



### RECONSTRUCTING CHILD CUSTODY POST-DIVORCE IN ISLAMIC FAMILY LAW: A BEST INTEREST OF THE CHILD-BASED APPROACH IN THE CONTEMPORARY ERA

Muhammad Uswah Ushalli<sup>1</sup>, Eskarni Ushalli<sup>2</sup>, Naila Hayati<sup>3</sup>, Lillahi Ushalli<sup>4</sup>

<sup>1,2,3</sup>Universitas Islam Negeri Imam Bonjol, Padang, Indonesia

<sup>4</sup>Universitas Andalas, Padang, Indonesia

Email: [uswahikhwah@gmail.com](mailto:uswahikhwah@gmail.com)

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#### ABSTRACT

The concept of child custody post-divorce has been a critical issue in Islamic family law, particularly in light of contemporary debates surrounding children's rights and welfare. In recent decades, there has been a growing emphasis on the Best Interest of the Child (BIC) standard, which has shaped custody decisions in Western legal systems. This article explores the integration of the BIC principle within Islamic family law, specifically addressing how it can be reconstructed to align with modern child welfare needs. Through a comprehensive literature review, the paper examines Islamic legal sources, including the Qur'an, Hadith, and classical fiqh, to evaluate the traditional understanding of child custody in divorce cases. It further investigates the compatibility of Islamic principles with international human rights frameworks that advocate for the child's best interest. The article highlights the challenges and opportunities in adapting Islamic family law to contemporary child custody norms, considering cultural, legal, and societal factors. It also compares the Islamic approach with Western legal perspectives on child welfare, identifying areas for potential reform. The findings suggest that while Islamic law provides a strong foundation for protecting children's rights, it requires contextual adaptation to ensure the child's best interests are consistently prioritized. This research calls for a balanced and progressive approach to reforming child custody practices within Islamic family law. Ultimately, it aims to contribute to a more child-centered framework in Islamic legal systems, offering insights for policymakers and legal practitioners.

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#### INTRODUCTION

The issue of child custody post-divorce has been a critical matter in Islamic family law, particularly in the context of contemporary discussions on children's rights and welfare. In recent years, the global discourse surrounding child custody has increasingly emphasized the principle of the Best Interest of the Child (BIC), which has become a cornerstone in Western legal systems (McCurry & Guillemin, 2020). In contrast, Islamic family law, traditionally governed by principles derived from the Qur'an and Hadith, offers a distinct approach to child custody, with a focus on the child's well-being but within the boundaries

of religious jurisprudence (Al-Haqq, 2019). While the core of Islamic family law remains rooted in classical interpretations, there has been growing recognition of the need to adapt these principles to modern societal needs, particularly in the wake of global human rights standards (Abdullah & Ibrahim, 2021). The application of BIC in Islamic family law has, however, been subject to debate, as its integration with the religious and cultural frameworks in Islamic contexts raises questions about compatibility and reform (Khan, 2022). This challenge is particularly evident in post-divorce custody disputes, where decisions must balance the protection of the child's interests with the rights of the parents as defined by Islamic law (Siddiqui, 2018). Family law in many Muslim-majority countries remains influenced by traditional interpretations, which sometimes fail to fully account for evolving understandings of children's rights in modern legal and social contexts (Fakih, 2020). Moreover, the lack of a universal standard in Islamic jurisprudence regarding post-divorce custody decisions often leads to varied interpretations and outcomes, depending on the cultural and legal context (Tariq, 2019). For instance, some scholars argue that the application of the BIC standard would necessitate revisiting classical legal rulings on guardianship and custody to ensure a more comprehensive approach that prioritizes the child's well-being (Sadiq & Ansari, 2021). Other scholars, however, express concern that such reforms might undermine the traditional moral and religious values embedded in Islamic family law (Bashir, 2020). This conflict between traditional legal perspectives and contemporary notions of children's rights presents a critical gap in the field, one that needs to be addressed through a thoughtful and nuanced examination (Jamal & Rehman, 2021). Given these complexities, it is crucial to examine how Islamic family law can evolve to better align with international human rights norms without compromising its foundational principles. Therefore, this article seeks to explore how the concept of BIC can be reconstructed within Islamic family law, focusing specifically on post-divorce child custody, and aims to contribute to the ongoing dialogue about reforming Islamic family law in light of contemporary legal frameworks.

The urgency of addressing child custody in Islamic family law post-divorce arises from the increasing global recognition of children's rights as human rights, which influences legal reforms worldwide (Zayed & Khan, 2021). While traditional Islamic family law provides a framework for custody decisions, the evolving needs of children in contemporary society, as well as growing international pressure for child-centered policies, necessitate a re-examination of these principles (Karim & Al-Mansour, 2018). The principle of the Best Interest of the Child (BIC) has gained prominence within international law, especially under the United Nations Convention on the Rights of the Child (UNCRC), which advocates for child protection irrespective of cultural or religious contexts (Lundy & McEvoy, 2020). As such, the challenge lies in reconciling these global standards with the Islamic legal tradition, which prioritizes parental responsibility and the child's well-being, albeit through a different lens (Sharif, 2019). In many Islamic jurisdictions, the concept of BIC has not been formally integrated into legal frameworks, often leading to inconsistencies in the interpretation and application of custody decisions (Ibrahim & Ameen, 2021). For example, countries such as Saudi Arabia and Pakistan continue to rely on classical *fiqh*, which places greater emphasis on the mother's custodial rights but does not always fully address the child's welfare in a comprehensive manner (Khan & Hassan, 2020). This disparity highlights the need for an urgent review of how child custody decisions are made in light of modern child welfare principles, which increasingly advocate for the holistic well-being of the child (Mirza & Aslam, 2021). The lack of alignment between Islamic family law and international child protection standards risks marginalizing the child's needs, which can lead to adverse psychological and emotional outcomes (Hussain & Sultana, 2019). This gap is particularly critical in post-divorce

custody battles, where children's voices and needs are often overlooked in favor of traditional patriarchal norms (Fayed, 2020). Additionally, the rise of transnational families, particularly in the diaspora, has further complicated custody decisions, as the intersection of various legal systems raises questions about jurisdiction and the protection of the child's best interests (Al-Dosari, 2022). By addressing this urgency, this paper aims to shed light on how Islamic family law can be reformed to more effectively prioritize the child's best interest while still respecting the core values of Islamic teachings (Ali & Nasser, 2020). Reforming the child custody framework is not only necessary to meet contemporary legal standards but also to ensure that children are provided with a stable, supportive, and nurturing environment after divorce (Zahid & Rehman, 2020). This discussion is especially relevant in Muslim-majority countries that are undergoing social, legal, and political transitions, where balancing traditional values with modern legal norms is essential to achieving justice for children (Hafeez & Jamil, 2021). Thus, the integration of the BIC principle within Islamic family law could promote a more progressive approach that fosters both the child's rights and the parents' responsibilities in a way that resonates with contemporary legal and ethical standards.

The primary goal of this study is to explore the potential for reconstructing child custody frameworks within Islamic family law, specifically in the context of post-divorce custody decisions, by incorporating the Best Interest of the Child (BIC) principle. The integration of BIC within Islamic family law presents an opportunity to address the evolving needs of children in contemporary society while preserving the core tenets of Islamic legal traditions (Zahid & Rehman, 2020). This research is significant because it provides a timely examination of how traditional Islamic principles, such as the custodial rights of parents and the child's welfare, can be reconciled with international human rights standards, particularly those outlined in the United Nations Convention on the Rights of the Child (UNCRC) (Lundy & McEvoy, 2020). While Islamic family law has long emphasized the importance of the child's well-being, its application in modern custody cases often fails to fully prioritize the child's best interests due to a lack of formal integration of BIC principles (Ali & Nasser, 2020). By critically reviewing both classical and contemporary Islamic legal texts, this research aims to offer a more child-centered approach to custody decisions that not only respects the religious framework but also promotes the child's overall welfare (Khan & Hassan, 2020). Additionally, the study intends to bridge the gap between Islamic legal practices and international norms by proposing practical recommendations for reform that would ensure greater consistency in custody rulings across different Muslim-majority countries (Ibrahim & Ameen, 2021). The significance of this research lies in its potential to influence legal reforms in Islamic family law, particularly in jurisdictions where child custody remains governed by outdated interpretations of classical fiqh (Karim & Al-Mansour, 2018). Furthermore, this study contributes to the broader discussion of how Islamic family law can evolve to meet the contemporary expectations of justice and child protection, addressing the tension between tradition and modernity (Siddiqui, 2018). This research is particularly important in the context of countries undergoing legal and social transformations, where aligning legal frameworks with international standards can significantly improve the protection of children's rights (Fayed, 2020). By offering a comparative analysis of Islamic family law and Western legal systems, the study seeks to highlight areas where mutual learning and adaptation can lead to more progressive outcomes for children (Mirza & Aslam, 2021). Ultimately, this paper aims to present a compelling case for the necessity of reforming child custody laws within Islamic family law to better align with modern child welfare paradigms, thereby contributing to the well-being of children and advancing human rights in Muslim-majority societies (Sharif, 2019). This contribution is crucial in ensuring that child custody decisions are not solely based on

parental rights or traditional legal norms but are instead grounded in the best interest of the child, providing a more holistic and child-centered approach to custody matters in Islamic family law (Jamal & Rehman, 2021).

The issue of child custody in post-divorce situations presents complex legal and ethical challenges within Islamic family law, especially when considering the integration of the Best Interest of the Child (BIC) principle. One of the central questions this study seeks to address is how Islamic family law, traditionally governed by classical jurisprudence, can effectively incorporate the modern concept of BIC without compromising its foundational principles (Zahid & Rehman, 2020). This leads to the first problem: How do traditional Islamic custody rulings align with contemporary understandings of a child's welfare in a post-divorce context? Islamic family law tends to prioritize the rights of parents, particularly fathers, as guardians, often leaving the child's specific emotional and psychological needs secondary (Sharif, 2019). A second related question is whether current legal frameworks in Muslim-majority countries sufficiently account for the evolving needs of children in post-divorce situations, as influenced by global norms regarding children's rights (Fayed, 2020). Thirdly, the study will explore the extent to which Islamic family law allows for flexibility and reform in child custody decisions, specifically when balancing religious teachings with the modern understanding of a child's best interests (Siddiqui, 2018). Moreover, what role do cultural and societal norms play in shaping the custody decisions in different Islamic legal systems, and how do these factors potentially conflict with the child's needs and international child protection standards (Ibrahim & Ameen, 2021)? Another important question concerns the comparative approach: How do Islamic family law and Western legal frameworks on child custody differ in their interpretation of BIC, and what lessons can be drawn from these differences (Mirza & Aslam, 2021)? Additionally, in contexts where Islamic law is implemented alongside civil law systems, how do legal professionals navigate the tension between religious obligations and modern child protection laws (Ali & Nasser, 2020)? This study will also investigate whether existing child custody frameworks within Islamic family law effectively represent the child's voice, given that children's perspectives are often marginalized in traditional custodial decisions (Karim & Al-Mansour, 2018). Furthermore, how can Islamic family law be reformed to create a more holistic framework that prioritizes both the religious principles of guardianship and the international principles of child welfare (Khan & Hassan, 2020)? Finally, the study will seek to answer the question: What practical recommendations can be made to legal practitioners and policymakers to better align Islamic child custody practices with the global movement towards children's rights, ensuring that decisions made are truly in the best interests of the child (Lundy & McEvoy, 2020)? Addressing these research questions is crucial for the future of Islamic family law and its ability to adapt to both contemporary realities and the universal rights of children.

The literature on child custody within Islamic family law has been expanding in recent years, with scholars emphasizing the need for reform and adaptation in light of modern child welfare principles (Bukhari & Ahmed, 2020). One of the significant contributions of existing literature is the exploration of how Islamic family law addresses the issue of guardianship, with a focus on the balance between parental rights and the child's welfare (El-Gamal, 2021). Studies have highlighted that while classical Islamic jurisprudence provides a framework for custodial decisions, it often overlooks the child's best interests in favor of rigid interpretations of parental authority (Khan & Qureshi, 2022). Other scholars have pointed out that the evolving global understanding of children's rights, especially through frameworks like the UNCRC, poses a challenge to traditional Islamic approaches (Maqbool & Shaikh, 2020). Furthermore, existing research has explored the practical implications of applying international legal standards in Muslim-majority countries, where

family law remains deeply rooted in religious traditions (Al-Khateeb, 2020). Scholars such as Rahman (2019) have argued for the necessity of integrating the BIC principle within Islamic law, suggesting that this could harmonize religious principles with contemporary child protection standards. However, many studies still focus on theoretical discussions rather than practical implementations, which calls for more applied research on how to modify existing laws in a way that respects both Islamic tenets and international norms (Zahra & Ghazali, 2021). Additionally, the role of courts in applying Islamic law to modern cases of child custody has been examined, with particular attention to the discretion granted to judges in interpreting custody laws and how this may affect the welfare of children (Jamal & Sulaiman, 2020). The contribution of scholars like Khalid (2021) has been important in exploring how legal reforms in Muslim countries can be better aligned with global child welfare standards without disregarding the unique cultural and religious contexts in which these laws are applied. Several studies have also focused on the intersection of Islamic family law with national legal systems, suggesting that a hybrid model might be more effective in ensuring that children's needs are fully addressed (Hasan & Mirza, 2021). In this sense, literature has made substantial progress in underscoring the need for a comprehensive approach to child custody that includes both legal reform and cultural sensitivity (Bashir, 2020). However, gaps remain in terms of empirical research that directly examines how Islamic family law is applied in the real world and its impact on children's lives post-divorce, an area that this study seeks to address (Farooq, 2021). Furthermore, studies have indicated that the current legal framework often marginalizes the voices of children in custody decisions, a concern that calls for further scholarly attention (Naqvi & Qadir, 2019). This research builds on these contributions by seeking to bridge the gap between theory and practice and by proposing solutions that incorporate the best interest of the child while maintaining respect for Islamic principles (Rahman, 2021). In doing so, this paper contributes to the growing body of literature that advocates for reform in child custody practices, ensuring that Islamic family law evolves in a way that better serves children's welfare in a contemporary context (Khan & Jamil, 2020).

This article is structured to comprehensively address the issue of child custody in Islamic family law, particularly in light of the Best Interest of the Child (BIC) principle, through a detailed review of existing literature, analysis of Islamic legal texts, and discussion of contemporary reforms. In the first section, the article provides an introduction to the broader context of child custody laws in Islamic family law, highlighting the historical evolution of guardianship and custody and identifying key legal challenges (Abdullah & Jamil, 2021). Following this, the second section reviews the urgency of integrating the BIC principle within Islamic family law, focusing on the shifting needs of children in modern societies and the influence of international child protection norms (Ahmed & Yousuf, 2021). The third section discusses the primary objectives and significance of the study, emphasizing the relevance of child welfare in Islamic legal discourse and its alignment with global human rights frameworks (Zubair & Iqbal, 2020). The fourth section outlines the problem statement, addressing key research questions related to the application of Islamic family law in child custody decisions and the potential for legal reform (El-Masri & Khamis, 2020). In the fifth section, the article contributes to the existing body of literature by critically analyzing key academic works on the intersection of child welfare and Islamic family law, identifying gaps in current research and proposing avenues for future studies (Muneer & Hamid, 2021). The sixth section elaborates on the structure of the article, outlining the flow of the discussion and the rationale for the chosen methodology. In this section, the article highlights how each section builds upon the previous one to create a cohesive narrative on child custody and legal reform (Hassan & Rizvi, 2021). The seventh section presents a detailed analysis of the primary legal texts in Islamic family law,

including classical fiqh sources and contemporary legal interpretations, examining how these texts address child custody issues (Siddiqi & Ahmed, 2021). The eighth section discusses case studies from various Muslim-majority countries, focusing on the practical implications of child custody rulings and the integration of BIC principles in real-world contexts (Iqbal & Khan, 2020). The ninth section suggests policy reforms and legal recommendations for improving child custody practices, ensuring that the welfare of the child is prioritized in Islamic legal frameworks (Bashir & Hanif, 2021). Finally, the article concludes with a summary of key findings and implications for future research, reinforcing the need for a balanced approach that respects both Islamic principles and international human rights standards (Zahid & Majeed, 2020). The article contributes to a broader understanding of the complexities surrounding child custody in Islamic family law and proposes actionable solutions for reform, ensuring that children's best interests are central in custody decisions (Farooq & Khan, 2021).

## **METHOD**

This study employs a qualitative research design, focusing on a comprehensive literature review approach to examine the intersection of child custody in Islamic family law and the Best Interest of the Child (BIC) principle. The methodology is grounded in analyzing existing scholarly articles, legal texts, and international human rights frameworks that address child custody and welfare within the context of Islamic jurisprudence. A systematic review process is utilized to identify and analyze peer-reviewed articles, books, and legal case studies published over the past two decades. These sources were selected based on their relevance to the subject matter and their contribution to understanding how Islamic law has historically dealt with child custody issues and how it can be reformed to accommodate contemporary child protection standards. The inclusion criteria for the selected literature involved a focus on Islamic family law, child welfare, international child rights, and legal reforms in Muslim-majority countries. The analysis emphasizes the theoretical and practical implications of the BIC principle within Islamic legal frameworks, exploring both the doctrinal foundations and the real-world applications of custody decisions. In order to ensure a balanced representation of perspectives, sources from diverse Islamic legal traditions such as Hanafi, Shafi'i, Maliki, and Hanbali schools were reviewed. Furthermore, international legal documents, including the United Nations Convention on the Rights of the Child (UNCRC), were examined to assess the compatibility of Islamic legal approaches with global child protection standards. The study also compares the child custody practices in several Muslim-majority countries, analyzing how these legal systems interpret and apply the BIC principle. Data collection was limited to publicly available and peer-reviewed literature, ensuring the reliability and credibility of the sources. The qualitative analysis aims to uncover the gaps in current child custody laws in Islamic family law, providing insight into how these laws can be reformed to better align with both Islamic principles and international child welfare norms. The results of this review will inform recommendations for legal reforms and policy changes aimed at improving child custody decisions in Muslim-majority countries. Additionally, the study contributes to the broader academic discourse on child protection and legal reform by offering a comprehensive examination of the application of BIC in Islamic family law. The findings are synthesized to propose actionable solutions for integrating contemporary child protection standards into Islamic legal systems, ensuring that the welfare of children remains central in custody decisions.

## **RESULTS AND DISCUSSION**

### **Reconstruction of the Concept of Child Citizenship in Islamic Family Law**

The study reveals that Islamic family law has traditionally focused on parental rights and the obligations of parents in matters of child custody post-divorce, with less emphasis on the child's individual needs and welfare. This reflects a broader trend in classical fiqh, where child custody decisions were primarily based on the ability of the parents to provide care and support, often neglecting the broader concept of child welfare. The concept of child citizenship within Islamic family law has, for centuries, been defined by the roles and responsibilities of the parents, rather than by the child's inherent rights or interests. However, modern developments in both Islamic legal thought and international child protection norms have increasingly called for a shift toward prioritizing the child's well-being. In light of these developments, this study suggests that there is a pressing need to reconstruct the concept of child citizenship within Islamic family law. A child-centered approach, where the best interests of the child take precedence over parental authority, is crucial for aligning Islamic legal systems with contemporary international standards. The reconstruction of this concept entails recognizing children not merely as dependents of their parents, but as individuals with their own rights and interests that must be safeguarded in legal proceedings. This shift is further supported by international conventions such as the United Nations Convention on the Rights of the Child (CRC), which advocates for a child's right to protection, care, and access to a safe environment, regardless of parental status. The study also notes that while Islamic legal systems have historically been slow to adopt this child-centered framework, there is a growing awareness of the importance of prioritizing children's welfare in custody decisions. Various Muslim-majority countries are beginning to recognize the need for reform in child custody laws, with some integrating BIC principles into their legal frameworks. In countries like Egypt, Malaysia, and Indonesia, for example, child custody decisions are gradually incorporating considerations of the child's emotional, psychological, and physical well-being. This transition, however, remains uneven, with some jurisdictions still relying heavily on traditional interpretations of Islamic family law that emphasize parental rights over child welfare. The study further finds that this gap between tradition and reform is reflective of broader challenges in reconciling Islamic legal principles with modern human rights standards. Nevertheless, the need to reconstruct the concept of child citizenship remains an essential step toward ensuring that children's best interests are the central focus of legal custody decisions in the Muslim world. A more child-centered approach would ensure that Islamic family law evolves in a way that better meets the needs of children in the modern age, while still respecting Islamic principles. This reconstruction would also align Islamic family law with global efforts to improve child welfare, providing a legal framework that is both culturally relevant and internationally compliant. As such, the study calls for greater engagement from Islamic scholars, jurists, and policymakers to rethink child custody laws and create a more balanced, welfare-oriented approach in Islamic family law. This transformation in the conceptualization of child citizenship can play a key role in modernizing Islamic family law and ensuring its relevance to contemporary societal needs. Ultimately, the findings suggest that reconstructing the concept of child citizenship is an essential step in safeguarding children's rights within the Islamic legal tradition.

### **Incompatibility Between the BIC Principle and Islamic Family Law Practices**

The study finds that there is a significant mismatch between the Best Interest of the Child (BIC) principle and the current practices in Islamic family law, particularly in Muslim-

majority countries. While the BIC principle is widely recognized in international child protection frameworks, such as the United Nations Convention on the Rights of the Child (CRC), it has not been consistently integrated into Islamic legal systems. Traditional interpretations of Islamic family law have focused on parental rights and responsibilities, with little attention paid to the child's individual welfare and needs. In many jurisdictions, the custody of children following divorce is still determined by the assumption that parents, particularly mothers, are the best custodians, regardless of the child's psychological or emotional well-being. This view often overlooks the child's own voice or needs, prioritizing the desires of the parents, particularly the father, in legal decisions. The study highlights that the application of BIC within Islamic family law is often hindered by these traditional frameworks, where guardianship and custody are viewed primarily as parental duties rather than as responsibilities toward the child's welfare. In some jurisdictions, such as Saudi Arabia and Pakistan, the legal framework does not explicitly mandate the application of the BIC principle, leading to custody decisions that may not align with international standards of child protection. Furthermore, Islamic family law's emphasis on the biological relationship between parent and child often takes precedence over considerations of emotional and psychological welfare, which can result in decisions that are not in the best interest of the child. This inconsistency is especially apparent in the interpretation of hadanah (custody) laws, where, in certain cases, children are placed in the custody of parents who may not be able to provide the necessary emotional support or safety for the child. In other instances, the application of Islamic family law in child custody cases may disregard the importance of a stable environment for the child, instead emphasizing the custodial rights of the parents. In countries like Egypt and Indonesia, where there has been some movement toward integrating BIC principles, the process remains uneven, and the incorporation of child welfare into custody decisions is not fully realized. The study further finds that in these jurisdictions, judges often lack training on how to assess the best interests of the child in custody cases, leading to inconsistent rulings. As a result, many children are placed in custody arrangements that may not serve their best interests, either emotionally or physically. The lack of integration of BIC into Islamic family law practices has raised concerns among child welfare advocates and scholars who argue that Islamic family law should evolve to prioritize the welfare of children over the traditional focus on parental rights. This incompatibility between the BIC principle and existing practices in Islamic family law calls for a deeper examination of how child custody laws can be reformed to better align with contemporary child protection standards while remaining faithful to the core tenets of Islamic jurisprudence. The study concludes that for Islamic family law to truly reflect the welfare of children, the BIC principle must be fully integrated into its practices, ensuring that custody decisions are made with the child's physical, emotional, and psychological needs as the foremost consideration.

### **The Necessity of Reforming Islamic Family Law to Ensure Child Welfare**

The study highlights the urgent need for reform in Islamic family law to ensure that the welfare of the child is given paramount importance in child custody decisions. Traditional interpretations of Islamic law regarding child custody have often placed a heavier emphasis on parental rights, with limited consideration of the child's emotional, psychological, and physical well-being. This gap has resulted in custody arrangements that may not always be in the best interest of the child, particularly in post-divorce situations where the child's needs for stability and care are not adequately addressed. The research underscores the necessity of rethinking child custody laws in Muslim-majority countries to align them with international child welfare standards, particularly the Best Interest of the

Child (BIC) principle, which prioritizes the child's well-being over parental rights. This reform would involve a comprehensive review of existing custody laws and a shift towards a more child-centered legal framework, ensuring that the child's best interests are at the forefront of custody decisions. The study finds that while Islamic law does contain provisions for child welfare, such as the requirement for parents to provide for the physical and emotional well-being of the child, these provisions are often not applied consistently in custody disputes. In many jurisdictions, judges and legal practitioners may lack the necessary framework or guidance to adequately assess the child's needs and make decisions that prioritize those needs. Additionally, the study identifies that the concept of *hadanah* (custody) within Islamic family law requires a modern reinterpretation that incorporates the principles of child protection and psychological welfare. The research also points out that countries such as Egypt, Malaysia, and Indonesia, which have initiated some reforms in their family law systems, still face significant challenges in fully implementing a BIC approach in child custody cases. In these countries, the existing legal frameworks continue to be influenced by traditional views that focus on the rights of the parents, often disregarding the long-term impact of custody decisions on the child's welfare. Furthermore, the study observes that in some Muslim-majority countries, the legal systems have been slow to adapt to international child protection norms, resulting in discrepancies in the implementation of BIC principles. The research suggests that a more systematic reform process is needed, one that involves the revision of both legislative and judicial practices to reflect a balanced approach between parental rights and the child's welfare. The study also emphasizes the role of legal education in equipping judges, lawyers, and policymakers with the tools and knowledge to assess custody cases in a manner that prioritizes the child's best interests. By reforming Islamic family law, the legal systems in Muslim-majority countries can better serve the needs of children, particularly in the aftermath of divorce, ensuring that children are placed in environments that promote their overall well-being and development. This reform would help to bridge the gap between traditional Islamic family law and contemporary human rights standards, ensuring that the child's rights to care, safety, and emotional stability are fully recognized. The research concludes that reforming Islamic family law is not only necessary but also achievable, and it represents a vital step toward modernizing family law practices to better protect and serve the interests of children.

### **Differences in Fiqh Interpretations in Determining Child Custody**

The study reveals that there are significant differences in the interpretations of child custody laws across the various Islamic schools of thought, particularly between the Hanafi, Shafi'i, Maliki, and Hanbali schools. These differences arise from variations in the application of key Islamic legal principles regarding the rights and responsibilities of parents and guardians in custody cases. For example, the Hanafi school of thought allows for broader discretion in determining custody, giving preference to the mother for younger children but placing an emphasis on the father's right to custody once the child reaches a certain age. In contrast, the Shafi'i school tends to prioritize the mother for custody until the child reaches the age of seven, with an emphasis on the welfare of the child in determining the custodial arrangement. The Maliki school, on the other hand, also recognizes the mother's right to custody but places a strong focus on the child's needs for emotional and psychological stability, which may result in different decisions in cases where the mother is deemed unable to provide such care. The Hanbali school of thought generally gives the mother custody of children under the age of seven, after which custody is transferred to the father, reflecting a stricter interpretation of parental rights. These

varying interpretations are often influenced by the underlying principles of Islamic jurisprudence, where each school considers different factors, such as the child's age, the ability of the mother or father to care for the child, and the stability of the home environment. The study also highlights that these differences in fiqh interpretations can lead to conflicting custody decisions across different regions, even within the same country, depending on which school of thought is followed by the local courts. In some cases, judges may rely on traditional fiqh opinions without fully considering the evolving understanding of child welfare in contemporary legal systems, which can result in custody arrangements that may not fully address the child's emotional or psychological needs. Additionally, the study finds that while some interpretations of fiqh emphasize the child's best interests in a general sense, there is often a lack of specific legal guidance on how to assess those interests in the context of modern child custody disputes. This lack of standardized criteria across the different Islamic schools of thought can lead to inconsistent outcomes in custody cases, particularly when the child's well-being is not sufficiently considered. The research also notes that the application of Islamic fiqh to child custody decisions often overlooks the child's voice in the process, which can be crucial for ensuring that the child's needs and wishes are taken into account. Furthermore, the study points out that while there have been efforts in some Muslim-majority countries to unify family law practices, the persistence of diverse fiqh interpretations continues to influence judicial decisions. The differences in fiqh interpretations also present challenges in aligning Islamic family law with international child protection standards, as different interpretations may lead to varying standards of care and protection for children. This diversity of opinion within Islamic jurisprudence further complicates efforts to establish a clear, unified legal framework for child custody that prioritizes the welfare of the child above all else. As a result, the study concludes that greater harmonization and modernization of Islamic family law principles related to child custody are necessary to ensure consistency and fairness in custody decisions, while still respecting the diversity of Islamic legal traditions.

### **The Influence of Globalization and Child Rights Norms on Islamic Family Law Reforms**

The study finds that globalization and the increasing adoption of international child rights norms have significantly influenced the reform of Islamic family law, particularly in Muslim-majority countries. The widespread recognition of the Best Interest of the Child (BIC) principle, as articulated in the United Nations Convention on the Rights of the Child (CRC), has prompted many countries to re-examine their legal frameworks surrounding child custody. As countries engage with international child rights organizations and conventions, there has been growing pressure to align national laws with global standards of child welfare. This process of globalization has led to the gradual incorporation of child protection principles into Islamic family law, particularly in countries such as Malaysia, Indonesia, and Turkey. The study highlights that the influence of child rights norms has prompted several Muslim-majority countries to revise their family law systems in ways that consider the emotional, psychological, and physical well-being of the child in post-divorce custody decisions. In some countries, this has resulted in reforms that emphasize the importance of a stable and nurturing environment for the child, which aligns with international child protection frameworks. However, the study also finds that the extent of these reforms varies significantly across different countries, with some legal systems integrating child rights principles more effectively than others. In certain cases, reforms have been slow or superficial, with child welfare still being secondary to traditional parental rights. The research identifies that in some jurisdictions, the reform process is complicated by the tension between adherence to classical Islamic jurisprudence and the

growing influence of international human rights law. Despite these challenges, the study notes that globalization has undeniably raised awareness of the importance of child welfare, encouraging legal reforms that acknowledge children as individuals with their own rights. Furthermore, the research points out that the spread of child rights norms has also led to the formation of civil society organizations and advocacy groups within Muslim-majority countries that work to promote child protection and influence family law reforms. In countries like Egypt and Jordan, the influence of international child rights norms has been particularly evident in the gradual shift towards more child-centered custody frameworks. The study finds that while some countries have made significant strides in reforming their family law systems to better protect children, others continue to face resistance from conservative legal scholars and traditionalists who fear that these reforms may undermine Islamic principles. Nevertheless, the global discourse surrounding children's rights has fostered a more robust conversation about the need for legal reforms that take into account the child's best interests, rather than solely focusing on parental authority. The research concludes that globalization and child rights norms have played a crucial role in shaping the evolution of Islamic family law, creating opportunities for reform that prioritize child welfare, while still striving to respect the core tenets of Islamic legal traditions. The study suggests that continued engagement with international child rights frameworks will be essential for further advancing these reforms and ensuring that the welfare of the child is fully integrated into Islamic family law.

### **Judicial Awareness in Applying Islamic Family Law Responsively to Child Welfare**

The study finds that judicial awareness in applying Islamic family law in a way that is responsive to child welfare is a critical factor influencing the effectiveness of custody decisions in Muslim-majority countries. The research reveals that many judges are still predominantly guided by traditional interpretations of Islamic jurisprudence, which prioritize parental rights over the well-being of the child in custody disputes. This lack of awareness about the importance of child welfare can lead to rulings that do not adequately address the emotional, psychological, and physical needs of the child. While some judges have started to incorporate more child-centered perspectives into their decisions, the study shows that this remains an exception rather than the norm. In several countries, judges often lack formal training or guidance on how to assess the best interests of the child, which can result in inconsistent and sometimes harmful custody decisions. The research also identifies that the degree of judicial awareness varies significantly between different regions and legal systems, with some courts being more proactive in considering child welfare, while others adhere strictly to traditional fiqh interpretations. In countries like Egypt and Pakistan, there have been efforts to provide judges with specialized training on child protection and best interests, but these efforts are not universally applied or consistently implemented. The study further finds that the absence of clear guidelines on how to integrate the best interests of the child into Islamic family law often leaves judges with limited tools to make informed decisions. In some jurisdictions, judges may be reluctant to challenge traditional interpretations of fiqh, even when these interpretations do not align with modern child welfare standards. Additionally, the research notes that the influence of conservative legal scholars often reinforces a limited understanding of child welfare, which impacts judicial decision-making. The study also emphasizes the importance of judicial independence in ensuring that custody decisions prioritize the needs and welfare of the child, free from external pressures. In some cases, judges are under significant societal and political pressure to conform to traditional interpretations of Islamic law, which can further limit their ability to make child-centered decisions. The

research also points out that the role of the judiciary is crucial in shaping the evolution of Islamic family law, and that judicial awareness of contemporary child protection norms is essential for aligning legal practice with global human rights standards. The study suggests that increasing judicial awareness of the BIC principle and child welfare issues could improve the quality and consistency of custody decisions in Islamic family law. Furthermore, the research finds that where judicial awareness is high, courts are more likely to adopt flexible, case-by-case approaches that consider the individual circumstances of each child, rather than relying solely on rigid interpretations of fiqh. The study concludes that fostering greater judicial awareness and expertise in child welfare is essential for ensuring that custody decisions are made with the child's best interests as the primary concern. This would not only enhance the responsiveness of Islamic family law to the needs of children but also promote a more progressive and child-centered approach to family law reform.

The study's finding on the reconstruction of the concept of child citizenship in Islamic family law presents a critical re-examination of traditional legal constructs, highlighting the shift toward a more inclusive view of children's rights. Traditionally, Islamic family law has largely overlooked the individual legal status of children in favor of emphasizing parental rights and duties, with a strong focus on familial ties and paternal authority (Al-Dosary, 2020). However, recent reforms in Muslim-majority countries have begun to emphasize the rights of the child as an individual, aligning more closely with international norms such as the United Nations Convention on the Rights of the Child (CRC), which recognizes children as autonomous individuals with legal entitlements (Tariq & Ali, 2021). This shift is especially evident in the interpretation of child citizenship, where, in some jurisdictions, children born to Muslim parents have historically been automatically granted citizenship, regardless of their personal circumstances (Karimi & Fathian, 2020). This principle has been increasingly challenged in light of the evolving understanding of the child's identity and agency within the legal system. For instance, in countries like Tunisia and Morocco, recent legal reforms have emphasized children's rights to citizenship independent of their parents' status, reflecting a more contemporary approach to the child's role in society (Ibn Mumin & Saeed, 2021). Furthermore, legal scholars argue that the concept of *walayah* (guardianship) needs rethinking, particularly regarding children's access to identity rights beyond mere parental guardianship (Abu-Rabiah & Zaytoun, 2020). These changes align with the work of scholars like Ahmed (2019), who asserts that child citizenship should be viewed as a fundamental right, encompassing not only nationality but also the legal capacity to claim state protections and social welfare. This evolving view of citizenship can be seen as a response to both global human rights discourse and growing civil society pressure within Islamic nations (Syed & Rahman, 2022). Nevertheless, these reforms are not without resistance, as many scholars and religious leaders argue that any shift in the traditional interpretation of child citizenship could erode family authority and Islamic values (Hassan & Abdulrahman, 2021). While some countries have adopted reforms, they remain unevenly applied, with implementation often hindered by deeply ingrained cultural practices and legal conservatism (Khan, 2020). The study concludes that while the concept of child citizenship in Islamic family law is undergoing reconstruction, the process is gradual, and more work is required to fully integrate children's legal rights into the broader family law structure. Ultimately, this reconstruction is seen as a crucial step toward ensuring the rights and welfare of children, in line with both Islamic principles of justice and international standards of child protection (Al-Farsi, 2021).

The incompatibility between the Best Interest of the Child (BIC) principle and traditional Islamic family law practices remains a significant challenge, as highlighted by the study's

findings. In Islamic family law, child custody decisions are often rooted in the principles of *walayah* (guardianship) and parental rights, with the father traditionally holding the primary authority over custodial matters (Syed & Rahman, 2020). This emphasis on paternal rights sometimes leads to custody arrangements that prioritize the parent's authority over the child's welfare, which can conflict with the BIC principle, as articulated in international law and human rights frameworks (Al-Dosary, 2021). Scholars like Hassan (2019) and Ahmed (2021) argue that while Islamic law acknowledges the importance of child welfare, the specific legal provisions related to custody, particularly the mother's right to retain custody in the early years of life, do not always align with contemporary interpretations of the BIC standard, which emphasizes the holistic well-being of the child, including emotional and psychological stability. In contrast, the BIC principle, widely adopted under international child protection conventions like the United Nations Convention on the Rights of the Child (CRC), focuses explicitly on ensuring the child's safety, development, and overall welfare, considering not just the parental relationship but also other factors such as the child's opinion, emotional needs, and living conditions (Khan, 2021). This difference has led to tensions between preserving traditional Islamic practices and meeting international standards of child welfare (Ibn Mumin & Saeed, 2021). Furthermore, studies by Tariq and Ali (2020) show that while some Muslim-majority countries, such as Tunisia and Jordan, have made strides in reconciling the BIC principle with Islamic family law by introducing reforms that allow for more flexible and welfare-based custodial decisions, the process remains uneven, with some countries maintaining a strict interpretation of Islamic jurisprudence that limits the scope of BIC application. This inconsistency creates a legal landscape where some children's needs are adequately addressed, while others remain neglected due to rigid custody frameworks that do not consider their emotional and psychological needs (Khan & Ahmed, 2020). The resistance to fully integrating the BIC principle into Islamic family law is also driven by concerns over the potential undermining of Islamic values and parental authority, as noted by scholars like Fathian and Karimi (2021). While Islamic law's focus on justice and the welfare of the child in principle can align with the BIC, the practice often falls short due to the limited consideration of the child's individual needs beyond their relationship with parents. This gap suggests the need for further reform within Islamic family law to bridge the divide between traditional custody practices and modern child welfare standards, ensuring that the BIC principle is not just a theoretical ideal but a practical guideline for decision-making (Al-Farsi, 2020). The study concludes that achieving compatibility between Islamic family law and international child protection norms requires a delicate balance between respecting religious values and ensuring that child custody decisions are based on a comprehensive understanding of the child's welfare, including both material and emotional well-being.

The necessity of reforming Islamic family law to ensure child welfare has become an increasingly critical issue, as the study's findings reveal a growing gap between traditional interpretations of Islamic law and contemporary needs for child protection. Islamic family law, while historically attentive to the welfare of children, often fails to account for the evolving complexities of child rights in the modern context (Saeed & Al-Jafari, 2020). Scholars have long argued that the traditional custodial structures, heavily reliant on guardianship and patriarchal interpretations, must be re-evaluated to better protect the holistic needs of children (Abdullah & Hossain, 2021). In comparison, international child protection frameworks, such as the CRC, emphasize an integrated approach to child welfare, prioritizing emotional, psychological, and social well-being alongside physical needs (Hassan & Malik, 2022). Recent studies have shown that the current system in many Muslim-majority countries, which focuses on paternal authority and strict gender roles,

does not adequately consider the individual needs of children in custodial arrangements, particularly regarding their mental health and future development (Badr & Syed, 2021). This contrasts with the CRC's focus on the child's best interests as a primary consideration in custody disputes (Al-Rashid, 2021). Moreover, scholars like Zayd and Noor (2020) have noted that the reluctance to reform Islamic family law is often rooted in a misinterpretation of Islamic texts, which are seen as immutable, when in fact many scholars argue for the adaptability of Islamic jurisprudence to meet contemporary challenges (Khan, 2021). Islamic legal thought has a long tradition of *ijtihad* (independent reasoning), which could be leveraged to integrate modern concepts of child protection into the legal framework (Al-Hassan & Nasser, 2022). Reform efforts in countries like Indonesia and Malaysia have made strides in ensuring that child welfare considerations are prioritized in family law reforms, with notable changes to guardianship laws and custody practices (Amin & Lee, 2020). However, challenges remain in countries such as Saudi Arabia and Pakistan, where entrenched patriarchal interpretations continue to dominate the discourse on family law and child custody (Mansoor & Khan, 2020). These developments highlight the need for a nuanced and flexible approach to child welfare that respects both Islamic teachings and international child protection norms (Mohammed, 2022). The study concludes that reforming Islamic family law is not only necessary to safeguard children's welfare but also to align with global legal standards, ensuring that children's rights are recognized and upheld within both national and religious legal systems.

The differences in *fiqh* (Islamic jurisprudence) interpretations regarding child custody have long been a point of contention within Islamic family law. These differences often arise from varying schools of thought, particularly between the Hanafi, Maliki, Shafi'i, and Hanbali schools, each of which offers distinct interpretations on issues such as the mother's right to custody and the father's role in guardianship (Zahra, 2020). The study reveals that while some interpretations grant the mother custody of young children, especially in the early years, other schools of thought prioritize the father's guardianship rights over custodial matters, regardless of the child's age (Khalil, 2021). Scholars like Al-Jabri (2020) argue that these differences can create inconsistencies in custody outcomes, as the application of *fiqh* principles may vary significantly depending on the jurisdiction and the judicial interpretation of Islamic law. While the Hanafi school traditionally grants maternal custody for children under the age of seven, other schools like the Shafi'i allow the father more influence over custody decisions once the child reaches a certain age, often leading to tensions when applying these rulings in a modern legal context (Hassan & Shams, 2022). This diversity in interpretations has practical consequences in Muslim-majority countries, where legal practitioners may need to navigate different *fiqh* views to arrive at a custodial decision, complicating the consistency of child welfare protections (Bashir & Ahmed, 2021). Research by Al-Sheikh (2020) highlights that in some jurisdictions, the courts have taken a more flexible approach, combining elements from multiple schools of thought to accommodate contemporary understandings of child welfare, such as considering the child's emotional needs and attachment to the mother. Conversely, in countries that strictly adhere to one particular school of thought, such as Saudi Arabia, the application of *fiqh* principles can often overlook these broader welfare considerations (Mohammad & Noor, 2020). Furthermore, recent scholarship emphasizes the growing influence of international human rights norms, including the United Nations Convention on the Rights of the Child (CRC), which advocates for the child's best interests as a guiding principle, often conflicting with rigid *fiqh* interpretations (Al-Khater, 2021). As the global discourse around child rights evolves, scholars such as Farah & Ibrahim (2020) argue that Islamic law must reconcile these differing interpretations with a more holistic approach to child custody that prioritizes the child's overall well-being. The increasing complexity of custody decisions,

especially in cases involving mixed cultural or international contexts, further underscores the need for a unified approach that harmonizes fiqh interpretations with international child protection standards (Tariq & Jamil, 2022). This study ultimately supports the view that Islamic law is flexible enough to accommodate changes that prioritize the child's welfare, though the implementation of such reforms requires judicial awareness and a shift in traditional legal practices (Al-Amin, 2022).

The influence of globalization and child rights norms on Islamic family law reforms has emerged as a significant force in shaping the contemporary landscape of family law in Muslim-majority countries. As the world becomes more interconnected, the principles of international child rights, particularly those enshrined in the United Nations Convention on the Rights of the Child (CRC), have increasingly shaped domestic legal reforms (Al-Mansoori, 2022). The study highlights how globalization has led to a convergence of legal standards, where child welfare and rights are now central to family law considerations (Chaudhry & Saleh, 2021). Scholars such as Yousaf & Khan (2020) argue that international legal frameworks have influenced Islamic family law by introducing concepts like the child's best interests, a principle which is not always fully realized in traditional interpretations of fiqh (Islamic jurisprudence). In contrast, researchers like Taha & Ibrahim (2021) have pointed out that while globalization has prompted some countries to reform child custody laws, the pace and extent of reforms vary significantly across different jurisdictions due to entrenched cultural and religious beliefs. For instance, countries such as Tunisia and Morocco have implemented comprehensive legal reforms, incorporating both fiqh and international child rights standards, leading to significant improvements in child welfare protections (Bouslama, 2022). However, nations like Egypt and Afghanistan, where more conservative interpretations of Islamic law prevail, have been slower to embrace these reforms, with scholars like Noor & Ali (2021) attributing this to the fear of undermining Islamic values in favor of Western ideals. The adoption of CRC principles in Islamic family law, therefore, presents both opportunities and challenges, as these global norms often conflict with long-standing legal traditions that prioritize male guardianship and paternal authority in custody matters (Mohammad & Sari, 2020). According to Al-Khaled (2020), the tension between Islamic legal traditions and international child rights standards is particularly evident in cases where child custody involves non-Muslim parents, where international legal standards may favor the non-Muslim parent's rights over Islamic ones. Moreover, studies such as those by Al-Farsi & Al-Sayed (2022) have suggested that the push for reform in Islamic family law, while influenced by international norms, often lacks a cohesive framework that integrates both Islamic and global legal principles in a balanced way. This has led to a fragmented approach in reform efforts, with some regions making progress while others remain resistant to change. As globalization continues to impact legal frameworks, it is clear that a more comprehensive integration of Islamic family law with international child rights standards is needed to ensure that the child's welfare remains the primary focus in custody disputes (Hamid, 2021).

The application of Islamic family law in child custody cases significantly hinges on judicial awareness and sensitivity to child welfare. A growing body of research suggests that while Islamic family law provides a framework for custody determinations, its practical application by judges varies widely based on their understanding of child welfare principles (Abdelrahman, 2021). Studies have shown that in many jurisdictions, judges often struggle to reconcile traditional fiqh interpretations with modern understandings of children's rights, which have been influenced by global norms (Abu-Lughod, 2020). For instance, in countries such as Saudi Arabia and Pakistan, the legal system's approach to child custody often lacks comprehensive guidelines on prioritizing child welfare, leading to inconsistent rulings (Mahmood, 2020). While Islamic jurisprudence emphasizes parental

responsibility, the well-being of the child is sometimes sidelined, particularly in cases where the father's rights are considered paramount (Sharif, 2020). Moreover, scholars like Al-Motairy (2021) argue that judges in conservative regions often adhere strictly to classical interpretations of *fiqh*, which may fail to incorporate child-centered principles in custody decisions. This gap in judicial awareness can be exacerbated by insufficient training on international child protection standards, as discussed by Dufresne & al-Hashimi (2021), who found that in many Islamic jurisdictions, judges lack awareness of the implications of the Convention on the Rights of the Child (CRC) on domestic family law. In contrast, reforms in other countries like Indonesia have resulted in greater judicial understanding of the intersection between Islamic law and child welfare, incorporating child best interests (CBI) principles in judicial training programs (Mawardi, 2021). Judicial reform initiatives in Egypt have also introduced new frameworks for custody decisions that prioritize the child's psychological and emotional well-being, aligning more closely with CRC guidelines (Nasser, 2022). However, the effectiveness of such reforms remains contingent on the commitment of judicial authorities to enforce these changes across courts. Al-Fahad (2022) highlights the importance of continued judicial education and awareness-raising to ensure that judges understand how best to apply Islamic family law while safeguarding the rights and welfare of children. Comparative studies between Muslim-majority countries show that judicial attitudes towards the integration of child welfare considerations into Islamic family law are still in flux, with some countries making more progress than others (Al-Khalaf, 2021). Furthermore, judicial awareness is also affected by the broader societal and political contexts in which family law operates, particularly in more politically conservative or unstable environments (Khan, 2021). This is further complicated by the lack of standardized judicial training, which often leads to disparities in the application of child welfare principles in custody cases (Nouri & Lallou, 2020). Therefore, improving judicial awareness in Muslim-majority countries is crucial for ensuring that Islamic family law evolves to adequately address the needs of children in custody proceedings (Tayeb, 2020).

## **CONCLUSION**

This study underscores the critical need to reconstruct child custody frameworks in Islamic family law, focusing on the Best Interest of the Child (BIC) principle in contemporary legal contexts. The research findings reveal significant gaps in the current application of Islamic family law in determining child custody, especially regarding the concept of child citizenship and its integration into custody decisions. Judicial practices in many Islamic jurisdictions remain influenced by traditional interpretations of *fiqh*, often failing to fully incorporate modern child welfare standards. The incompatibility between the BIC principle and existing Islamic family law practices highlights the necessity for reform to ensure that the child's well-being is placed at the forefront of custody determinations. The study further emphasizes the importance of judicial awareness and training, as judges must be equipped with the knowledge to balance religious interpretations with contemporary child rights norms. Additionally, the research points to the role of globalization and the increasing influence of international child welfare standards in shaping family law reforms in Muslim-majority countries. Despite the challenges, some regions have made notable strides in aligning their family law systems with global best practices, ensuring greater protection for children in custody proceedings. The findings advocate for a nuanced approach to legal reforms, one that respects Islamic traditions while also embracing the evolving understanding of children's rights in the modern world. Effective reform in Islamic family law requires a multidisciplinary effort involving legal scholars, child welfare experts, and judicial authorities. Only through a comprehensive and inclusive approach

can Islamic family law evolve to meet the needs of children in custody cases, ensuring their physical, emotional, and psychological welfare. The research further suggests that international cooperation and dialogue between legal systems are crucial to fostering a more child-centered approach to family law across borders. In conclusion, while the integration of the BIC principle into Islamic family law poses complex challenges, it offers a promising avenue for enhancing child protection and ensuring that the best interests of children are consistently upheld in custody disputes.

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