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Dr. Fal. Arovah Windiani, SH. MH

as **PRESENTER** in 5th International Conference on Islamic Law in Indonesia

"The Role of Islamic Laws and Islamic Institution in Dealing with Global Disaster "

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Post-Divorce Care for Children in an Islamic Perspective

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ABSTRACT

A child born in a legal marriage bond has the status of a biological child with civil rights attached to it and has the right to use his father's name after his name to indicate his descent and origin. Children's rights are part of human rights contained in the 1945 Constitution of the Republic of Indonesia and the United Nations Convention on the

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ABSTRACT

A child born in a legal marriage bond has the status of a biological child with civil rights attached to it and has the right to use his father's name after his name to indicate his descent and origin. Children's rights are part of human rights contained in the 1945 Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child. The rights of a child with a divorced parent condition, Islam has arranged in detail, related to the child's age and needs as well as the condition of both parents.

Keywords: Keywords: Childcare, post-divorce.

1. INTRODUCTION

Status of the Child

Children are both a mandate and a gift from God Almighty, even children are considered the most valuable assets compared to other assets. Therefore, children as God's mandate must always be guarded and protected because children are inherent in dignity and human rights that must be upheld.[1]

A child born from a woman's womb cannot choose to be born into a family that is intact, harmonious, happy, or legally recognized by both parents. Fortunately, a child born from a legal marriage is recognized and a birth certificate is made by both parents, but on the other hand, a child born by a woman is not recognized by her biological father as good due to several factors, for example, the child was born from an illegal marriage (for example, kawin sirri), adultery, a child victim of rape.[2]

A child born in a legal marriage bond has the status of a biological child with civil rights attached to it and has the right to use his father's name after his name to indicate his descent and origin.[3]

Legal marriage will give birth to a child who has a legal status and position before the law, while a child born from an illegal relationship without a valid marriage will bear the status of an out-of-wedlock child when he is born in the world. [4]

Marriage determines the status of the child, so the child depends on the marriage or the relationship between the mother and father. [5] If the marriage is carried out by following under accordance with the applicable provisions without being violated, the child's status will be protected and guaranteed, while

the marriage is carried out in violation of the applicable provisions, then the child's status is not protected and not guaranteed.

Ideally, a child born into the world will automatically have a man as his father and a woman as his mother, both biologically and legally (juridically), because naturally, it is impossible for a woman to become pregnant without a meeting between ovum and spermatozoa. through sexual relations or through other means based on technological developments that lead to conception. Therefore, it is not right and unfair when the law frees a man who has sexual relations which led to the pregnancy and birth of the child from his responsibility as a father, and at the same time, the law negates the rights of the child to the man as the father.[6]

Children's rights are part of human rights contained in the 1945 Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child.[7]The state protects children from treatment that can destroy their future. The law provides several views on the terminology of children based on their function and position, including the following:

Law Number 23 of 2002 concerning Child Protection in a General Explanation: Children are a mandate as well as a gift from God Almighty, which we must always protect because they are inherent in their dignity, dignity, and human rights that must be upheld. Children's rights are part of the human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. In terms of national and state life, children are the future of the nation and the next generation of the ideals of the nation, so that every child has the right to survive, grow and develop, participate and have the right to protection from acts of violence and discrimination as well as civil

Rights of the Child. The rights of a child with a divorced parent condition, Islam has arranged in detail, related to

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UU No. 4 of 1979 concerning Child Welfare in the Consideration of point (a): Children are the potential and successor to the ideals of the nation that the previous generations have put in place.

UU No. 3 of 1997 concerning Juvenile Court in consideration of point (a): Children are part of the younger generation as a human resource who is a potential and successor to the ideals of the nation's struggle, which has a strategic role and has special characteristics and characteristics, requires guidance and protection to ensure complete, harmonious, harmonious and balanced physical, mental and social growth and development.

Government Regulation Number 54 of 2007 concerning Adoption of Children in General Explanation: Children are part of the younger generation, the successor to the ideals of the nation's struggle and human resources for national development.

However, in reality, children born because of the mistakes of their parents who marry in an illegal marriage, do not get their rights such as the right to earn a living and the right to inherit. Parents do not care about the fate of the child in the future. So not all children will be respected for their existence or even recognized by their biological parents for their status.

1.2. Research Method and Benefit

The research method used is the descriptive-normative method, which means research by explaining, describing, analyzing a problem in a certain situation, the problem is about the care of children from their divorced parents.

Data collection technique

Data collected through library research, which is studying materials from books, magazines, newspapers, articles, laws, and regulations, and Supreme Court decisions. The data that has been collected is then sorted and selected for accuracy and validity, so that good research results can be found.

Data analysis

The data analysis used is qualitative. This qualitative analysis is intended is that analyze used without using numbers or

can describe divorce and childcare relationships and protection of children

1.3. Paper Structure

This study aims to provide an overview of child care arrangements in a condition where parents are divorced. In the provisions of the Marriage Law and Islamic Law Compilation, childcare arrangements are made in general. In the Islamic Law Compilation Article 105 it is stated that: in the event of a divorce a child who is not yet mumayyiz or not yet 12 years old is the right of the mother, while the care of a child who is mumayyiz is left to the child to choose between the father or mother as the holder of the right to care. Islamic Sharia regulates in more detail the care of the children

2. BACKGROUND

2.1. 1. Post-Divorce Care for Children in an

Article 41 letter Law Number 1 of 1974 concerning Marriage ("Marriage Law"), divorce does not remove the obligation of the father and mother to care for and educate their children. The article also states that if there is a dispute over the control of children, the court will make the decision.

This means that regarding child custody if no agreement is found between husband and wife, it is resolved through court channels.

But as an illustration of the distribution of custody, if we look at it from Islamic law, we can refer to Compilation of Islamic Law ("KHI"). In Article 105 KHI, in the event of a divorce, the care of children who are not yet mumayyiz or not yet 12 years old is the right of the mother, while the care of children who are mumayyiz is left to the child to choose between the father or mother as the holder of the right to care.

Regarding the provisions of Article 105 KHI, there are exceptions, namely if it is proven that the mother has apostatized and embraced a religion other than Islam, then the mother's right to care for the child will be annulled. This is in accordance with the jurisprudence of the Supreme Court of the Republic of Indonesia No. : 210 / K / AG / 1996, which contains a legal abstraction that religion is a requirement to determine whether a mother's right to care and care (hadhanah) for her child is not yet mumayyiz.

Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law ("Law 17/2016") which states that parental power is the power of parents to nurture, educate, nurture, nurture, protect, and develop children according to their religion and their abilities, talents, and interests.

This means that children must be cared for according to their religion so that their mental and spiritual development is good.

However, apart from seeing the religion of the parents who will get custody of the child, of course, the behavior of the parents must also be seen. The Similarity in religion is not the only factor in determining what is best for the child (in the care of the father or mother).

Regarding the costs for children, based on Article 41 letter b of the Marriage Law, the father is responsible for all maintenance and education costs that the child needs. If in fact, the father cannot fulfill this obligation, the Court may determine that the mother is responsible for the costs.

born in adultery.[8] The term illegitimate child is defined as a child born to his mother from an illegitimate relationship that is legally unrelated by lineage to his husband.[9]

In the statement of the Islamic Law Compilation, "children born outside of marriage", there is a confusion of meaning. Children born outside of marriage are different from children outside marriage. Children whose conception occurred after the marriage of their mother's father and born out of wedlock after their mother divorced or their husband died before the maximum age of pregnancy is considered a legal child and has rights like a legal child. Meanwhile, out of wedlock children (zina children) even though they are born in a marriage, they still do not have rights such as legal children. Thus, the main difference between the two lies in the presence or absence of a lineage connection. So, the status of an out-of-wedlock child as illegitimate in the view of Islamic law only has a nasab relationship with the mother. However, this lineage relationship will be according to other rights implications.[10]

The position of the child according to Islamic law as contained in the Compilation of Islamic Law in principle has the same view as the Marriage Law, because Article 100 of the Compilation of Islamic Law contains a formula that is not different from Article 43 paragraph (1) of the Marriage Law, where a Out-of-wedlock children only have a family relationship with their mother and their mother's family. A husband has the right to deny children born by his wife by confirming them through li'an institutions. Article 102 paragraph (1) of the Compilation of Islamic Law states that: A husband who will deny a child born from his wife,[11]

A husband who succeeds in proving the denial of a child born by his wife will have an impact on the status of the child who is born as an illegitimate child and will automatically cut off civil relations with the father. Article 102 paragraph (1) The above compilation of Islamic Law provides a time limit for the husband to file a lawsuit for child denial, which is 180 days after the child's birth or 360 days after the break-up of the marriage or the husband knows that his wife gave birth to a child if the husband's residence is available. allows to file a lawsuit to the Religious Court.[12]

Children born outside of marriage in the Islamic Law Compilation, include:

Children born as a result of adultery muhsan and adultery ghoiru muhsan are called children out of wedlock. Zina Muhsan is adultery committed by people who have or have never been married, while Zina Ghairu Muhsan is adultery committed by people who have never been married, namely a virgin or a virgin. Islamic law does not consider zina ghoiru muhsan as an ordinary act, but it is still considered an act of adultery that must be subject to punishment. It's just that the quantity of punishment is different, for adulterers, muhsan is stoned to death while adulterers ghoiru muhsan can be flogged 100 times. For example: 2 (two) months pregnant and then married.

Mula'anah children, namely children born to a woman whose husband is li'an. The position of the original child is the same as the child for adultery, he does not follow the lineage of the mother who gave birth to him, this provision also applies to the law of inheritance, marriage, and others. For example a mother is 4 months pregnant but the father denies that the child is not his son because the mother is accused of adultery with another man, then the father must be able to prove his words.

A child of syubhat, a child whose position has nothing to do with the lineage of a man who interferes with his mother, unless he acknowledges it. For example, A child born to a woman whose pregnancy was due to the wrong people (mistakenly), the husband is not.[13]

In Fiqh, there is no strict definition of an illegitimate child, but

Meanwhile, Wahbah Az-Zuhaili defines adultery as a child born to his mother through a path that is not syar'i, or it is the fruit of an unlawful relationship.[15]

Children outside of marriage arise due to:

A child is born to a woman but that woman is not married to the man who intercourse with her and is not married to another man.

A child born to a woman, the birth is known and desired by one of the mother and father, it's just that one or both parents are still bound by another marriage.

A child born to a woman during the iddah period of divorce but the child born is the result of a relationship with a man who is not her husband. There is a possibility that this illegitimate child can be accepted by the families of both parties naturally if the woman who gave birth is married to the man who intercourse with her.

A child born to a woman whose husband has left her husband for more than 300 days is not recognized by her husband as a legal child.

A child born to a woman even though the religion they adhere to determines differently, for example in Catholicism it does not recognize divorce but it is also done then remarries and gives birth to children. The child is considered an outside child.

Children born to a woman while for them the state prohibits marriage, for example, Indonesian citizens (WNI) and foreign citizens (WNA) do not get permission from the embassy to enter into a marriage because one of them already has a wife but they still mix and giving birth to the child, this child is also called an out-of-marriage child.

A child is born to a woman but the child does not know her parents at all.

Children born from marriages that are not recorded at the Civil Registry Office and / or the Office of Religious Affairs. Children born from traditional marriages are not carried out according to religion and belief and are not registered at the Civil Registry Office and the Office of Religious Affairs.[16]

Legal Status of Children Outside of Marriage According to the decision of the Constitutional Court Number 46 / PUU-VIII / 2010

The issue of the legal status of children in legal studies in Indonesia has recently become interesting and important to note. Especially after the Constitutional Court issued a very controversial decision regarding the status of children out of wedlock. The Constitutional Court's decision was not only controversial but even provoked a prolonged polemic in society until finally, the Indonesian Ulema Council issued Fatwa No. 11 of 2012 concerning the Position of Children as Results of Adultery and Their Treatment. Because Islamic sharia distinguishes the rights of legitimate children and illegitimate children, real children, and adopted children. These provisions are the principles of the Islamic religion. Therefore, the emergence of an opinion that equates the position of children born from legal marriages and children born not from marriage, especially with the issuance of the Constitutional Court decision Number 46 / PUU-VIII / 2010 can shake the life of the Muslim community. This fatwa was based on the background of the decision of the Constitutional Court which granted the request for a judicial review of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage.

In the verdict, the judge stated that he had granted the Petitioner Hj. Aisyah Mochtar for some, namely:

Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State

contradicts the 1945 Constitution of the Republic of Indonesia as long as it is interpreted as eliminating civil relations with men which can be proven based on science and technology and / or other evidence according to the law that has blood relations as his father;

Article 43 paragraph (1) of Law Number 1 the Year 1974 concerning Marriage (State Gazette of the Republic of Indonesia Year 1974 Number 1, Supplement to State Gazette of the Republic of Indonesia Number 3019) which states, "Children born outside of marriage only have a civil relationship with their mother and his mother's family ", does not have binding legal force as long as it is interpreted as eliminating civil relations with men which can be proven based on science and technology and / or other evidence according to the law has a blood relationship as his father, so the verse must be read, "Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a boy as their father which can be proven based on science and technology and/or other evidence by law to have blood relations, including civil relations with their father's family".

The Constitutional Court's decision was considered constructive regarding children born out of marriage, apparently born from a dilemma between the desire to enforce the law fairly and equitably on the one hand and an effort to maintain several values held by society, especially those originating from religious and cultural teachings. on the other.

Legal Status of Children of Divorced Parents

The magazine As-Sunnah Edition 04 / Tahun XII / 1429H / 2008[17] explained that the Islamic Shari'ah enforces this custody, to love, care for and give good to them. The reason is, if they are left without responsibility, they will undoubtedly be neglected, neglected, and in danger. Whereas the dinul Islam teaches compassion, cooperation, and solidarity. So that it prohibits actions that are wasted on other people in general, especially those who are in a state of distress. This is the obligation of people who are still bound by kinship with the child. And their obligation is, to take care of the responsibilities of members of his extended family, as in other laws. Mother is the most entitled to hold custody of children compared to other parties. Al-Imam Muwaffaquddin Ibn Qudamah said, From 'Abdullah bin' Amr, that a woman came to the Prophet to complain about her problem. The woman said:

يا رسول الله إن ابني هذا كان بطني له وعاء وتديي له سقاء
وحجري له حواء وإن أباه طلقني وأراد أن ينتزعه مني

"O Messenger of Allah. My son was before, I was the one who was carrying it. I was the one breastfeeding and holding her. And actually, his father has divorced me and wants to take it from me.

Hearing the woman's complaint, the Prophet sallallaahu 'alaihi wa sallam answered:

أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي

"You have more right to take care of him as long as you are not married".[18]

Although child care is the right of a mother, sometimes she cannot get this right. Several factors that can hinder his rights. Including the following.

First. Ar-Riqqu.

That is, the person concerned has the status of a slave, even though there is still "a little left". Because hadhonah (caring for) is a type of territory (responsibility). As for a slave, he had no territorial rights. Because he will be busy with service to his master and everything he does is limited by the rights of his master.

obedience to Allah. That means, he cannot be trusted with parenting responsibilities. Thus, child custody is separated from him. The existence of a child with him "a little or a lot" will educate the child according to his bad habits. It is feared that it will harm children, which of course has an impact on children's education.

Third. Infidel.

An infidel should not be granted the right to care for a Muslim child. His condition is worse than the wicked. The dangers arising from it were greater. Do not rule out, he deceived the child and expelled him from Islam by instilling his kufr religious beliefs.

Fourth. A Woman Who Has Remarried Another Man.

In the matter of childcare, it is the mother who has the most important rights. However, this right is automatically terminated if she remarries an ajnabi (another man). That is, a man who is not from among the 'asabah (heir) of the child he cares for. However, if the mother marries a man who is still related to the child, then the mother's custody is not lost. Or for example, a woman whose husband has divorced, and then she marries another man (ajnabi), then in this situation, she does not get custody of the child from her first husband. Thus, his parental rights will be eliminated, based on the content of the hadith of the Prophet sallallahu 'alaihi wa sallam:

أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي

"You have more right to take care of him as long as you are not married".

These are several factors that can prevent a person from obtaining custody of their child. When these hindering factors disappear, for example, a slave is completely free, the wicked person repents, the infidel has embraced Islam, and the mother has divorced again, then these people will regain their right to care for their child.

WHEN CHILDREN DETERMINE CHOICES?

At the age determined by the shari'ah, children have the right to make choices to live with their mother or father. In this case, two conditions must be met.

First: The father and mother must deserve the responsibility of taking care of their children (ahlil hadhonah). This means that one of the factors that prevent a person from being a babysitter of their child must not be attached to him.

Second: The child is already 'aqil (intelligent). If he has a disability, then he remains under the supervision of his mother. This is because women are more affectionate, more responsible, and more aware of children's needs.

THE DIFFERENCE OF CARING FOR BOYS AND GIRLS

A boy.

He was faced with the choice to decide. That is, he lives with his father or mother, when he is seven years old. When he is seven years old, sensible, he makes up his mind and then lives with the person of his choice, father, or mother. This is the decision made by the Caliphs 'Umar and' Ali.

Basically, there is a woman who came to the Prophet. She complained, "My husband wants to take my son away," then Rasulullah Sallallahu 'alaihi wa sallam asked the boy, his son: "O little child. This is your father, and that is your mother. Choose who you want! " The boy then took his mother's hand, and then they both left.[19]

If the child belongs to the father, then he is where the father lives day and night. So that his father is free to look after, teach, and educate him. However, it must not prevent the child's desire to visit his mother. Because to prevent him

night. Meanwhile, during the day, he was with his father, to receive education and guidance.

However, if the child is silent, not making up his mind in this matter, then a lottery is taken. This means that both parents are not very special parties in the eyes of the child, so it is decided by qur'ah (lottery).

The information above applies to boys. What if the child is a girl?

Girl

When she was seven years old, her custody passed to her father, until she married. The reason is, the father will be better at maintaining and guarding against him. In addition, a father is more entitled to receive the territory (responsibility) of a daughter. However, that doesn't mean that his mother shouldn't visit him. The father is even prohibited from preventing the mother of the child from visiting him unless it causes bad things or haram actions.

If it turns out that the father is unable to handle the care of his daughter, or does not care about the problem, because of his busyness or religious shallowness, then the mother has the right to take over, and the daughter lives with her mother.

Shaykhul Islam Ibn Taimiyyah rahimahullah said: Imam Ahmad and his students considered father prioritizing (to care for his seven-year-old daughter) if it did not cause harm (trouble) to his daughter. If it is thought that the father is unable to look after and protect him, (and instead ignores him because of his busy life, then the mother is the one who (has the right) to handle the care and protection for him. In these conditions, the mother takes precedence. from her parents, then no doubt, the other party (who does not cause problems for her daughter), has more right to handle it.[20]

Shaykhul Islam Ibn Taimiyyah rahimahullah also added, if it is estimated that his father remarried and entrusted his daughter in the lap of his stepmother who was reluctant to deal with his problems, even (his stepmother) hurt and neglected the good for himself (daughter), while her mother (herself) could provide maslahat for him, did not hurt him, then in a situation like this, definitely hadhonah rights belong to the mother.[21][5]

1. CONCLUSION

As a conclusion, it is important to note that this research is

1.1. Child Care due to Marriage Breakdown (Law No.1 of 1974 concerning Marriage)

However, globally the Marriage Law has provided regulations for the care of these children which are linked together with the result of breaking up a marriage. In article 41 it states: If a marriage breaks up due to divorce, the following consequences are: 1. Either the mother or the father is still obliged to care for and educate her child, solely based on the child's interests, if there is a dispute regarding child care, the Court will give its decision. 2. The father is responsible for all the maintenance and education costs required by the child, if in fact, the father cannot fulfill these obligations, the Court may determine that the mother is responsible for the costs. The court can oblige the former husband to provide living expenses and / or determine an obligation on the part of the ex-wife. Regarding the obligations of parents to children, it is contained in Chapter X starting from articles 45-49. Article 45 states: (1) Both parents are obliged to care for and educate their children as well as possible. (2) The obligations of the parents as meant in paragraph (1) of this article shall be valid until the child is married or can stand alone, which obligation continues even if the marriage between the two parents breaks up. Article 49 (1) One or both parents can be deprived of power over a child or more for a certain time at the request of the other parent, the child's family in a straight line up and siblings who are adults or an authorized official by a court decision. in these matters: 1. He greatly

That: (1) Parents are obliged and responsible for: a. Caring for, nurturing, educating, and protecting children; b. Developing children according to their abilities, talents, and interests; and c. Prevent child marriage. d. Providing character education and instilling character values in children. (2) If the parents are absent, or their whereabouts are not known, or for some reason, are unable to carry out their obligations and responsibilities, as referred to in paragraph (1), then this can be transferred to the family, which is carried out according to the provisions prevailing laws and regulations. Then if both parents have divorced, the care and maintenance of the child remain an obligation and responsibility for the parents, although one of the parents has custody of the child. However, in the care and maintenance of children, it is the children's rights that are prioritized for the benefit of the child in the future.

From the article above, this is in line with the Convention on the Rights of the Child (KHA) as explained in article 9 which states that basically, a child has the right to live with his parents, unless this is deemed not in his best interest. The right of the child to maintain a relationship with his parents if separated from one or both, it is the obligation of the State in cases where such separation occurs as a result of the State's actions. However, in this case, the State also has the authority to separate the child from his parents a court decision. Therefore, from the legal provisions regarding child protection, the principle is that the best interests of the child should be the main consideration, as enshrined in the KHA (Convention on the Rights of the Child) Article 3 Paragraph 1

1.3. Child Care due to the Breakdown of Marriage (Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law) Compilation of Islamic Law (KHI)

As for the Compilation of Islamic Law (KHI) the meaning of *ḥaḍānah* has also been formulated in article 1 letter (g) that what is meant by nurturing and educating children to adulthood or being able to stand alone.¹⁷ In Islamic Law Compilation (KHI) Here, *ḥaḍānah* (maintenance) of the child is held by the mother who has been divorced by her husband. However, if the wife has remarried another man, the mother's right to care for the child will be annulled. The Compilation of Islamic Law (KHI) in article 105 (a) which regulates custody of children reads as follows: Article 105: In the event of a divorce: a. It is the mother's right to care for a child who is *ghairu mumayyiz* or not yet 12 years old; b. Child care that is *mumayyiz* is left to the child to choose between father and mother as the right to care for the child; c. The cost of separating the children is borne by the father. "Everyone accused of a crime has the right to be presumed innocent until proven guilty according to law

1.4. Child Care due to the Breakdown of Marriage (sharia)

After the divorce, the mother is more entitled to child custody, both of them say that this right will be null and void when the mother remarries another person. Related to *ha!* First, it means that the obligation to bear the cost of caring for it is the consequence of the father. If the mother does not get married again, the process of exercising custody is in! continued until the child was seen as *mumayyiz*. Fiqh scholars generally determine that the child is *mumayyiz* if a boy is seven years old and if the girl is nine years old. If the child is already *mumayyiz*, the stipulation is that custody returns to the principle that the exercise of custody of this right is the interest or benefit of the child. In this case, to protect the interests of the child, children who are already *mumayyiz* are given the freedom to make choices regarding their custody of the mother or father. Meanwhile, if the requirements for receiving custody are not fulfilled by the mother. If before the child the mother was married again to someone else, the *fiqh uiama* agreed to transfer this right to the mother's family, for example, the mother's grandmother and above. The legal basis is an analogy (*qiyas*)

than the relatives of the father. That is why if the mother's eligibility for custody of the child is neglected, the custody of the child falls on the relatives of the mother's side. This opinion is also shared by *ibn Qayim* and *Sayid Sabiq*. "Under certain circumstances, according to *fiqh*, the above conditions can indeed change,

2. ADVICE

THE SOLUTION IF A POLEMIC HAPPENS BETWEEN THE WIFE AND FORMER HUSBAND RELATED TO CHILDREN CARE

It is undeniable that sometimes this parenting also creates problems due to problems that sometimes arise.

For example, if one of the husband or wife wants to travel far and stay temporarily in the destination, without any ill intent, the situation is safe, then in this situation, the right of *hadhonah* belongs to the father, whether the father is traveling or not. Fathers must take care of education and maintenance. Because, if the child is far from the father, which causes the father to be unable to carry out his duties, it will result in the child being neglected.

If the trip is not far away, is still within the *qoshor* prayer distance, and plans to stay there, then this custody of the child belongs to the mother of the child. Because the mother is more perfect in her love for the child. And again, in a situation like this, the father is still very likely to see the condition of his son. Meanwhile, if traveling is for a purpose, then immediately returns, or the route or condition of the country to which the destination is concerned, then the right to *hadhonah* is transferred to the party who does not travel Because, traveling in such a state, will cause harm to him.

Ibnul Qayyim stated: "If you want chaotic problems or fabricate to abort mother's custody, then the father goes on a trip followed by his son, (then) this is *hilah* (fabrication) which is contrary to the intended purpose of the *Shari'ah*. In fact, the *Shari'ah* stipulates that mothers have more rights to child custody than fathers if the conditions of the residence are close together so that it is possible to visit at any time.[22]

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