

## **CO-PARENTING MODEL IN RESOLVING CHILD CUSTODY DISPUTES IN URBAN MUSLIM FAMILIES**

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**Abstract:** Post-divorce child custody (*hadhanah*) disputes in urban Muslim families often become prolonged conflicts, and children become undeniable victims. The problem is whether the shared parenting model for resolving post-divorce child custody disputes (*hadhanah*) in urban Muslim families through litigation (court) is effectively used? If effective, to what extent is it effective, and how is it practiced in the field? A shared parenting model can be created if scientists, practitioners, and other relevant parties comprehensively understand the resolution of *hadhanah* disputes through litigation. The application of this shared parenting model is still rarely used by judges in court decisions. However, it turns out that there have been several examples of implementing the shared parenting model in urban areas. Bandung City, DKI Jakarta, Semarang City, Madiun City, and others are among them. This article is juridical-normative research. This article uses qualitative data from a literature study. This method was chosen because the research object was dispute resolution activities in the care of children in urban Muslim families. Primary data comes from religious court decisions. Meanwhile, secondary data comes from library materials such as books, scientific articles, research reports, and websites. Research finds that resolving child custody disputes in urban Muslim families through litigation can be so effective that joint parenting can be created, provided that a comprehensive understanding is

adapted to the existing problems in resolving child custody disputes. So that the judge's decision is made based on real facts and for the sake of justice and the common good, especially to minimize children becoming victims in the long term.

**Keywords:** *Hadhanah*, Joint Custody, Family Disputes, Urban Muslim Families

**Abstrak:** Sengketa hak asuh anak (*hadhanah*) pasca perceraian pada keluarga Muslim urban sering kali menjadi konflik berkepanjangan dan anak menjadi korban yang tak terbantahkan. Permasalahannya adalah apakah model pengasuhan bersama (*share parenting*) untuk penyelesaian sengketa hak asuh anak (*hadhanah*) pasca perceraian pada keluarga muslim urban melalui jalur litigasi (pengadilan) efektif digunakan? Jika efektif, sejauhmana efektifitasnya dan bagaimana praktiknya di lapangan? Model pengasuhan bersama (*share parenting*) bisa tercipta jika ilmuwan, praktisi, hingga pihak yang bersangkutan lainnya memahami secara komprehensif penyelesaian sengketa *hadhanah* melalui litigasi ini. Penerapan model pengasuhan bersama ini masih jarang di gunakan oleh hakim dalam putusan pengadilan. Namun ternyata sudah ada beberapa contoh penerapan model pengasuhan bersama yang diputuskan di perkotaan. Di antaranya adalah Kota Bandung, DKI Jakarta, Kota Semarang, Kota Madiun, dan lainnya. Artikel ini merupakan penelitian yuridis-normatif. Artikel ini menggunakan data kualitatif dari studi literatur. Pemilihan metode ini didasari bahwa objek penelitian berupa aktifitas penyelesaian sengketa dalam pengasuhan anak keluarga muslim urban. Data primer berasal dari putusan-putusan pengadilan Agama. Sementara data sekunder berasal dari bahan pustaka seperti buku, artikel ilmiah, laporan penelitian, dan website internet. Penelitian ini menemukan bahwa penyelesaian sengketa hak asuh anak pada keluarga Muslim urban melalui litigasi dapat sangat efektif hingga pengasuhan bersama pun dapat tercipta dengan syarat pemahaman yang komprehensif disesuaikan dengan permasalahan yang ada dalam menyelesaikan sengketa hak asuh anak. Sehingga putusan hakim diambil berdasarkan realita, fakta, dan demi keadilan serta kemaslahatan bersama, khususnya untuk meminimalisir anak menjadi korban dalam jangka waktu yang panjang.

**Kata Kunci:** *Hadhanah*, Hak Asuh Bersama, Perselisihan Keluarga, Keluarga Muslim Perkotaan

## INTRODUCTION

With today's high divorce rates, many children around the world are caught in the custody conflict between parents.<sup>1</sup> This problem occurs in various countries such as Africa<sup>2</sup>, Canada<sup>3</sup>, United States<sup>4</sup>, etc. Divorce cases in Indonesia are relatively very

- 1 Hani Nouman, Guy Enosh and Pnina Niselbaum-Atzur, 'The Role of Parental Communication, Child's Wishes and Child's Gender in Social Workers' Custody Recommendations' (2016) 70 Children and Youth Services Review 302.
- 2 Kathi LH Harp and Carrie B Oser, 'Factors Associated with Two Types of Child Custody Loss among a Sample of African American Mothers: A Novel Approach' (2016) 60 Social Science Research 283; Kathleen Wells, 'A Narrative Analysis of One Mother's Story of Child Custody Loss and Regain' (2011) 33 Children and Youth Services Review 439; Kathi LH Harp and Carrie B Oser, 'A Longitudinal Analysis of the Impact of Child Custody Loss on Drug Use and Crime among a Sample of African American Mothers' (2018) 77 Child Abuse and Neglect 1.
- 3 Michael Saini, Melissa van Wert and Jacob Gofman, 'Parent-Child Supervised Visitation within Child Welfare and Custody Dispute Contexts: An Exploratory Comparison of Two Distinct Models of Practice' (2012) 34 Children and Youth Services Review 163; Jennifer Harman and others, 'Gender and Child Custody Outcomes across 16 Years of Judicial Decisions Regarding Abuse and Parental Alienation' (2023) 155 Children and Youth Services Review 107187.
- 4 Rafael González-Val and Miriam Marcén, 'Unilateral Divorce versus Child Custody and Child Support in the U.S.' (2012) 81 Journal of Economic Behavior and Organization 613.

high. Based on data from the Statistics Indonesia report, there were 447,743 cases in 2021, an increase of 53.50% compared to 2020, which reached 291,677 cases. This report shows that wives are more likely to file for divorce than husbands. A total of 337,343 cases, or 75.34% of divorces occurred due to contested divorces.

Meanwhile, 110,440 cases, or 24.66% of divorces, were due to divorces. By region, the highest number of divorce cases in 2021 will be in West Java, namely 98,088 cases. Followed by East Java and Central Java, with 88,235 cases and 75,509 cases respectively. Regarding trends, divorce cases in Indonesia have fluctuated over the past five years. The highest number of divorce cases occurred in 2021, while the lowest occurred in 2020. Divorce cases were recorded to have jumped throughout 2017-2019.<sup>5</sup>

Furthermore, data shows that West Java is the province with the highest number of divorce cases in Indonesia yearly, which continues to increase. As of 2022, the number of divorce cases in Indonesia has reached 516,334 cases. This figure increased by 15.31% compared to 2021, which reached 447,743 cases. In 2021, it was recorded that 474,522 people in West Java had divorce certificates as legal proof of marriage breakdown and changes in status as widowers or divorced living widows. The city of Bandung is the area with the most divorce certificate owners, with a total of 53,335 people. Followed by Bogor Regency and Indramayu Regency with the number of divorce certificate holders, namely 33,360 and 31,161 people respectively. When viewed by age group, the largest number of divorced residents is in the 40–44 year age group. As of 2021, the number will reach 134,750 people.

Meanwhile, the number of divorced people living in their old age (60–64 years) tends to be less, namely 54,268 people. Then, after extracting the data again. In West Java, the highest divorce cases are in urban areas, namely Bandung City, followed by Bogor Regency, Indramayu Regency, Cirebon Regency, and Ciamis Regency.<sup>6</sup>

The phenomenon of child custody decisions varies between those who point to one party (father/mother) and those who are cared for by both parents. In the background, the decision places more of both parents as the holders of custody rights, which is known as joint custody. Other studies that have been conducted on child rearing focus on decisions regarding child care, especially analyzing judges' considerations, while studies on joint parenting models as a follow-up to court decisions have not been widely carried out. When there is no peace agreement between the two, it will eventually have an impact on co-parenting, which is difficult to do, and it is the child who will be the victim physically and psychologically. Therefore, to minimize the risk of resolving post-divorce child custody disputes in urban Muslim families in particular, joint parenting can be implemented. Until then, sole custody was assigned to the mother by default upon divorce.<sup>7</sup> Although there are studies that state

5 Databoks.katadata.co.id, 'Divorce Cases in Indonesia Will Soar Again in 2022, the Highest in the Last Six Years' (2023).

6 Opendata.jabarprov.go.id, 'Bandung City Is the Region with the Most Divorce Certificate Holders' (2023).

7 Eva M Garcia-Moran, 'Differential Fecundity and Child Custody' (2018) 90 Journal of Economic Dynamics and Control 156.

mothers are losing to fathers in contested child custody battles that have occurred between 1980 and 2003.<sup>8</sup>

Although child custody reform became a nationwide phenomenon, the debate over joint custody's costs and benefits was carried out by a relatively small.<sup>9</sup> In order to apply this co-parenting model, a more comprehensive understanding is needed regarding the perspective of the Compilation of Islamic Law and Positive Law in resolving child custody disputes through litigation.

The literature discussing the co-parenting model for resolving child custody disputes through litigation is still limited compared to non-litigation. Thus, if this matter is understood more comprehensively, it will become a reinforcement for resolving child custody disputes through litigation, which is more acceptable to the parties concerned. Previous research, such as Neng Eri Sofiana's study entitled "Settlement of Child Custody Rights Disputes Through Litigation: Study of Case No. 011/Pdt. G/2018/Pta.Plk".<sup>10</sup> Then, Fahimah's research entitled "Post-Divorce Child Custody Disputes According to Legislation (Case Study at the Maros Religious Court)"<sup>11</sup>, and M. Nasir Asnawi's research entitled "Application of the Shared Parenting Model in Resolving Child Custody Disputes."<sup>12</sup> These studies have not comprehensively explored the shared parenting model for resolving child custody disputes from the perspective of the Compilation of Islamic Law or Positive Law. Therefore, based on previous studies, studies related to litigation dispute resolution are still limited, and researchers have not found a comprehensive one.

The purpose of this writing is to complete the shortcomings of previous studies, which tend to analyze the problem of child custody only partially. So it is less comprehensive, and the panel of judges still uses the co-parenting model little in deciding cases. Given the many post-divorce problems, one of them is the issue of child custody. An integral (whole and comprehensive) approach is needed, especially regarding positive law, Islamic law, and how co-parenting is implemented. In line with that, there is a main question in this research, namely, how is the application of the co-parenting model to resolve post-divorce child custody disputes in urban Muslim families through litigation? The results of this research are used to resolve child custody disputes comprehensively from various aspects, especially in urban areas that have a high divorce rate.

This paper argues that resolving child custody disputes is less effective if discussed partially. Especially for urban Muslims who currently have a high divorce rate. If it only refers to non-litigation settlements, for example, by mediation, without the court route being used as a reference in settlements, if non-litigation is not successful, then in reality, other problems often arise. Therefore, in addition to focusing on how to settle child custody in urban Muslim families through litigation, this research also

- 8 Jacqueline Goodman, 'Mothers and Children: Caught in the Warzone' (2003) 32 *Studies in Law Politics and Society* 163.
- 9 John M Nunley and Richard Alan Seals, 'Child-Custody Reform, Marital Investment in Children, and the Labor Supply of Married Mothers' (2011) 18 *Labour Economics* 14.
- 10 Neng Eri Sofiana, 'Settlement of Child Custody Disputes Through Litigation: Case Study No. 011/Pdt. G/2018/Pta.Plk' (2022) 2 *Indonesian Journal of Shariah and Justice* 119.
- 11 Fahimah Fahimah, 'Dispute of Child Custody Post Divorce According to Legislation (Study Cases in the Religious Court of Maros)' (2021).
- 12 M Natsir Asnawi, 'Application of the Shared Parenting Model in Resolving Child Custody Disputes' (2019) 5 *Al Iqtishadiyah: Jurnal Ekonomi Syariah dan Hukum Ekonomi Syariah* 61, 62.

focuses on the co-parenting model so that children do not become victims of prolonged divorces, which in turn lower their quality of life physically and mentally. So that there can be scientific collaboration on how to resolve child custody disputes for urban Muslim families through litigation and how to implement joint parenting when viewed from positive law and Islamic law. The settlement of child custody disputes in urban Muslim families will be presented comprehensively, one by one to be congruent with problems that are indeed very complex.

## Methods

This research discusses the shared parenting model in resolving child custody disputes. The shared parenting model is the right to care for children carried out by a divorced father and mother in a balanced manner for the child's best interests. This study on the joint parenting model in dispute resolution was chosen because childcare disputes increase every year and harm children's lives, so the study of the joint dispute resolution model is seen as being able to reduce childcare disputes. This article is juridical-normative research. This article uses qualitative data from a literature study.<sup>13</sup> Normative legal research is legal research that places law as the norm for system development.<sup>14</sup> This method was chosen because the research object was dispute resolution activities in the care of children in urban Muslim families.

The data sources in this research are divided into two sources, namely primary data sources and secondary data sources. Primary data sources are research data obtained directly from the first source (not through intermediaries), such as court decisions and parties involved in childcare disputes. Secondary Data is a source of research data obtained indirectly through intermediary media (obtained or recorded by other parties). The secondary data is a collection of several scientific works related to childcare disputes in urban Muslim families in the form of journal articles, research results report, and annual religious court reports containing the number of childcare disputes. Primary data sources are specifically conducted to answer research questions. The author collected primary data by searching the Supreme Court website regarding child custody dispute decisions. The author obtained secondary data by conducting an online study through searches on the digital library network.

Data analysis uses qualitative data analysis, namely an in-depth data processing method based on literature searches. The reason for using qualitative data analysis is its advantages, namely the level of depth of the analysis results. This process is quite important so that the characteristics of the data can be easier to understand and useful as a solution to a problem, especially related to research. The data analysis process uses three steps, namely first, data reduction, which means summarizing, selecting the main things, focusing on the important things, and looking for themes and patterns, data reduction in this research, namely data that has been obtained in the field

13 Dena Ayu and others, 'A Sociological Approach to Consumer Protection in E-Commerce Transactions During the Covid-19 Pandemic' (2022) 4 *Khazanah Hukum* 181; Shinta Azzahra Sudrajat, Arzam Arzam and Doli Witro, 'Legal Protection in Labor Dispute Settlement Through Industrial Relations Mechanism' (2022) 4 *Khazanah Hukum* 1; Muhamad Izazi Nurjaman and Doli Witro, 'The Relevance of the Theory of Legal Change According to Ibnu Qayyim Al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia' (2021) 11 *El-Mashlahah* 164.

14 Darti Busni and others, 'Implementation of the Hybrid Contract Concept in Multiservice Ijarah Financing as a Financing Alternative Health Service in the Covid-19 Pandemic' (2022) 21 *JURIS (Jurnal Ilmiah Syariah)* 11.

regarding the model more integrative resolution of child care disputes, factors that determine the success of resolving child care disputes, and the implications of this integrative problem resolution model for family life.

Second, data presentation (data display). Data presentation is carried out in the form of short descriptions, charts, relationships between categories, flowcharts, and the like. In this case, what is most often used to present data in qualitative research is narrative text that displays the data. Therefore, it will be easier to understand what happened and plan further work based on what is understood. Third, concluding drawing verification. The initial conclusions are temporary and will change if strong supporting evidence is not found at the next data collection stage. Data conclusions can answer the problem formulation formulated from the start in the form of a description of the object under study.

## Results and Discussions

### Application of Co-Parenting Model as Resolving Post-Divorce Child Custody Disputes Through Litigation

Disputes that arise in a household are often classic and are one of the common reasons for filing a divorce suit with the Religious Courts. Whatever the reason, Islam wants eternity in the household and hates separation<sup>15</sup>, and including the effect of separation is a dispute over child custody. The Al-Qur'an and Hadith of the Prophet Muhammad Saw. offer a process of resolving court disputes in two ways, namely proving legal facts (adjudication) and settlement through peace (*islah*). The process of resolving disputes through adjudication is incapable of exploring the true nature of the facts in the dispute between the parties because the judge can only understand and decide on a case to the extent of the strong evidence submitted. Based on the judge's conviction and available evidence, he decides on the law, even though in essence, it is the parties to the dispute who know best.<sup>16</sup>

One of the cases brought to court is the settlement of child custody disputes. These disputes often become protracted, so that resolution is slow. Therefore, in the execution of children following the norm, there is no execution. Moreover, the decision is declaratory because the reality is that the execution of children is only voluntary. While legal experts who allow the execution of children can be carried out, the legal developments that have been adhered to stipulate that the problem of controlling children whose decisions are commentator, the problem is in the execution of children with all its problems.<sup>17</sup>

Caring for children after a divorce in the *fiqh* language is called *hadhanah*, namely raising children, which is the responsibility of both parents. However, if there is a

15 Adam Rahman, 'The Role of Mediation in Reconciling Domestic Disputes (Study at the Tasikmalaya City Religious Court)' (2014) 7 Al-Ahwal: Jurnal Hukum Keluarga Islam 143, 144.

16 Iman Jauhari, 'Determination of Tahkim Theory in Resolving Child Rights Disputes (Hadlanah) Outside of Court According to Islamic Law' (2011) 45 Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum 1382, 1383. See also, Muhammad Siddiq Armia and others, 'Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice' (2022) 17 AL-IHKAM: Jurnal Hukum & Pranata Sosial 113; Muhammad Siddiq Armia, 'Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)' [2019] Qudus International Journal of Islamic Studies.

17 Jauhari (n 16). See also, A Hamid Sarong & Nur A Fadhil Lubis, 'The Child Rights In Islamic Law With A Special Focus On Aceh' (2019) Volume 4 Petita : Jurnal Kajian Ilmu Hukum dan Syariah.

divorce between the two parents, the problem will continue with determining parental rights and responsibilities for the child. As explained, “child-rearing is basically for the child’s benefit, both for his physical, spiritual, intellectual intelligence and religious growth. Thus, mothers are parents who are more entitled to care for children under the age of 12 years.” So, in terms of the interests of a child, of course, the judge at the Religious Court pays attention to and weighs various aspects before making a decision.<sup>18</sup>

*Hadhanah* comes from Arabic, which means nurturing, educating, managing, and caring for all the interests or affairs of children who are not yet *mumayyiz* (unable to distinguish between good and bad things or actions for themselves). Meanwhile, according to language, it means to put something near the ribs or on the lap because when the mother breastfeeds her child, she puts the child on her lap, as if the mother is protecting and caring for her child at that time, so that “*hadhanah*” is used as a term that means: education and child care from birth to being able to independently take care of himself which is done by the child’s relatives.<sup>19</sup>

Child rearing (*hadhanah*) in Islamic Family Law is synonymous with *hadhanah*, which means looking after, leading, or managing all the child’s affairs, which he cannot do regarding himself or something outside himself.<sup>20</sup> The division of the role of parents to look after, care for children, and educate children has been arranged in such a way as to maintain the integrity of the household, but it is undeniable that the ripples that hit the household often lead to divorce. The phenomenon of divorce, which continues to increase significantly from year to year, needs serious attention because one of the impacts is on children.<sup>21</sup>

Families involved in high-conflict child custody disputes pose unique challenges for child protection services.<sup>22</sup> This is one of the disadvantages of resolving disputes in court or litigation. However, under certain conditions, humans must choose, and if the choice of the person in dispute is to resolve the problem by litigation, then how can the results of the judge’s decision be received in a supportive manner, as well as preventive and curative steps taken? so that children do not become victims of their parents’ minimal efforts.

18 Nabilla Karima, ‘Settlement of Divorce Disputes Through Mediation and Its Relationship with Hadhanah (Child Custody) in the Stabat Religious Court (Case Study No.: 980/Pdt.G/2021/PA.Stb)’ (2022) 1 JSL: Journal Smart Law 25, 25.

19 A Arnengsih and Ramdani Wahyu Sururie, ‘Child Custody Rights Due to Divorce Lawsuit in Case Number 0915/Pdft.G/2017/PA.Bgr’ (2020) 1 Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga dan Peradilan Islam 15, 16.

20 Usep Saepullah, *The Nature and Transformation of Islamic Family Law Regarding Child Protection* (LP2M UIN Sunan Gunung Djati Bandung 2021).

21 Alfian Qodri Azizi, ‘Guarantee of Children’s Right to Live in Islamic Family Law in Indonesia’ (UIN Sunan Kalijaga Yogyakarta 2016). See also, Ali Abubakar, ‘The Chance on Islamic Family Law in Indonesia’ (2019) 4 Petita : Jurnal Kajian Ilmu Hukum dan Syariah 42; Iman Jauhari and others, ‘Legal Analysis Of Unregistered Marriage Viewed From Ulama’s Perspective In Aceh Province’ (2023) 8 PETITA: Jurnal Kajian Ilmu Hukum dan Syari’ah; Murdan, ‘Hukum Islam Dalam Kerangka Sistem Hukum Masyarakat Modern’ (2016) 1 PETITA: Jurnal Kajian Ilmu Hukum dan Syari’ah; Nawir Yuslem, ‘Sharia Contextualisation To Establish the Indonesian Fiqh’ (2020) 5 Petita : Jurnal Kajian Ilmu Hukum dan Syariah.

22 Michael Saini and others, ‘Feeling the Pressure to Take Sides: A Survey of Child Protection Workers’ Experiences about Responding to Allegations of Child Maltreatment within the Context of Child Custody Disputes’ (2019) 96 Children and Youth Services Review 127.

Without a judiciary, society will become disorderly, and disputes will continue because there is no institution to resolve them. Because of this, judges play a very important role in determining a law against justice seekers by taking clearer steps. Likewise, the judge's decision can influence the determination of divorce status. If the judge does not want or does not decide on a divorce, then the marriage cannot be said to be dissolved. Therefore, divorce is defined as the abolition of a marriage by a judge's decision or demands from one of the parties to the marriage. Law No. 7 of 1989 concerning the Religious Courts states that there are two types of divorce, namely *thalaq* and lawsuit. In this law, divorce can occur due to two things, namely divorce and lawsuit.<sup>23</sup>

Settlement of child custody disputes can be resolved through litigation or non-litigation. Generally, when it is resolved through a court institution, it will be filed together or after filing a divorce case. Settlement of child custody disputes need to be resolved so that the child's status becomes clear because after the parents separate, it is necessary to provide certainty for the child regarding his rights, such as housing, management, education, and expenses for his life.<sup>24</sup>

In disputes over child custody, it is not uncommon for mutual claims of neglect to educate children, accusing each other of not properly educating children, limiting or prohibiting visits from spouses to children, and putting pressure on the child's psyche by influencing his mindset. This continuing dispute can spread to acts of seizure of children in the form of kidnapping, forced pick-up of children, and even acts of confinement. So, it is important to have a settlement of child custody disputes.<sup>25</sup>

The conclusion regarding the settlement of post-divorce child custody disputes, which in *fiqh* is often called *hadhanah*, can be resolved through litigation or non-litigation. Both have advantages and disadvantages. Everything must be adjusted to the circumstances and conditions of the parties to the dispute. However, if you have chosen litigation, the hope is that shared parenting can be created so that children still get their rights from their father and mother, although certainly not as ideal as a harmonious whole couple, to minimize the impact that occurs, even through litigation, the disputing parties must try their best to fulfill children's rights.

### **Court Decisions Using the Co-Parenting Model in Urban Muslim Families through Litigation**

Two possibilities may occur when two legal persons are separated religiously and legally in terms of child custody that a judge decides. The first possibility is split parenting. For example, if custody falls on the mother, then the father does not play the role of the father, who should still be fully responsible for his child, the difference is only a matter of distance and time, which cannot be as usual. Likewise, if custody of the child goes to the father, the mother does not seem to have built the attachment that the child needs, regardless of age. Basically, the child still needs a mother figure, even though the intensity is different. If split parenting occurs, it is the child who

23 Alex Kusmardani and Siah Kho'siah, 'Dynamics of Court Decisions in Resolving Post-Divorce Child Custody Disputes' (2022) 3 Jurnal Syntax Admiration 880, 881. See also, Zendy Wulan Ayu Widhi Prameswari and Erni Agustin, 'Indonesian Marriage Law Reform: The Way To Strengthen The Protection of Children's Rights Against Child Marriage' (2018) 2 Journal of Southeast Asian Human Rights 286.

24 Eri Sofiana (n 10).

25 Eri Sofiana (n 10).



becomes the victim physically and psychologically for a long time, which is sometimes not realized by the parents. As a result, in cases that occur in mental health clinics, many teenagers fail to get out of the mental block due to their parents' divorce. Apart from split parenting, the second is shared parenting. One factor contributing to poor child health is the poor care they receive.<sup>26</sup>

There are several reasons why co-parenting has received considerable attention in the normalization of child custody. Put forward by Mason, "the 'best interests of the child' standard has historically reflected a struggle between mothers' and fathers' rights, with children's needs considered to be commensurate with either position. Children are viewed at different times as fathers' property, as requiring the 'tender care' of mothers, and as fully 'belonging' to one or the other parent". Mason's explanation illustrates that parenting should pay more attention to the child's best interests. The child's interests are the main basis or preference in parenting management. Therefore, views must be eliminated which tend to regard or position children as "belonging to the father", or "belonging to the mother", or "as an object of rights" from one of the parents. This paper elaborates on the concept of co-parenting by trying to present developments in thinking about child-rearing. The analysis is strengthened by the consistency of parenting norms in the Compilation of Islamic Law and the latest norms that have developed in law enforcement practice on child custody in Indonesia (jurisprudence).<sup>27</sup>

In legal psychology, the need for child care can be divided into two types namely, First, legal custody, namely the need to care for the child completely according to the law, which includes the need for living expenses, health, education, and legal needs in general which is the shared responsibility of the father and mother. However, this need is generally more dominantly obtained from the father. Second, physical custody, namely the need to take care of the child physically because he has not been able to take care of himself both physically and spiritually, such as the need to breastfeed the mother, bathe, wear clothes, take care of himself, maintaining health, food and drink services, learning to communicate, friends playing and studying, the needs of children's growth and development, etc.<sup>28</sup>

If we link back to the concept of shared parenting with *syara'* (sharia) texts and provisions in Indonesian marriage law (including jurisprudence regarding child custody), it can be seen that these norms rely on noble efforts to ensure the child's best interests. Parenting, in truth, is not just concerned with who takes care of whom. However, more than that, the determination of child care is directed so that it is as

26 Mary V. Greiner and others, 'Child Welfare Experiences with Automated Medical Data Sharing for Children in Protective Custody' (2022) 136 Children and Youth Services Review 106453.

27 Asnawi (n 12). Muhammad Siddiq et all Armia, 'Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?' (2022) 7 JILS 525; Muhammad Siddiq Armia, 'Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience' [2018] Intellectual Discourse; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Maintaining the Constitutional Rights to Create a Better Society' (2023) 8 Petita : Jurnal Kajian Ilmu Hukum dan Syariah 69; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Form Over Substance, Achieving Objectives While Preserving Values' (2023) 8 Petita : Jurnal Kajian Ilmu Hukum dan Syariah i.

28 Maghfirah Maghfirah and Gushairi Gushairi, 'Shared Parenting Concept in Post-Divorce Gifts; Study of Contemporary Islamic Marriage Legislation' (2020) 20 Hukum Islam 185, 185.

much as possible to provide kindness, benefits, and guarantees for a better future for the child.<sup>29</sup>

Regarding the shared parenting model, several examples of the birth of joint parenting decisions by a panel of judges will be presented:

First, the decision of the Gedong Tataan Religious Court, through its decision Number: 0334/Pdt.G/2019/PA.Gdt.<sup>30</sup>, who apply co-parenting as a model in resolving child custody disputes after a divorce. In this decision, the judge in his decision determined that the children of the plaintiff and the defendant (aged 4 years and 6 months) were under joint care of the Plaintiff and the defendant with the following provisions:

1. The plaintiff was given custody of the child on Saturdays and Sundays when the children were not at school;
2. The defendant was given child custody on Monday–Friday (children’s school days);
3. If there are holidays on Monday-Friday, the child will still be cared for by the defendant unless the defendant and plaintiff agree on other matters; and,
4. Matters regarding education, health, and other matters related to the development of basic competencies and skills of the child must be carried out with the mutual agreement of the plaintiff and the defendant.<sup>31</sup>

Based on the rulings mentioned above, the judge who tried the *a quo* case did not grant the plaintiff’s request to be granted custody of the plaintiff and defendant’s children, who were not yet *mumayyiz* or not yet 12 years old, but instead determined child custody based on considerations of justice and benefit for the child, where the child’s custody is determined in joint care of the plaintiff and the defendant and then orders both of them to carry out the child’s care in full good faith.<sup>32</sup>

Second, is the consideration of the panel of judges in the Court Decision Number: 1901/Pdt.G/2017/PA.Smg studied choosing not to give custody of one of the parties but based on the existing status quo in the child’s best interests. The panel of judges in the decision did not mention the word conflict, but the considerations implied that joint custody decided by the judge aimed to reduce conflicts that might arise.<sup>33</sup> The decision refers to Article 5, paragraphs 1 and 2 of Law Number 1 of 1974 concerning Marriage.

“Based on the facts and the interests of the children, the panel of judges believes that the two children of the plaintiff and the defendant will not be assigned to the plaintiff or the defendant and will remain in their current status while being cared for by the plaintiff and the defendant as their mother and father, as has been running when his

29 Asnawi (n 12).

30 Hi Salasa Masriah, ‘Implementation of Shared Parenting Patterns in Decisions 0334/Pdt.G/2019/PA.Gdt Regarding Settlement of Child Custody Disputes (Study at the Gedong Tataan Religious Court, Pesawaran Regency)’ (UIN Raden Intan Lampung).

31 Masriah (n 30).

32 Masriah (n 30).

33 Rika Saraswati, Emanuel Boputra and Yuni Kusniati, ‘Fulfilling Children’s Rights in Indonesia Through Parenting Planning, Single Parenting and Joint Parenting’ (2021) 7 *Veritas et Justitia* 188. See also, Kelly Chong Yan Chan and Edward Lui, ‘Citizenship, Charges And Common Law Constitutional Rights’ (2022) 81 *The Cambridge Law Journal* 225 <<https://www.cambridge.org/core/product/6A959F14C59A5F380ECB95AAC5C7B832>>.

parents separated from their homes, while still giving freedom to the plaintiff and defendant as parents to express their love for each other.”<sup>34</sup>

Third, Court Decision Number: 217/Pdt.G/2014/PN.Smg where in their consideration, the panel of judges stated that: “...Considering that the two children are still underage and psychologically closer to their mother (plaintiff) because they are cared for by the plaintiff daily, it is fitting for the child to be under the care and guidance of the plaintiff. The plaintiff’s children follow and live with the plaintiff as the mother until they grow up and stand on their own, provided that if the defendant, as the child’s biological father, wants to visit or meet his child to give affection to each other, the plaintiff does not block and forbid it.”<sup>35</sup>

Fourth, considering the panel of judges in Court Decision Number: 428/Pdt.G/2014/PN.Smg states: “...The panel of judges thinks that these children would be more appropriate if their care, maintenance, and education were handed over to the plaintiff as the mother without reducing the defendant’s obligations as the father to provide maintenance and education costs for their children.”<sup>36</sup>

Fifth, the Court Decision Number: 1901/Pdt.G/2017/PA.Smg: “Considering that from the testimony of the witnesses of the plaintiff and defendant, it was found that the plaintiff still often meets his two children and still expresses affection at certain moments, while the defendant has raised the two children well and comfortably, the Panel of Judges thinks that the convenience of the two the child is not disturbed even though the plaintiff and the defendant are divorced, then the child should be protected from the problems of the two parents solely for the best interests of the child (Article 2 letter (b) and article 26 paragraph (1) letter (b) of the Law Number 23 of 2002 which has been amended by Law Number 35 of 2014 concerning Child Protection)”.<sup>37</sup>

Sixth, the decision of the High Religious Court Number: 10/Pdt.G/2016/PTA.JK. In this decision, the child custody decision was handed down along with the provisions for the division of time, namely, Monday to Friday, the child is under the mother’s care, and Saturday to Sunday, the child is under the father’s care.<sup>38</sup>

If you look at the six examples of the co-parenting model above, it is clear that the judge’s consideration is for the child’s benefit, even if there are underage children, but if co-parenting is beneficial, then this model must be implemented. Although, in some cases, single parenting can be more beneficial, the joint parenting model also needs to be disseminated and normalized for the sake of the physical and psychological health of post-divorce children.

In the Al-Qur’an Surah Al-Baqarah, verse 233 stipulates the obligation to care for children as well as possible. Word of Allah Swt., which reads:

34 Saraswati, Boputra and Kusniati (n 33).

35 Saraswati, Boputra and Kusniati (n 33).

36 Saraswati, Boputra and Kusniati (n 33).

37 Saraswati, Boputra and Kusniati (n 33).

38 Meliani Meliani and Indra Budi Jaya, ‘Implementation of Joint Custody Rights for Minor Children: Analysis of Legal Norms’ (2022) 3 Fastabiq: Jurnal Studi Islam 56. See also, Samantha Fairclough, ‘The Lost Leg of the Youth Justice and Criminal Evidence Act (1999): Special Measures and Humane Treatment’ (2021) 41 Oxford Journal of Legal Studies 1066 <<https://doi.org/10.1093/ojls/gqab014>>; Harman and others (n 3).

وَالْوَلَدُ يُرْضَعُ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنِمَّ الرِّضَاعَةَ ۖ وَعَلَى الْمَوْلُودِ لَهُ ۖ رِزْقُهُنَّ  
وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارُّ وَالِدَةُ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ ۖ بِوَلَدِهِ ۖ  
وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۚ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا إِنْ أَرَدْتُمْ أَنْ  
تَسْتَرْضِعُوهُمَا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ ۖ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا  
تَعْمَلُونَ بَصِيرٌ

Meaning English Sahih Internasional from Kemenag RI.

233. Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do.

This verse obliges both parents to take good care of their children. In the event of a divorce, the obligation remains attached. The problem is only in the absence of confirmation regarding who has more rights to care for children after a divorce and the order of parties more entitled to child care.<sup>39</sup> Therefore, the concept of co-parenting offers a new paradigm in childcare management. This conception has been widely implemented in common-law countries such as the United States and Canada. In Canada, for example, joint parenting is regulated in Canadian divorce law (1997 Federal Child Support Guidelines under the Divorce Act), shared custody is an arrangement regarding time shared between children and each parent.<sup>40</sup>

The conclusion is that although, basically in Islam, there are separate rules regarding *hadhanah*, there are also different views between the various schools of thought. The obligation of parents to care for and accompany children physically and psychologically cannot be canceled after a divorce. Those who died were an obligation to their ex-partner but not to children. Therefore, because split parenting has many weaknesses, it is hoped that with a comprehensive understanding, we will be able to develop shared parenting, which certainly does not violate the boundaries violated by the sharia. If a spouse has an ex, but children and in-laws cannot be exes, parents still have the same obligations and cooperate as best they can, hoping that children will not become victims of prolonged divorce.

### Patterns of Resolve Child Custody Disputes in Urban Muslim Families

This follows the description of the application of the co-parenting model discussed clearly in the previous sub. In this sub, the author will focus more on case data on several urban samples in resolving child custody disputes. Has the co-parenting model been used frequently in decisions, or is it limited so children become prolonged victims?

39 Asnawi (n 12).

40 Maghfirah and Gushairi (n 28).

First, the settlement of child custody disputes through the decision of the Medan Religious Court. Based on considerations containing interests (*mashlahah*) and social norms (law as a social engineering tool). The fact shows that two cases of child custody fall on the husband (father) even though the child has not been *mumayyiz* after the divorce caused by death and divorce (*thalaq*). Child custody falls to the father in Decision Number: 433/Pdt.G/2019/PA.Mdn. Furthermore, child custody also falls into the hands of the father in Decision Number: XXXX/Pdt.G/2019/PA.Mdn. The two decisions show the results of a split parenting decision, in which the child's custody goes to the father.<sup>41</sup>

Second, the decision of Banjarmasin High Religious Court, South Kalimantan. In case No. 11/Pdt.G/2018/PTA.Plk issued by the High Religious Court of Central Kalimantan regarding child custody, whose ruling reads:<sup>42</sup>

"Strengthening the decision of religious courts of Kuala Kapuas No. 0304/Pdt.G/207/PA.K.Kps dated March 7, 2017, which was filed for appeal with the verdict which became:

1. Granted the comparative/appeal lawsuit in part;
2. Set a child named Z, aged 9 years, under his care (*hadhanah*) plaintiff/appeal;
3. Punish the defendant/appellant to surrender the child to the plaintiff/appeal;
4. Punish the defendant/appellant to provide maintenance to the child named Z in the amount of 1,500,000 every month, which is given through the plaintiff/appeal until the child is an adult or 21 years old with an annual increase of 10%;
5. Ordered the plaintiff/appeal to grant access or ease for the defendant/appellant to meet with the child named Z;
6. Rejecting the plaintiff's/appeal's claim for other than and the rest;
7. Burden the plaintiff/appeal to pay court fees (so)."<sup>43</sup>

In the decision, it was explained that the reason for filing for divorce from X was because, since 2013, there had been a dispute, the defendant was often drunk, played online gambling, and had an affair with another woman who is now married and is pregnant. Then in the counterclaim, the defendant has no objection to divorcing the plaintiff but asks that the child's custody fall to the defendant because the child is currently living and studying at the defendant's residence. Furthermore, the plaintiff objected and gave the response that the child was underage, apart from that, the defendant often obstructed and even forbade the plaintiff to meet his son.<sup>44</sup>

After the issuance of the decision of the Marabahan Religious Court with No. 0300/Pdt.G/2016/PA.Mrb, on December 8, 2016, the defendant or the father submitted an appeal to the Banjarmasin High Religious Court on January 24, 2017, with case number: 0008/Pdt.G/2017/PTA.Bjm, which resulted in the verdict:<sup>45</sup>

"Declaring that the appeal filed by the defendant/appellant is formally acceptable. Cancelled the decision of the Marabahan Religious Court Number:

41 Dhiauddin Tanjung, Mhd Yadi Harahap and Fadlan Fuadi, 'Settlement of Child Custody Disputes Through Medan Religious Court Decisions (Analytical Study of the Compilation of Islamic Law)' (2021) 9 Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial 581.

42 Eri Sofiana (n 10).

43 Eri Sofiana (n 10).

44 Eri Sofiana (n 10).

45 Eri Sofiana (n 10).

0300/Pdt.G/2016/PA.Mrb dated 8 December 2016 AD, coinciding with 8 Rabiul Awal 1438 Hijriyah.”

“By judging yourself”

In Convention:

1. Granted the Plaintiff's lawsuit;
2. Divorced one *bain sughra* of the defendant against the plaintiff;
3. Ordered the Registrar of Religious Court of Marabahan to send a copy of the decision that has permanent legal force to the Value Added Tax Office of Religious Affairs (PPN KUA), Anjir Muara District, Barito Kuala Regency and Selat District, Kuala Kapuas Regency to be recorded in the list provided for that purpose.

In Reconvention:

“Reject the Plaintiff's claim.”

Referring to the cases above, the reality is that the plaintiffs did not accept many decisions. However, due to situations and conditions that made it impossible to appeal the custody of the children, they finally accepted the judge's decision regarding the split parenting. It differs from the case example above, which was appealed, so the decision was changed, and the child's condition was looked at more. Even in cases like this, co-parenting is still a long way off.

The example of resolving child custody disputes for urban Muslims above is, of course, only a handful of the many decisions that use the split parenting model (care for the father or mother only). Furthermore, it will also be explained so that it is clear that even in urban areas, there are cases of child custody dispute resolution using the co-parenting model. Especially in this era, many public figures provide role models that when divorced, children remain in the care of both parents. Although of course, there are differences in other matters, in essence children are still the responsibility of both parents even though they are separated. Following are some examples of co-parenting models in decisions for urban or urban Muslims.

Third, in Bandung City and DKI Jakarta, it is as in the decision number: 5162/Pdt.G/2020/PA.Bdg, which stipulates joint custody with a one-month change of residence pattern (50%-50%), and also in decision Number: 10/Pdt.G/2016/PTA.JK by dividing the time of stay, namely Monday to Friday, the child is under the mother's care, and Saturday & Sunday, the child is under the father's care (70%-30%).<sup>46</sup> Furthermore, it is still in South Jakarta Religious Court with decision No. 574 K/Ag/2016, which gives a co-parenting decision with a long way to the cassation level first, and in the end, the judge gives a joint custody decision.<sup>47</sup>

Fourth, in the City of Semarang. Seen in Court Decision Number: 217/Pdt.G/2014/PN.Smg, Court Decision Number: 428/Pdt.G/2014/PN.Smg. Then, Court Decision Number: 1901/Pdt.G/2017/PA.Smg, which applies the co-parenting model in its decision.<sup>48</sup>

Fifth, in the Madiun City Religious Court. It is LKH and SR, ex-husband and wife, who were divorced about 4 years ago and are again facing each other at the green table of

46 Meliani and Jaya (n 38).

47 Direktori Putusan Mahkamah Agung Republik Indonesia, 'Supreme Court Decision Number 574 K/Ag/2016 Cassation Petitioner VS Cassation Respondent' (2016).

48 Saraswati, Boputra and Kusniati (n 33).

the Madiun City Religious Court. The household conflict that should have ended when a court decision was issued broke the divorce of their household. The fact has not subsided even though they are no longer bound by marriage.<sup>49</sup>

The trigger this time was their only child AFK. The little girl seems to make her father and mother reluctant to part from her. Unfortunately, the desire of the two to always be with the princess collided with the fact that the two of them are currently living separately, each of them has opened a new chapter of their life with their partner, so both of them asked the court to determine one of them as the right to care for the child.<sup>50</sup>

The case for child custody on behalf of LKH against SR was registered at the Madiun City Registrar's Office with Number: 44/Pdt.G/2020/PA.Mn. In the process, LKH and SR were finally reconciled in a mediation forum. AI, the Mediator for the case, welcomed the choice of both parties not to continue the case through trial. He stated that the negotiation process between LKH and SR was running as expected. "Both of them agreed to make a Memorandum of Peace Agreement in which the main point was that the child was left to be cared for by LKH while still giving SR the widest possible access to meet and express his love to AFK."<sup>51</sup> The example of the last case above shows the judge's decision to co-parenting even if the child lives with the LKH, but the SR is still given the freedom to accompany the growth and development of their child.

## Conclusion

This study illustrates that the co-parenting model is effective if applied to the settlement of post-divorce child custody disputes (*hadhanah*) in urban Muslim families, it can be resolved through litigation or non-litigation. Both have their advantages and disadvantages. If the disputing parties choose to go to litigation (the case is brought to court), then if scientists, practitioners, and the parties concerned with this problem can comprehensively understand the basis of *hadhanah*, shared parenting as a new model in resolving child custody disputes can be created for the sake of justice, benefit to legal certainty for children.

Examples of co-parenting applied in various cities include the City of Bandung and DKI Jakarta in the decision Number: 5162/Pdt.G/2020/PA.Bdg and also in the decision Number: 10/Pdt.G/2016/PTA. JK. Furthermore, it is still at South Jakarta Religious Court with decision Number: 574 K/Ag/2016. Then, an example of a decision on the co-parenting model in Semarang City is in Court Decision Number: 217/Pdt.G/2014/PN.SMG, Court Decision Number: 428/Pdt.G/2014/PN.Smg. Then, Court Decision Number: 1901/Pdt.G/2017/PA.Smg. Lastly, case analysis from Madiun City Religious Court. The case for child custody on behalf of LKH against SR was registered at the Madiun City Registrar's Office with Number: 44/Pdt.G/2020/PA.Mn.

If someone has implemented the co-parenting model in urban areas and it turns out to be effective in minimizing children becoming victims of prolonged divorce, then it is hoped that there will be synchronization between court decisions and facts on the ground. Even though, in reality, there are related parties who decide that split parenting is a benefit for the child, especially if the father or mother is toxic to the

49 Pa-kotamadiun.go.id, 'Fighting over Child Custody, Ex-Husband and Wife Reconcile in Mediation' (2020).

50 Pa-kotamadiun.go.id (n 49).

51 Pa-kotamadiun.go.id (n 49).

child. However, most children still need both parents for a more prosperous life physically and mentally even though their parents have separated with the condition that parents do not violate the sharia or predetermined limits.

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