. The Islamic jurisprudence (Fiqh al-Usrah) emphasizes that parental obligations to children continue after divorce. Discussions regarding child custody relate not only to who has the authority to care for the child, but also to the ability of each parent to ensure the child's overall needs are met. Considerations regarding the child's welfare are a crucial factor in determining custody. Within this framework, Islamic law does not base decisions solely on the parents' gender but also considers their parenting capacity, moral responsibility, and ability to fulfill the child's rights. This approach demonstrates that the primary goal of custody arrangements is not to provide benefits to one party, but rather to ensure that the child receives the most supportive environment for their growth and development.

Classical Islamic jurisprudence generally explains that the right to custody of young children is primarily given to mothers. This view is based on the consideration that mothers have a strong emotional bond with their children and a greater ability to meet daily care needs, especially during the early stages of a child's development. Although custody rights are often granted to mothers, the father's obligation to meet the child's economic needs remains fully intact. Child support is the father's responsibility, which is not interrupted by divorce. Under certain circumstances, the obligation to provide support can also extend to ex-wives who are still in the

iddah period, in accordance with Islamic law. This arrangement demonstrates that divorce does not erase the bond of responsibility between parents and children. Physical separation does not eliminate the moral or legal obligations inherent in both parents. Fulfilling children's rights remains a shared responsibility that must be implemented proportionally according to the roles and capacities of each party in post-divorce life (Syahrin & Munir, 2025).

Although the normative principles regarding post-divorce childcare have been clearly formulated in Islamic law, their practical implementation often faces various obstacles. Not all divorces are followed by an agreement regarding the form of childcare that will be applied to the children. Disputes over custody, time allocation, and the fulfillment of child support obligations often become sources of prolonged conflict. In some cases, one party feels they have a greater right to determine the child's future, creating tension in the post-divorce relationship. Problems can also arise when economic constraints prevent the child from being able to fulfill child support obligations optimally. Furthermore, social and cultural factors influence how society views post-divorce childcare. In certain social environments, childcare is still often predominantly associated with the mother's role, while the father's contribution to the parenting process receives less attention. These views can influence parenting practices and the relationship between children and their parents after divorce (Said et al., 2025).

The existence of various social, cultural, and economic factors makes the issue of post-divorce childcare a highly complex issue in the study of Islamic family law. Parents' responsibilities towards children are inseparable from the primary objective of sharia, which places the protection of offspring as a crucial aspect of human life. The Qur'an emphasizes parents' obligations to meet their children's needs through various provisions related to care and support. In Surah Al-Baqarah, verse 233, it is stated that mothers should breastfeed their children for two full years if they wish to complete the breastfeeding period, while fathers are obligated to provide adequate support and clothing. This verse demonstrates a complementary division of responsibilities between fathers and mothers in the process of raising children. Its normative meaning demonstrates that the continued fulfillment of children's rights remains a primary obligation of parents, regardless of any changes in marital status.

Regulations regarding parental custody and responsibilities after divorce are found not only in Islamic jurisprudence literature but are also incorporated into various legal systems in Muslim countries. Countries that directly implement Islamic law and those with mixed legal systems generally have specific regulations regarding child protection after divorce. In Indonesia, these provisions are reflected in the Compilation of Islamic Law, which serves as a primary reference for resolving family disputes for Muslims. The Compilation of Islamic Law stipulates that children under the age of puberty are, in principle, under the care of the mother, unless there are reasons indicating the mother's inability or unfitness to carry out her parenting role. At the same time, the father's obligation to provide child support remains in effect and must be fulfilled to the best of his ability. This provision reflects an effort to harmonize Islamic jurisprudence principles with the needs of modern legal systems to ensure the protection of children's interests, which must receive primary attention in every divorce proceeding (Firdaus et al., 2023).

Although a relatively clear legal framework is in place, its implementation still faces various challenges that require further attention. Disputes over child custody often escalate to the courts due to the failure of both parents to reach an agreement. This process often has significant psychological impacts on children, as they are caught in the midst of ongoing conflict between the father and mother. In addition to custody issues, the implementation of child support obligations is also a frequent issue in practice. Failure or non-compliance by either party in fulfilling established obligations can result in the child's needs not being optimally met. This situation demonstrates that the existence of legal regulations does not fully guarantee effective protection for children. Children have the potential to be the ones most negatively impacted by the prolonged conflict that arises after divorce. This situation highlights the importance of understanding the various obstacles that arise in post-divorce childcare practices so that children's rights can be more effectively protected (Mera et al., 2024).

Research on the division of parental responsibilities in childcare after divorce is important because it provides a platform for understanding how the principles of Islamic

jurisprudence (Fiqh al-Usrah) are applied in the realities of Muslim family life. This study allows for the identification of various challenges that arise in the implementation of custody rights, the provision of maintenance, and the management of the relationship between children and their parents after divorce. A deeper understanding of these practices can contribute to the development of Islamic family law studies, particularly in efforts to strengthen the protection of children's rights. In addition to providing an overview of the implementation of legal norms in social life, this research is also relevant in encouraging the creation of parenting mechanisms that are more oriented towards the best interests of children. Focusing on children's welfare is crucial, given that they are the ones most in need of protection when families experience changes due to divorce. This study is expected to provide a more comprehensive understanding of the division of parental responsibilities after divorce from the legal and social perspectives of Muslim families.

Method

This study employed a library research method with a normative approach as the primary foundation for data assessment and analysis. The normative approach was chosen because the study focused on examining the rules, principles, and legal constructions that have developed within the Islamic legal literature regarding divorce, child custody, and the division of parental responsibilities after the end of a marriage. Through this approach, the research focused on exploring various legal sources relevant to the theme of post-divorce childcare from the perspective of Fiqh al-Usrah. The library research enabled the researcher to conduct in-depth readings of scientific documents, works of scholars, fiqh books, legal regulations, and various academic literature discussing Islamic family issues. The focus of the research was not placed on field data collection, but rather on a systematic review of library materials that have scientific and normative authority. This method is considered appropriate for gaining a comprehensive understanding of the concept of post-divorce childcare based on the Islamic legal framework developed within the fiqh tradition (Zed, 2014).

The normative study in this study aims to identify, interpret, and understand the principles of Islamic law governing the relationship between parents and children after divorce. The study attempts to examine how the concepts of responsibility for childcare, maintenance, protection, education, and fulfillment of children's needs are discussed in classical and contemporary Islamic jurisprudence literature. The analysis is conducted through a critical reading of various scholarly opinions developed within the Islamic legal tradition, thus providing an overview of the normative foundations that underpin the regulation of parental rights and obligations. This approach provides a platform for understanding how Islamic legal provisions are constructed through religious arguments derived from the Qur'an, Hadith, consensus (ijma'), and ijtihad of jurists. Through this process, the study attempts to systematically describe the legal construction of post-divorce childcare and relate it to the development of Islamic family law thought, which continues to experience dynamics in accordance with the needs of Muslim society throughout various historical periods (Soekanto, 2022).

The primary data sources used in this study come from various Islamic legal literature directly related to the research theme. This literature includes classical fiqh texts representing the views of the four major Islamic schools of thought: the Hanafi, Maliki, Shafi'i, and Hanbali schools. These four schools were chosen because they have significantly contributed to the formation of Islamic family law doctrine, particularly regarding divorce, hadhanah (charity), child support, and parental obligations. The review of these classical texts was conducted to gain an understanding of the normative foundations underlying the concept of childcare in Islamic law. Furthermore, the study utilized various modern scholarly works written by scholars, academics, and contemporary Islamic legal experts that discuss the development of family law in the context of modern society. The presence of contemporary literature provides an important contribution to understanding the relevance of classical fiqh thought to a social reality that continues to change and develop (Rahmani & Sayuti, 2025).

In addition to using Islamic jurisprudence literature as the primary source, this study also examines various regulations applicable to the Indonesian legal system. One legal source of particular interest is the Compilation of Islamic Law (KHI), which serves as a guideline for

resolving family disputes for the Muslim community in Indonesia. The KHI contains provisions relating to divorce, child custody, and the obligation to provide child support after a divorce. The study of these regulations was conducted to understand how the principles developed in Fiqh al-Usrah are accommodated within the national legal system. The study also considers various other positive legal provisions related to child protection and parental responsibilities after divorce. The analysis of these legal sources provides an overview of the relationship between Islamic jurisprudence norms and their implementation within the national legal framework, thus understanding how Islamic law interacts with the legal system prevailing in Indonesian society (Marzuki, 2017).

The data analysis process was conducted using a normative legal analysis method that emphasizes the interpretation and construction of law based on the various sources collected. The analysis begins by identifying key concepts related to post-divorce childcare, followed by an interpretation of the legal provisions contained in the Islamic jurisprudence (fiqh) literature and regulations that are the object of the research. This stage aims to identify the legal principles underlying the division of parental responsibilities towards children after divorce. Data obtained from various sources are systematically compared and analyzed to identify similarities, differences, and trends in thinking developing within the study of Islamic jurisprudence (Fiqh al-Usrah). Through this process, the research seeks to generate a deeper understanding of the status of child custody, the obligation to provide support, and the forms of parental responsibility from an Islamic legal perspective. This analytical approach allows for the development of arguments based on legal sources that possess academic and normative legitimacy.

The primary objective of this study is to provide a deeper understanding of the relevance of Islamic law in regulating the distribution of parental responsibilities towards children after divorce in the context of Muslim family life in Indonesia. Through a literature review based on a normative approach, the study seeks to explain how the principles of Fiqh al-Usrah can be understood and applied in the social realities that develop in society. This study also aims to demonstrate the relationship between Islamic legal doctrines derived from the fiqh tradition and legal regulations applicable in the national legal system. The results of this study are expected to provide academic contributions to the development of Islamic family law studies, particularly those related to the protection of children's rights after divorce. The understanding gained from this study is expected to enrich the scientific discourse on childcare, parental responsibilities, and the implementation of Islamic legal principles in contemporary Muslim family life.

Results and Discussion

Division of Parental Responsibilities in Fiqh al-Usrah

In the study of Islamic jurisprudence (Fiqh al-Usrah), the discussion of the division of parental responsibilities towards children occupies a crucial position because it is directly related to the protection of children's rights within the family environment. This concept is built on the principle of *maslahah*, or benefit, which is one of the main foundations of Islamic family law. This principle places the welfare of children as the primary orientation in all arrangements related to family life, both during the marriage and after divorce. From this perspective, children are seen as a trust that must be continuously guarded, cared for, and guided by both parents. Responsibility for children is not only understood as a legal obligation but also as a form of moral and religious responsibility inherent in the father and mother. Islamic jurisprudence views the success of the parenting process as being greatly influenced by the involvement of both parents in meeting the child's comprehensive needs. These needs encompass the physical, emotional, social, intellectual, and spiritual aspects that are interrelated in shaping the child's quality of life. On that basis, the division of parental responsibilities is not positioned as a form of rigid separation of roles, but rather as a mechanism that allows each child's needs to be optimally met according to the capacity and function of each parent in the Islamic family structure (Busriyanti et al., 2025).

While the marriage bond is still in effect, Fiqh al-Usrah describes the child-rearing relationship as a form of complementary cooperation between father and mother. Both have different responsibilities but are connected by a common goal: ensuring the child's balanced growth and development. The mother is generally positioned as a figure who has a direct relationship with

the child in everyday life. This closeness makes the mother play a crucial role in meeting the child's physical needs, providing emotional care, and instilling basic values that form the foundation of character formation. The mother's presence in the parenting process is not only related to biological care but also involves forming psychological bonds that influence the child's personality development. Within the family environment, the mother is often the first figure to introduce norms, customs, and patterns of social interaction to children from an early age. The mother's caregiving activities are ongoing and form part of the early education process that significantly determines the direction of the child's development in later stages of life. This role demonstrates the mother's presence makes a significant contribution to creating a family environment that supports the healthy and sustainable growth and development of children.

In addition to the dominant role of mothers in daily care and nurturing, Fiqh al-Usrah also positions fathers as central figures with significant responsibility for ensuring the continuity of family life. Fathers bear the obligation to provide a living, which serves as the basis for fulfilling various children's needs, including food, clothing, education, and protection. This obligation is not only related to economic aspects, but also includes the responsibility of providing guidance, role models, and education that support the formation of children's identities. In many discussions of Islamic jurisprudence, fathers are seen as having a crucial role in guiding children to understand religious values and preparing them for life skills necessary for social life. This function demonstrates that the father's role cannot be reduced merely to providing material needs, but also as an educator who contributes to the development of children's moral and spiritual qualities. Thus, the relationship between fathers and mothers in the parenting process is a form of mutually supportive collaboration, where each party carries out different responsibilities but remains connected by the same goal: to create the best conditions for the child's overall growth and development (Busriyanti et al., 2025).

The concept of shared responsibility developed in Islamic jurisprudence (Fiqh al-Usrah) demonstrates that successful child-rearing cannot be solely attributed to one party. Children require the presence of both parents at various stages of their lives, as each parent contributes differently to the development of their character and well-being. Meeting emotional needs, education, protection, and economic support are inseparable parts of a single entity. Islamic jurisprudence views the family as the primary space for the formation of a generation with sound moral and social qualities. In this context, the involvement of both fathers and mothers is crucial in maintaining a balanced educational process. Parenting relationships built on cooperation enable children to gain a more comprehensive learning experience within the family environment. This principle serves as a foundation consistently upheld in various discussions of Islamic family law, including when families face changes resulting from divorce. Despite changes in family structures, the focus on fulfilling children's rights remains a priority that cannot be ignored in all decisions related to childcare and upbringing.

Following a divorce, discussions regarding the division of parental responsibilities receive greater attention due to the need to reorganize the relationship between children and their parents. In Islamic jurisprudence (Fiqh al-Usrah), divorce is understood as the end of the marital relationship between husband and wife, but does not eliminate the obligations of both parties to the child. Children's rights must continue to be fulfilled even if the father and mother no longer live in the same household. This perspective demonstrates that parental responsibilities are inherent and independent of the continuation of the marital relationship. Children still have the right to adequate love, protection, education, and care after a divorce. In Islamic family law practice, post-divorce childcare arrangements are aimed at ensuring that changes in family structure do not result in neglecting the child's needs. The primary focus is not placed on the interests of the father or mother as the separating party, but rather on how the child's rights can still be optimally fulfilled. Thus, all post-divorce responsibility-sharing mechanisms remain oriented toward the protection and well-being of the child, the party most in need of attention.

In classical Islamic jurisprudence, custody of children in their early years is generally granted to the mother. This provision stems from the consideration that mothers possess a strong emotional bond and greater experience in meeting the child's daily needs. Early childcare requires intensive attention, particularly in terms of physical care, fostering a sense of security, and emotional support. These considerations are the reason why many Islamic jurists prioritize

mothers in fulfilling their role as caregivers. Custody granted to mothers is not intended to diminish the father's role, but rather as a mechanism to ensure the child's needs are met according to their developmental stage. During this period, children require a high level of closeness with caregivers who can provide consistent attention in their daily lives. Islamic jurisprudence (Fiqh al-Usrah) views granting custody to mothers as part of efforts to safeguard the child's well-being, particularly during a period when the need for direct care is greatest. This provision also demonstrates that the primary orientation of Islamic family law remains the child's interests and welfare as the focus of legal protection.

Although custody rights are often granted to the mother, the father's obligations to the child remain and are not abrogated by divorce. The father retains primary responsibility for providing the necessary support for the child's life and development. This support covers various basic needs related to the child's well-being, such as food, clothing, education, healthcare, and other needs relevant to the child's development. From the perspective of Islamic jurisprudence (Fiqh al-Usrah), the obligation to provide support is a legally binding obligation that is independent of the marital relationship between the father and mother. Providing support is part of the parent's commitment to the child's well-being after divorce. Discussions on support in Islamic law demonstrate that economic responsibility is inseparable from the concept of comprehensive child protection. By providing support, the child's basic needs can be guaranteed, ensuring the child's education, health, and social development continue. These provisions demonstrate that the father's role in a child's life remains crucial, even if he is not the one providing daily care.

Under certain circumstances, Fiqh al-Usrah also addresses situations related to parents' economic capacity. When fathers face limitations in fulfilling their child support obligations, discussions of Islamic family law allow mothers with financial means to contribute to meeting their children's needs. This arrangement demonstrates flexibility in efforts to ensure children's well-being as a primary goal. The focus is not on a formalistic division of obligations, but rather on meeting children's concrete needs in everyday life. The principle of benefit, which underlies Fiqh al-Usrah, allows for adjustments to various circumstances faced by families after divorce. Meeting children's needs remains a top priority without ignoring the social and economic realities that both parents may experience. This approach demonstrates that Islamic family law not only regulates relationships based on textual norms but also takes into account the evolving context of life within society. Thus, the distribution of responsibilities after divorce remains directed at efforts to optimally maintain children's well-being.

The development of Islamic family law thought in the contemporary era demonstrates a shift in understanding the issue of child custody and parenting after divorce. While in some classical literature, age and gender were significantly influential in determining custody, contemporary studies place greater emphasis on child welfare as the primary basis for decision-making. This perspective believes that children's needs cannot be understood solely through general, formal categories. Each child's circumstances are unique, necessitating a more comprehensive assessment of the available care environment. Attention to child welfare encompasses the parents' ability to provide physical needs, psychological support, emotional stability, and a healthy social environment for the child's development. This shift in orientation demonstrates an effort to adapt the principles of Islamic family law to the increasingly complex dynamics of modern society. The focus on the best interests of the child has become an increasingly prominent foundation in contemporary discourses on Islamic jurisprudence (S. Ramadhan & Muslimin, 2022).

Within a more modern framework, the determination of custody rights is no longer understood as a matter solely related to the identity of the father or mother. Primary attention is directed to the parents' ability to provide the most supportive caregiving environment for the child's development. Assessment of parenting capacity involves various aspects related to the child's physical, emotional, psychological, and social conditions. The parent deemed to be better able to meet these needs can be considered as the primary caretaker. This approach demonstrates a shift from assessments focused on formal categories to one more oriented toward the child's actual needs. From the perspective of contemporary Fiqh al-Usrah, the primary goal of custody arrangements remains the effort to create conditions that enable the child to grow and develop optimally. Determining custody is not aimed at giving advantage to one party, but rather at

ensuring that all decisions made provide the greatest benefit to the child's life, both now and in the future.

Ultimately, the entire concept of the division of parental responsibilities in Fiqh al-Usrah is rooted in the principle of *maslahah*, which places the welfare of the child as the primary consideration in all family law arrangements. Both in the context of an intact family and after divorce, the interests of the child remain a central concern and cannot be separated from the entire decision-making process. Custody, provision of livelihood, education, protection, and personality development of the child are understood as part of the responsibilities that must be carried out continuously by both parents. This principle demonstrates that Islamic family law has a strong orientation towards protecting children as the next generation who must have the opportunity to grow in a healthy and supportive environment. All forms of regulation regarding the division of parental responsibilities are ultimately directed towards creating tangible benefits for the physical, emotional, social, and spiritual development of the child. Thus, the concept of parenting in Fiqh al-Usrah not only reflects legal regulations but also reflects a moral commitment to maintaining the welfare of children as a primary goal that must be continuously maintained (M. U. C. Ramadhan et al., 2025).

Implementation of Islamic Law in Post-Divorce Childcare Practices

The implementation of Islamic law in post-divorce childcare practices in Indonesia exhibits quite complex dynamics, involving interactions between Islamic jurisprudence norms, the national legal system, and prevailing social realities. Regulations regarding childcare after the end of a marriage relate not only to the normative aspects contained in Islamic legal literature but also to the mechanisms of law enforcement in real life. Fiqh al-Usrah, as a branch of Islamic family law, has provided quite detailed guidelines regarding the rights and obligations of parents towards children, including after divorce. However, the process of applying these principles in the context of Indonesian society is not always straightforward. Various conditions underlying family life, differing understandings of the law, and the existence of a nationally applicable positive legal system make the implementation of post-divorce childcare an issue that requires in-depth attention. The diversity of social conditions in Indonesian society also influences how the principles of Fiqh al-Usrah are understood and applied in resolving family disputes. This situation shows that the implementation of Islamic law does not only depend on the existence of legal norms, but is also related to the ability of legal institutions and society to translate these values into practices that can guarantee the fulfillment of children's rights in a sustainable manner.

The discussion on child care after divorce occupies a very important position in Islamic family law because it is directly related to the protection of children's interests. In the framework of Fiqh al-Usrah, the child is seen as the party that must obtain a guarantee of maintenance and protection even though the marital relationship of the parents has ended. Child custody or *hadhanah* is one of the main issues that often appear in the divorce settlement process. Jurisprudence literature generally gives priority to mothers to take care of children who are still at an early age. The provision was born from consideration of the emotional closeness of the mother to the child as well as the mother's capacity in meeting the needs of direct day-to-day care. In the early stages of growth, children need intensive attention in both physical and psychological aspects so the existence of the mother is considered to have a very important role in supporting the development. In this context, the right of custody given to the mother is understood as a form of protection for the child's interests and not simply as an exclusive right attached to one of the parties. The main orientation to be achieved is to ensure the child's well-being through a nurturing environment that is able to meet basic needs and provide a sense of security for the process of growth and development (Hermanto et al., 2024).

On the other hand, although day-to-day care is more often the mother's responsibility, Islamic jurisprudence (Fiqh al-Usrah) still places the father as the party with important obligations towards the child's life. Divorce does not remove the father's responsibility to provide sustenance, education, protection, and support necessary for the child's development. The obligation to provide sustenance encompasses various basic needs related to the child's survival, such as food, clothing, healthcare, and education. From an Islamic legal perspective, this responsibility remains with the father even if he is no longer the party providing direct daily care. A father's presence in a child's

life also has broader dimensions than merely economic aspects. Fathers retain moral and educational responsibilities that contribute to the formation of character, religious values, and the child's readiness for social life. The division of responsibilities between fathers and mothers after divorce is essentially designed to ensure the continuity of meeting the child's overall needs. This pattern ensures that children continue to receive attention and support from both parents even though the family structure has changed due to the divorce.

Although the normative framework for post-divorce childcare has been clearly formulated in Fiqh al-Usrah and national legal regulations, its implementation in practice often faces various obstacles. One frequently encountered problem relates to differences in interpretation between fiqh principles and provisions contained in Indonesian positive law. The Compilation of Islamic Law, as one of the family law instruments for Muslims in Indonesia, stipulates that custody of children under a certain age is generally granted to the mother. Once the child reaches adulthood, considerations regarding custody can be re-evaluated, taking into account the child's best interests. This provision demonstrates an effort to integrate the principle of benefit into national legal mechanisms. However, the application of these provisions in practice often cannot be separated from the actual conditions faced by each family. Economic capacity, psychological condition, social environment, and the quality of the relationship between parents and children are factors that influence the decision-making process regarding custody. This reality demonstrates that legal implementation cannot be separated from the context of the lives of the parties involved in family disputes.

In the Indonesian legal system, religious courts play a very important role in translating the principles of Fiqh al-Usrah into decisions that have legal force. Religious courts are institutions tasked with resolving various family disputes, including cases related to child custody after divorce. In the process of examining cases, judges not only consider the normative provisions contained in Islamic law and the Compilation of Islamic Law, but also pay attention to the concrete conditions faced by children and parents. Considerations regarding the welfare of children are one of the aspects that receive primary attention in the decision-making process. Factors such as emotional stability, economic ability, health conditions, the quality of the living environment, and the psychological relationship between children and parents are often part of the assessment carried out by the court. This approach reflects a strong orientation towards protecting the interests of children as the main goal in resolving custody cases. Through this mechanism, the court seeks to ensure that the resulting decisions not only have legal legitimacy, but also provide real benefits for the child's life after the divorce takes place (Suryantoro, 2026).

Judicial practice demonstrates that considering the parents' capacity to carry out their caregiving role is a crucial aspect in determining custody. Although in classical Islamic jurisprudence (fiqh) literature, early childhood care is more often assigned to the mother, religious courts may consider various circumstances that indicate that one party has a greater capacity to meet the child's needs. This consideration is not intended to disregard the principles of Islamic law that have developed within the Islamic jurisprudence tradition, but rather to implement the principle of benefit, which is the primary objective of Islamic family law. The parents' ability to provide a safe, stable, and supportive environment for the child's development is a factor that receives attention in the assessment process. In some cases, adequate financial conditions, psychological readiness, and the quality of the relationship between the child and the parents are also factors taken into account in determining the most appropriate form of care. This approach demonstrates that the implementation of Islamic law in the modern context increasingly emphasizes the importance of analyzing the child's actual needs over the mere application of formal rules.

Although various legal guidelines governing the division of post-divorce responsibilities exist, their implementation often faces obstacles related to the inability or non-compliance of one party in fulfilling their obligations. The issue of child support is a common example. Not all parents burdened with child support obligations are able or willing to consistently fulfill these responsibilities. This situation can have a significant impact on children's lives, as basic needs that should be met are hindered. Beyond the issue of child support, there are also situations where one parent experiences limitations in providing adequate attention and care to the child. This situation can reduce the effectiveness of the custody rights established by the court decision. An imbalance in the implementation of parental responsibilities has the potential to place children in a vulnerable

position because they do not receive optimal support from both parties. In such circumstances, the primary goal of parenting, which is oriented towards the child's well-being, becomes more difficult to achieve optimally.

Another issue affecting the implementation of Islamic law in post-divorce childcare relates to the diversity of views prevailing in society. Understanding of child custody is often influenced by prevailing social and cultural values. Some communities still maintain the view that mothers are automatically considered the party with the highest right to care for children after divorce. This view is rooted in classical understandings long established in social and religious traditions. On the other hand, there are also groups in society who emphasize the importance of both parents' involvement in a child's life and believe that parenting ability is not solely determined by gender. These differing perspectives demonstrate that the implementation of Islamic family law does not occur independently of social and cultural influences. Legal norms often interact with prevailing values in society, resulting in variations in their application depending on the surrounding social context. This situation demonstrates that the success of legal implementation is also influenced by the level of public understanding of the goals and principles underlying the legal regulations.

Developments in contemporary Islamic jurisprudence (fiqh) suggest a growing emphasis on the principle of child welfare in determining custody rights. The primary focus is no longer solely on formal categories related to the identity of the father or mother, but rather on the ability of each party to provide a supportive environment for the child's development. Within this framework, custody can be awarded to the party deemed more capable of meeting the child's physical, emotional, psychological, and social needs. This approach provides greater scope for decision-making that takes into account the specific circumstances of each family. If circumstances indicate that the father has a better parenting capacity than the mother, then the possibility of granting custody to the father can be considered as part of efforts to safeguard the child's well-being. Such considerations reflect the development of Islamic family law, which increasingly emphasizes the substance of child protection rather than simply maintaining formal patterns of regulation. An orientation toward the child's best interests is becoming an increasingly strong foundation in contemporary family jurisprudence discourses.

The overall picture of the implementation of Islamic law in post-divorce childcare in Indonesia demonstrates a close relationship between the principles of Fiqh al-Usrah, the national legal system, and the prevailing social realities within society. The various challenges that arise demonstrate that the application of Islamic family law requires an approach that comprehensively accommodates children's needs. The principle of *maslahah*, the primary foundation of Fiqh al-Usrah, remains strongly relevant in addressing post-divorce childcare issues. Religious courts, as the authorized institutions in resolving family disputes, have a crucial responsibility to ensure that every decision taken is truly oriented toward the welfare of the child. Consideration of the child's parenting abilities, psychological condition, social environment, and developmental needs is an integral part of this process. A flexible approach based on the specific circumstances of the family allows for more effective protection of children's rights. In this context, the implementation of Islamic law serves not only as a dispute resolution mechanism but also as an instrument for maintaining the continued well-being of children after divorce (Hifni, 2016).

Obligation of Maintenance and Division of Responsibilities

Within the framework of Islamic jurisprudence (Fiqh al-Usrah), discussions regarding the obligation to provide for children and the distribution of parental responsibilities, both during marriage and after divorce, occupy a fundamental position in the structure of Islamic family law. This concept is built on the principle of *maslahah*, which prioritizes the welfare of children as the primary objective in all legal arrangements related to the family. Children are viewed as subjects who have the right to receive protection and continuous fulfillment of their needs, regardless of changes in the relationship between the father and mother. Divorce, which ends a marriage, does not remove the moral, social, or legal responsibilities inherent in both parents. From this perspective, the continued fulfillment of children's rights remains a priority that must be maintained through a clear division of roles between father and mother. Islamic jurisprudence views this structure of responsibilities as not merely an administrative division, but rather part of a mechanism

for protecting the child's survival and overall development. Every decision related to support and care is directed at ensuring that children remain in conditions that allow for the balanced fulfillment of their physical, emotional, and social needs (Putra et al., 2025).

The obligation to provide maintenance in Islamic family law is positioned as the primary responsibility of the father towards his children. This responsibility is not abrogated even if the marital relationship between the parents ends through divorce. Maintenance is understood as fulfilling basic needs that encompass various aspects of a child's life, from food, clothing, and shelter to education and healthcare. The scope of maintenance in Islamic jurisprudence (Fiqh al-Ushrah) is not limited to material aspects alone, but also includes non-material support related to the child's psychological development. The father's presence in the form of attention, protection, and moral guidance also forms part of fulfilling this broader responsibility towards children. Within the framework of Islamic law, maintenance is positioned not only as an economic obligation but also as a manifestation of ongoing paternal responsibility. Although the mother plays a significant role in daily care, especially during early childhood, the obligation to provide maintenance remains with the father as part of the structure of responsibility established in Islamic family law. Thus, maintenance is a crucial instrument in maintaining the continued well-being of children after divorce.

Following a divorce, the division of roles between fathers and mothers undergoes adjustments to reflect the conditions established in the post-separation family structure. Child custody is generally granted to the mother, particularly in cases where children are still in their early stages of development. This determination is based on the consideration that mothers have a more intense emotional closeness and a more direct capacity to care for the child's daily needs. However, the determination of custody does not eliminate the father's obligation to provide ongoing support. Fathers remain responsible for ensuring that the child's basic needs are adequately met, both in the form of financial support and educational and health care. In practice, support is not only interpreted as an economic transfer but also encompasses attention to the child's overall development. A father's involvement in a child's life remains crucial in maintaining the balance between the material and non-material needs necessary for the child's growth and development. Thus, the post-divorce responsibility structure maintains the interconnectedness of the father's and mother's roles in ensuring the child's continued well-being.

In the practical implementation of Islamic law (Fiqh al-Ushrah), the division of parental responsibilities does not always occur uniformly. The social, economic, and psychological conditions of the family often influence how these obligations are distributed in real life. In some situations, mothers with sufficient financial resources can participate in meeting the child's needs, even though the primary obligation to provide for the child rests with the father. A mother's financial involvement can occur when family circumstances require additional support to ensure the child's needs are optimally met. Conversely, there are also situations where fathers face limitations in fulfilling their obligation to provide for the child, necessitating adjustments in the mechanisms for meeting the child's needs. This flexibility in the division of responsibilities demonstrates that the implementation of Islamic family law is not rigid but rather considers the realities faced by each family. In this context, the principle of benefit remains the primary foundation in determining the division of roles between fathers and mothers, ensuring that children's well-being can be maintained under various circumstances.

The development of contemporary Islamic family law demonstrates a greater emphasis on the principle of child welfare as the primary basis for determining custody and the allocation of parental responsibilities. In this approach, age and gender are no longer the sole factors in determining who is entitled to assume custody. Assessment of the family's specific circumstances is increasingly considered in the decision-making process. The ability of each parent to provide for the child's physical, emotional, psychological, and social needs is a crucial indicator in determining the most appropriate form of custody. In certain situations, a father may obtain custody if he is deemed more capable of providing the child with the stability he needs, both economically and psychologically. This approach reflects a shift in orientation from general normative patterns to more contextual considerations based on the child's actual needs. Thus, the allocation of responsibilities is no longer understood as a standardized role, but rather as a flexible mechanism to ensure the child's best interests are met (Daharis et al., 2025).

In the context of contemporary Islamic law in Indonesia, the implementation of the division of parental responsibilities after divorce demonstrates significant flexibility. The Compilation of Islamic Law, as one of the primary references in Islamic family law, stipulates that child custody rests with the mother until a certain age, with the child's best interests always taken into consideration in every decision. However, judicial practice shows that decisions regarding custody are not always fixed, but rather are adjusted to the evolving factual circumstances within the family. Religious courts have the authority to assess various aspects related to the child's welfare, including the economic situation, psychological stability, and the parenting abilities of each parent. In this process, consideration of the child's best interests is a dominant factor influencing the outcome of the decision. This flexibility demonstrates that Islamic law in the Indonesian context operates not only within a normative framework but also adapts to evolving social needs. Thus, the division of responsibilities between fathers and mothers remains directed toward safeguarding the child's welfare as the primary goal in every family dispute resolution process.

In family life, the division of responsibilities between fathers and mothers often does not occur in a completely separate pattern, but rather overlaps in efforts to meet children's needs. Both fathers and mothers simultaneously contribute to the child's well-being, albeit in different roles. Fathers play a role in meeting economic needs, while mothers are more involved in direct daily care. Both play complementary roles in ensuring that children receive a supportive environment for their growth and development. The interaction between these two roles demonstrates that post-divorce childcare still requires joint involvement, even within a changed family structure. In many cases, the successful fulfillment of children's rights depends heavily on the extent to which both parents are able to consistently fulfill their responsibilities. When one party fails to fulfill their obligations optimally, the balance in childcare can be disrupted, impacting the child's overall well-being. This situation demonstrates the importance of shared awareness of parental responsibilities in maintaining the continued well-being of children after divorce.

Ultimately, the concept of the obligation to provide for children and the division of responsibilities in Fiqh al-Usrah demonstrates a balance between normative provisions and flexibility in their application. The principle of *maslahah* serves as the primary basis guiding all arrangements in Islamic family law, ensuring that they are always oriented toward the best interests of the child. Maintenance, as the father's obligation, and caregiving, as the mother's primary role, are not understood as a rigid division, but rather as a structure that can be adapted to the family's actual circumstances. Contemporary thought reinforces the understanding that child welfare is a top priority that must always be placed in every decision-making process. Thus, the implementation of the division of parental responsibilities in Islamic law serves not only as a normative guideline but also as an adaptive mechanism capable of responding to the social, economic, and psychological dynamics faced by families after divorce (Putra et al., 2025).

Challenges in Law Implementation

The implementation of Islamic law in post-divorce childcare in Indonesia presents a number of multidimensional challenges, encompassing normative, social, and institutional aspects. This complexity arises from the intersection of the principles of Islamic jurisprudence (Fiqh al-Usrah) with the prevailing national legal system, in the form of the Compilation of Islamic Law (KHI) and various other regulations. Conceptually, Islamic jurisprudence provides relatively systematic guidelines for childcare, including determining custody rights, maintenance obligations, and the division of parental responsibilities. However, in practice, the application of these principles does not always operate in a harmonious manner. Differences in approach between normative Islamic law and positive law often create diverse interpretations within the religious courts. This situation requires complex adjustments, given that each divorce case has distinct social and family characteristics. The tension between normative texts and empirical reality is an integral part of the dynamic implementation of Islamic family law in Indonesia. This situation demonstrates that the law operates not only within the realm of formal regulations but also within a constantly evolving social context influenced by various complex external factors (Safii & Kaur, 2025).

One of the most prominent challenges relates to the inconsistency between Islamic jurisprudence (Fiqh al-Usrah) and Indonesian positive law, particularly the Compilation of Islamic Law. Within the framework of Islamic jurisprudence, child custody is generally granted to the

mother, especially in early childhood, based on considerations of emotional closeness and the ability to provide more intensive, direct care. This view is rooted in normative constructs developed in the classical Islamic jurisprudence tradition. Meanwhile, under Indonesian positive law, the determination of custody is not solely dependent on the child's age but also considers aspects of overall well-being. In practice, religious courts use a more contextual approach, assessing various factors such as the child's psychological condition, the parents' economic capacity, and the stability of the residential environment. This difference in orientation often creates broad room for interpretation in decision-making, often leading to confusion in determining the most appropriate basis for consideration. This situation demonstrates that differences in legal paradigms occur not only at the theoretical level but also directly impact judicial practice in handling family cases (Kurniawan, 2024).

Another challenge affecting the implementation of Islamic law in post-divorce childcare relates to the social and economic conditions of parents. In many cases, the obligation to provide child support, which is normatively imposed on fathers, cannot always be optimally implemented due to various limitations faced in real life. Economic factors are one of the main obstacles preventing the fulfillment of child support from running smoothly. On the other hand, mothers who receive child custody also face unique challenges, particularly when having to combine their role as primary caregiver with the responsibility of meeting their personal and children's economic needs. This situation often creates a double burden that impacts the overall quality of childcare. An imbalance in meeting children's needs can impact their physical, emotional, and social development in the long term. From a *maslahah* perspective, this situation demonstrates a gap between normative principles that idealize the fulfillment of children's rights and social realities that do not always support the full implementation of this ideal (Putra et al., 2025).

Differences in perception between society, families, and law enforcement officials also complicate the implementation of Islamic law in the context of post-divorce childcare. In most societies, traditional views on gender roles remain strongly held, with mothers positioned as the most qualified to care for children, while fathers are more dominant in the role of breadwinners. This mindset often influences social expectations regarding court decisions in child custody cases. In practice, these differing understandings can influence the judicial decision-making process, even though courts are normatively required to consider the principle of child welfare as a primary priority. The tension between traditional views and more contextual legal approaches creates room for interpretation that does not always align with the principle of Islamic jurisprudence (*Fiqh al-Ushrah*), which emphasizes *maslahah* (benefit). This situation demonstrates that the law does not operate in a neutral space but always interacts with the social values that exist within society.

The influence of culture and societal traditions also significantly contributes to the challenges of implementing Islamic law in post-divorce childcare. In the Indonesian social context, patriarchal values remain quite dominant in shaping perceptions of the role of parents. Fathers are often understood as the primary breadwinners, while mothers are considered the primary caregivers. This structure of thought influences how society views the division of child custody after divorce. In some cases, custody decisions are influenced more by entrenched social assumptions than by a comprehensive analysis of the family's actual circumstances. This situation has the potential to shift the principle of *maslahah* (benefit), which should be the primary basis for legal decision-making. In practice, religious courts are not always completely independent of these social influences, so their decisions sometimes reflect a compromise between legal norms and prevailing cultural realities. This phenomenon demonstrates that the implementation of Islamic family law cannot be separated from the surrounding cultural context.

The low level of legal understanding among the public also poses a significant challenge to the implementation of Islamic law regarding post-divorce childcare. In many regions, particularly those far from legal service centers, public understanding of parental rights and obligations remains limited. Many individuals lack access to adequate information regarding Islamic legal provisions or national regulations governing childcare. This situation often results in decisions made in parenting practices that are not based on a comprehensive understanding of applicable legal principles. Ignorance of available legal mechanisms also hinders parents' efforts to optimally defend children's rights. This situation has the potential to lead to parenting

practices that are inconsistent with normative provisions, thus subverting the goal of child protection. In this context, access to legal education is a crucial factor that needs to be considered in order to improve the effectiveness of the implementation of Islamic family law in society (Arfa & Turnip, 2025).

Another equally important challenge relates to the weak oversight mechanism for the implementation of religious court decisions. Although courts have issued decisions regarding custody and child support obligations based on Islamic legal principles, implementation in the field does not always align with these decisions. The absence of an effective oversight system means that the implementation of parental obligations often depends on the individual awareness of each party. In some cases, child support obligations are not consistently fulfilled, while child custody is not carried out in accordance with established agreements or legal decisions. This situation creates an imbalance in the fulfillment of children's rights, which ultimately impacts their quality of life. Weaknesses in oversight demonstrate that the effectiveness of the law is determined not only by the existence of regulations, but also by the extent to which implementation mechanisms can be implemented consistently and sustainably in social practice.

The gap between Fiqh al-Usrah and positive legal practice in Indonesia has become one of the main issues in the implementation of Islamic family law, especially in child rearing after divorce. In Fiqh al-Usrah, provisions regarding custody, maintenance, and parental responsibilities have been formulated normatively with an orientation on the principle of *maslahah*. Child custody is generally given to the mother, while the father bears the main responsibility for fulfilling maintenance. However, in positive legal practice, especially through KHI, there is a more flexible approach in determining child custody. Religious courts not only consider the age and gender of the parents, but also various other factors related to the welfare of the child. This approach reflects a shift from a textual normative pattern to a more contextual and situational approach.

These differences are also evident in the concept of maintenance used in both legal systems. Islamic jurisprudence (Fiqh al-Usrah) defines maintenance not only as fulfilling material needs but also encompasses the emotional and psychological aspects of a child. In practice, maintenance reflects broader responsibilities beyond mere financial support. Meanwhile, in Indonesian positive law, maintenance is more often understood in the context of material economic obligations. This difference in interpretation creates gaps in the implementation of children's rights, particularly in emotional and psychological care, which do not always receive equal attention in formal legal practice. This situation indicates that understanding the concept of maintenance in Islamic family law requires a more comprehensive approach to fully reflect children's needs (Busriyanti et al., 2025).

Differences in views regarding the role of parents in post-divorce childcare also reinforce the gap between Islamic jurisprudence (Fiqh al-Usrah) and positive law. In most Islamic jurisprudence (fiqh) literature, mothers are positioned as the primary caregivers of young children, while fathers are more dominant in fulfilling their economic needs. However, in positive law, the assessment of custody rights is based more on each parent's actual ability to meet the child's overall needs. This approach creates a broader scope for judgment in determining the most suitable party for care. In many cases, court decisions no longer rely on gender categories but rather on an analysis of the specific circumstances faced by the family. This indicates a shift in legal orientation toward a more holistic approach based on child welfare as the primary priority.

The overall challenges in implementing Islamic law regarding post-divorce childcare demonstrate the need to strengthen the harmonization between Fiqh al-Usrah and positive law. Differences in normative interpretation, socioeconomic limitations, cultural influences, and weak legal understanding are intertwined factors influencing childcare practices in Indonesia. Efforts to harmonize these two legal systems are crucial to ensure that the primary goal of child protection can be optimally achieved. The principle of *maslahah*, the foundation of Fiqh al-Usrah, remains strongly relevant in addressing various contemporary issues, as long as it can be adaptively integrated with evolving legal and social conditions. In this context, strengthening legal understanding, increasing the effectiveness of supervision, and adopting a more contextual approach to decision-making are crucial for improving the implementation of Islamic family law in Indonesia.

Conclusion

The discussion on the implementation of Islamic law in post-divorce childcare demonstrates that Fiqh al-Usrah places the principle of *maslahah* as the primary foundation in determining parental rights and obligations. The normative structure established in fiqh provides a relatively clear framework for the division of roles between fathers and mothers, in both financial support and caregiving. Fathers are positioned as responsible for meeting children's material needs, while mothers play a dominant role in direct care, particularly during early childhood. However, this framework is not rigid but strongly oriented toward ensuring the child's overall well-being. In practice, the implementation of these principles in Indonesia is shaped by positive law, social and cultural conditions, and parents' economic capabilities. The Compilation of Islamic Law and the role of religious courts demonstrate an effort to integrate Islamic jurisprudence principles with the needs of more contextual modern law. Determining custody no longer relies solely on the age or gender of the parents, but also considers the psychological, social, and social aspects of the child's life. This demonstrates that the application of Islamic family law operates within a framework that adapts to societal realities.

Ultimately, the challenges arising in implementing Islamic law regarding post-divorce childcare underscore the importance of harmonizing Islamic jurisprudence (fiqh) norms with positive law. Interpretive gaps, economic constraints, cultural influences, and weak legal understanding are factors that impact the effectiveness of existing regulations. Efforts to strengthen legal understanding, increase consistency in enforcing decisions, and adopt a more child-centered approach are crucial to ensuring that the primary objectives of Islamic Jurisprudence (Fiqh al-Usrah) are optimally achieved within Muslim families in Indonesia.

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