

Rethinking Financial Responsibility in Muslim Families: A Critical Analysis of Nafaqah in Classical and Contemporary Islamic Jurisprudence

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ARTICLE INFO

Article History

Received, 2025/02/15

Revised, 2025/03/19

Accepted,
2025/04/30

Keywords

Child custody; *Haḍānah*;

Maṣlaḥah;

Best interests of the child;

Islamic family law

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ABSTRACT

Child custody (*ḥaḍānah*) in classical Islamic family law has traditionally emphasized parental eligibility, gender-based preferences, and hierarchical custodial rules. Although these doctrines provide legal guidance, their application may not adequately address children's safety, psychological development, emotional stability, and changing welfare needs. This study reconstructs *ḥaḍānah* by integrating *maṣlaḥah* with the best interests of the child as a child-centered normative framework. Using qualitative normative legal research, it applies conceptual and comparative approaches to classical jurisprudence, contemporary Islamic family law, and international child-rights principles. The analysis suggests that *maṣlaḥah* offers a substantive basis for reassessing rigid custodial preferences, while the best-interests principle supplies operational criteria for evaluating safety, emotional well-being, developmental needs, continuity of care, and social environments. Accordingly, the study proposes a custody model that prioritizes each caregiver's demonstrated ability to protect children's holistic welfare over parental gender or formal status. This approach seeks to reconcile Islamic legal objectives with contemporary child-rights standards without disregarding relevant jurisprudential foundations. Its contribution is a conceptual framework for more equitable, context-sensitive custody decisions that makes children's interests central to legal reasoning. As a normative proposal rather than an empirically tested model, its practical application requires careful assessment within specific judicial and institutional contexts.

Citation:

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INTRODUCTION

Child custody has become an increasingly complex issue in contemporary family law because the dissolution of marriage transforms custody from a question of parental entitlement into a broader question of child protection, welfare, and justice. The principle of the best interests of the child has emerged as an important normative standard in custody adjudication, requiring decision-makers to consider the consequences of custody arrangements for the individual child rather than relying exclusively on formal parental rights. The United Nations Committee on the Rights of the Child (2013) explains that the best-interests principle functions simultaneously as a substantive right, a fundamental interpretive principle, and a procedural rule. Nevertheless, its practical application depends on judicial interpretation, the availability of relevant evidence, institutional capacity, and the legal traditions within which custody disputes are resolved. In Muslim-majority societies, this complexity is particularly significant because contemporary custody regulation operates at the intersection of classical Islamic jurisprudence, statutory family law, judicial discretion, and international child-rights norms (Fajar et al., 2021; Rika, 2021). Classical formulations of *ḥaḍānah* generally allocate custodial priority according to parental eligibility, the child's age and developmental stage, and prescribed custodial conditions. Contemporary disputes, however, increasingly require consideration of psychological well-being, continuity of care, parental capability, protection from violence, and the child's individual circumstances (Rika, 2021). The resulting tension indicates that reconstructing child custody in Islamic family law is not merely a matter of replacing traditional rules with modern standards, but of developing an internally coherent Islamic legal framework capable of responding to changing understandings of childhood, welfare, and substantive justice.

Previous studies have made important contributions to understanding this transformation, particularly by demonstrating that *ḥaḍānah* cannot be reduced to a fixed parental right detached from the welfare of the child. Fajar et al. (2021) highlight the importance of the best-interests principle in custody and post-divorce care, supporting an understanding of custody as a combination of parental rights and caregiving responsibilities. Rika (2021), based on an examination of 31 custody decisions in Indonesia, found that judges considered parental capability and the potential psychological and social consequences of custody arrangements. However, the study also identified limitations in judicial reasoning, particularly the inconsistent consideration of domestic violence histories and the insufficient incorporation of children's voices. These findings suggest that recognising child welfare as a legal principle does not necessarily ensure its consistent implementation in judicial practice. They also demonstrate that custody decisions require more than the formal identification of an eligible parent: decision-makers must examine whether the proposed arrangement can adequately protect the child's safety, development, and continuing relationships with significant caregivers.

A further contribution of existing scholarship concerns the relationship

between Islamic legal reasoning and contemporary child-protection principles. Within Islamic jurisprudence, *maṣlaḥah* provides a basis for evaluating legal consequences in terms of welfare, benefit, and the prevention of harm. Its relevance to *ḥaḍānah* lies in the possibility of assessing custodial arrangements according to their consequences for the child rather than treating conventional custodial preferences as detached from their protective purpose. This approach does not necessarily require the abandonment of classical jurisprudential rules. Rather, it invites a closer examination of the objectives those rules are intended to serve and the circumstances in which their application may need to be reconsidered. Fajar et al. (2021) support a child-centred understanding of custody, while Rika (2021) demonstrate the practical importance of examining parental capability and the child's circumstances in judicial decisions. Read together, these studies establish a basis for further inquiry into how the welfare-oriented reasoning associated with *maṣlaḥah* can inform custody decisions without severing contemporary legal interpretation from the normative foundations of Islamic family law.

Despite these advances, the relationship between *maṣlaḥah* and the best-interests-of-the-child principle requires further conceptual clarification. Although the two approaches share a concern with welfare and the avoidance of harm, they emerge from different normative and intellectual contexts and should not be treated as interchangeable without explanation. *Maṣlaḥah* is embedded in Islamic legal reasoning and requires consideration of the purposes, principles, and normative boundaries of the *Sharī'ah*. The best-interests principle, by contrast, directs attention to an individual child's circumstances and requires the decision-maker to identify, assess, and give appropriate weight to the interests affected by a particular decision. General Comment No. 14 emphasises that the child's best interests must be assessed in the specific context of the child concerned and that the decision-making process should demonstrate how those interests have been identified and considered (United Nations Committee on the Rights of the Child, 2013). An integrated approach therefore requires both normative justification and an identifiable process of assessment. Without such clarification, references to welfare or *maṣlaḥah* may remain abstract and offer limited guidance for resolving competing claims in actual custody disputes.

The need for an integrated framework becomes clearer when custody is understood as a multidimensional arrangement rather than a single decision about which parent should possess custodial authority. A child may have a strong emotional attachment to one parent while also depending on the other parent for educational support, financial stability, or continuity of family relationships. Similarly, a parent may satisfy formal eligibility requirements but lack the practical capacity to provide a safe and stable caregiving environment. Custody assessment must therefore distinguish between parental status and demonstrated caregiving capacity, while recognising that economic resources alone do not necessarily determine a parent's suitability. It must also consider the possible effects of parental conflict, disruption of established care arrangements, exposure to

violence, and restrictions on the child's relationship with either parent. These considerations are consistent with the concerns raised by Rika (2021) regarding judicial attention to parental capability, psychological consequences, domestic violence, and children's participation. They also support the argument that a child-centred approach must be sensitive to the particular circumstances of each case rather than based on a universal presumption that one parental arrangement will always produce the best outcome.

Another important consideration is the procedural dimension of substantive justice. Even where legislation recognises child welfare as a guiding principle, meaningful protection depends on whether judges have a clear basis for gathering evidence, evaluating competing claims, and explaining their decisions. The best-interests principle should not become an unrestricted justification for judicial discretion, just as *maṣlaḥah* should not be invoked as a general appeal to benefit without identifying the benefit sought, the potential harm to be prevented, and the interests at stake. A reasoned custody decision should make clear which aspects of the child's circumstances have been assessed, how conflicting considerations have been balanced, and why the selected arrangement is preferable to the available alternatives. The United Nations Committee on the Rights of the Child (2013) underscores the importance of procedural safeguards in applying the best-interests principle. In the context of Islamic family law, such safeguards can strengthen the transparency and consistency of judicial reasoning while preserving the role of Islamic legal principles in determining the legitimacy and objectives of the decision.

A further dimension of the problem concerns the child's participation in custody proceedings. Children are not merely the objects of parental claims; they are individuals whose experiences, attachments, concerns, and developmental needs may be relevant to determining an appropriate arrangement. Nevertheless, participation must be understood in a manner appropriate to the child's age, maturity, and circumstances. Listening to a child does not mean transferring the entire burden of decision-making to the child or assuming that the child's expressed preference must automatically determine the outcome. Instead, the child's views should be considered alongside evidence about safety, caregiving capacity, emotional stability, and other relevant circumstances. Rika (2021) found that children's voices were not consistently incorporated into Indonesian custody adjudication, illustrating a gap between the recognition of child welfare and the procedural means required to assess it. Integrating meaningful child participation into a *maṣlaḥah*-oriented framework would help ensure that welfare is assessed in relation to the actual child concerned, rather than inferred exclusively from parental status, conventional assumptions, or the preferences of adults involved in the dispute.

Against this background, a significant research gap remains: the absence of a sufficiently integrated normative and operational framework that systematically connects the internal logic of *maṣlaḥah* with the practical requirements of the best-

interests-of-the-child principle. Existing scholarship has examined the normative significance of child welfare, the application of custody rules, and the reasoning employed by judges in individual disputes (Fajar et al., 2021; Rika, 2021). However, these discussions leave room for a more systematic account of how Islamic legal objectives can be translated into transparent criteria for evaluating competing custody arrangements. The problem is therefore not simply that Islamic family law lacks concern for child welfare, but that the relationship between *maṣlaḥah* and the best interests of the child needs to be further theorised as a coherent decision-making framework. Such a framework should clarify the normative basis for custody assessment, identify the relevant dimensions of child welfare, and explain how competing interests should be evaluated when no available arrangement is free from disadvantage.

This study addresses that gap by proposing an integrated *Maṣlaḥah*–Best Interests of the Child framework for reconstructing *ḥaḍānah* in contemporary Islamic family law. Rather than treating *maṣlaḥah* and the best-interests principle as parallel or competing normative systems, the study conceptualises *maṣlaḥah* as the substantive Islamic legal foundation and the best-interests principle as an operational mechanism through which the welfare of the particular child can be assessed. This proposed integration seeks to move custody adjudication beyond the question of which parent possesses the stronger presumptive claim toward a more substantive inquiry: which arrangement is most capable of protecting and promoting the child's overall welfare in the circumstances of the case? It retains the normative significance of Islamic law while emphasising the need to assess caregiving arrangements in light of the child's safety, dignity, development, and family relationships. The framework is intended to contribute to the reconstruction of *ḥaḍānah* as a welfare-oriented legal responsibility rather than merely a status-based allocation of parental rights.

Operationally, the proposed framework evaluates custody through interconnected considerations, including physical and psychological safety, emotional continuity, developmental and educational needs, parental caregiving capacity, stability of the social environment, protection from harmful parental conflict, and the child's views in accordance with age and maturity. These considerations are not intended to function as a mechanical checklist in which every factor carries identical weight in every case. Instead, they provide a structured basis for identifying the relevant interests, evaluating potential benefits and harms, and explaining why a particular custody arrangement is justified. The child's safety, for example, may require particular weight where there is credible evidence of violence or abuse, while continuity of care and the preservation of meaningful parental relationships may be important in cases where both parents remain capable of providing safe care. By combining an Islamic normative foundation with a contextual assessment of the child's circumstances, the proposed framework seeks to improve the consistency, transparency, and substantive fairness of custody reasoning.

The proposed reconstruction also distinguishes the determination of custody from the broader responsibilities that continue after divorce. Assigning primary custody to one parent does not, by itself, resolve questions concerning the other parent's involvement, financial responsibilities, communication with the child, or participation in important decisions affecting the child's development. A welfare-oriented framework should therefore avoid assuming that the allocation of custodial authority automatically determines the appropriate scope of each parent's continuing responsibilities. Instead, it should encourage decision-makers to consider how custody arrangements can protect the child while maintaining appropriate and safe relationships with both parents whenever circumstances permit. Where contact with a parent would expose the child to harm, protective restrictions may be necessary; where both parents can safely contribute to the child's upbringing, preserving their involvement may serve the child's welfare. This distinction reinforces the central argument of the study: the legitimacy of a custody arrangement should be assessed by its capacity to protect the child, not simply by the formal distribution of parental rights.

Against this background, the present study aims to critically examine the development of ḥaḍānah in classical and contemporary Islamic family law and to formulate a reconstructed custody framework that integrates maṣlaḥah with the best interests of the child. The first objective is to identify how classical and contemporary Islamic legal doctrines conceptualise custody, including the underlying assumptions concerning parental priority, custodial eligibility, the child's age and developmental status, and the circumstances that justify transferring custody. The second objective is to determine how maṣlaḥah can be translated into substantive and operational criteria for child-centred custody decisions while remaining consistent with the objectives of Islamic family law and contemporary child-rights principles. Accordingly, the study is guided by two research objectives. First, it examines how child custody (ḥaḍānah) is conceptualised and regulated in classical and contemporary Islamic family law, with particular attention to parental priority, custodial eligibility, the child's age and developmental status, and the circumstances that justify transferring custody. Second, it analyses how the principle of maṣlaḥah can be integrated with the best interests of the child to reconstruct a more child-centred framework of custody in contemporary Islamic family law, while maintaining consistency with Islamic legal objectives and contemporary child-rights principles. By pursuing these objectives, the study seeks to contribute not merely to the debate on custody allocation but also to the broader reconstruction of Islamic family law through a model of substantive justice that places the child's welfare at the centre of legal reasoning.

METHODS

This study employs a qualitative doctrinal research design combined with a structured literature review to examine the conceptualisation, regulation, and possible reconstruction of child custody (ḥaḍānah) in Islamic family law. A qualitative approach is appropriate because the study seeks to interpret legal

concepts, normative principles, and scholarly arguments rather than measure relationships among variables or estimate statistical effects. The doctrinal dimension focuses on identifying, interpreting, and critically examining legal norms, jurisprudential arguments, and principles governing custody in classical and contemporary Islamic law. The literature-review dimension complements this analysis by identifying developments in scholarship concerning *maṣlaḥah*, *maqāṣid al-sharīʿah*, child rights, and the best interests of the child. Literature reviews can provide a systematic basis for synthesising fragmented scholarship, identifying conceptual inconsistencies, and developing theoretical contributions when their procedures are clearly specified (Snyder, 2019). Accordingly, this study does not treat the literature as a collection of independent opinions but as a body of normative and conceptual evidence through which the relationship between Islamic legal reasoning and child-centred custody principles can be critically evaluated. This design supports the examination of the doctrinal development of *ḥaḍānah* and the formulation of an integrated framework for contemporary custody assessment.

The literature identification and selection process follows a structured search strategy informed by the transparency principles of PRISMA 2020, particularly the documentation of source identification, screening, eligibility assessment, and inclusion (Page et al., 2021). PRISMA is used as a reporting guide rather than as a substitute for doctrinal legal analysis or as evidence that the study constitutes a quantitative systematic review. The search strategy focuses on scholarly publications available up to 31 December 2022, consistent with the study's temporal inclusion criteria. Relevant sources are sought through academic databases and scholarly repositories, including Scopus-indexed publications where available, alongside authoritative legal materials and relevant academic books. Search terms include "child custody," "*ḥaḍānah*," "Islamic family law," "*maṣlaḥah*," "*maqāṣid al-sharīʿah*," "best interests of the child," "child rights," and "custody reform." These terms are combined using Boolean operators such as AND and OR to retrieve literature addressing the substantive and conceptual dimensions of the research. Searches are adapted to the terminology and indexing practices of each database, while bibliographic references in relevant publications are examined to identify additional sources that may not appear in the initial search results.

The sources are selected according to their relevance, scholarly credibility, and contribution to the research objectives. The principal sources consist of peer-reviewed journal articles and scholarly publications that directly examine *ḥaḍānah*, Islamic family law, *maṣlaḥah*, child-centred adjudication, or the best-interests-of-the-child principle. Secondary materials include relevant statutory provisions, authoritative legal instruments, international child-rights documents, and classical or contemporary jurisprudential works required for doctrinal interpretation. Sources are included when their bibliographic information can be verified, their scholarly or legal provenance is identifiable, and their content contributes substantively to at least one research objective. Publications are

excluded when they are unrelated to the research focus, duplicate other records, lack sufficient scholarly credibility, or refer to custody and child welfare only incidentally. A persistent identifier, such as a DOI, is recorded when available but is not treated as an absolute requirement, because relevant legal instruments, classical texts, and some legitimate scholarly publications may not have one. The selection process prioritises substantive relevance and source quality rather than relying exclusively on publication indexing or the presence of a DOI.

To strengthen the transparency of the review, the identification and screening process is organised into successive stages. First, records retrieved from the selected databases and repositories are compiled and checked for duplicate entries. Second, titles and abstracts are examined to determine whether the publications address the study's principal concepts and legal context. Third, potentially relevant publications are assessed in full text against the inclusion and exclusion criteria. Fourth, the final selection is organised according to its contribution to the doctrinal analysis, the interpretation of *maṣlaḥah*, or the assessment of child welfare and custody decision-making. The reasons for excluding full-text publications are documented where applicable, and the selection process is summarised using a PRISMA-style flow diagram if complete search and screening records are available. This procedure is intended to make the literature-selection process transparent and traceable, while recognising that a doctrinal review requires qualitative judgement about the authority, interpretive relevance, and normative significance of legal sources. In line with Snyder (2019), the methodological account therefore distinguishes the retrieval of literature from the subsequent critical synthesis of its arguments.

The collected material is analysed through qualitative thematic analysis, combining deductive coding derived from the research objectives with inductive identification of concepts emerging from the selected literature. Thematic analysis provides a systematic approach to identifying and interpreting patterns of meaning across qualitative materials (Braun & Clarke, 2006). In this study, the analytical process involves extracting relevant textual and normative information, coding recurring legal concepts, grouping related codes into higher-order themes, and synthesising the relationships among *ḥaḍānah*, parental rights and responsibilities, *maṣlaḥah*, child welfare, and the best-interests principle. Document analysis also provides a useful methodological basis for examining legal texts and scholarly publications as sources of evidence, while attending to their context, purpose, and limitations (Bowen, 2009). The analysis therefore considers not only what a source explicitly states but also the normative assumptions underlying its argument, the legal context in which it operates, and its relevance to the reconstruction of custody principles. This combination enables the study to examine both the explicit rules governing custody and the broader legal reasoning through which those rules are interpreted.

The analysis proceeds through two interrelated analytical tracks corresponding to the study's objectives. The first examines the conceptualisation and regulation of

ḥaḍānah in classical and contemporary Islamic family law. Relevant materials are compared to identify the principal rules concerning custodial priority, parental eligibility, the child's age and developmental status, and circumstances that may justify transferring custody. Particular attention is given to the relationship between formal custodial entitlements and the purposes of care, protection, and the prevention of harm. The second analytical track examines how *maṣlaḥah* can be integrated with the best-interests-of-the-child principle to inform a more child-centred approach to custody assessment. This involves identifying the substantive objectives of *maṣlaḥah* and comparing them with the practical dimensions of child welfare, including safety, emotional continuity, developmental needs, caregiving capacity, and the child's participation. Rather than assuming that these concepts are identical, the analysis evaluates their points of convergence, their different normative foundations, and the conditions under which they can be integrated coherently.

The final stage involves cross-source comparison and normative synthesis. Findings from classical jurisprudential texts, contemporary legal scholarship, statutory materials, and child-rights instruments are compared to identify areas of convergence, contradiction, and unresolved tension. Where sources offer different positions, the analysis considers their legal authority, interpretive context, underlying assumptions, and relevance to the study's objectives rather than treating all sources as equivalent. The proposed *Maṣlaḥah–Best Interests of the Child* framework is then developed by connecting the normative purposes of Islamic law with identifiable criteria for assessing the circumstances of an individual child. These criteria are treated as interrelated considerations rather than a rigid checklist or a formula that automatically determines custody outcomes. The framework is intended to support reasoned and context-sensitive decisions by clarifying the relevant interests, identifying potential benefits and harms, and explaining how competing considerations may be balanced. Through this process, the study seeks to ensure that its proposed reconstruction emerges from a critical synthesis of the selected literature and legal materials rather than from an unsupported theoretical assumption.

RESULT AND DISCUSSION

Classical Islamic Custody Doctrine and Its Child-Welfare Foundations

Child custody (*ḥaḍānah*) in classical Islamic family law is fundamentally understood as a responsibility to provide care, protection, upbringing, and education for children who have not yet attained sufficient independence. Although classical jurisprudential discussions frequently describe custody through parental entitlement and preferential custodial arrangements, the underlying responsibilities associated with *ḥaḍānah* demonstrate that custody cannot be separated from the protection of children's welfare. Classical jurists established requirements concerning custodial eligibility, including physical and mental capacity, trustworthiness, and the ability to provide appropriate care. These requirements indicate that parental status alone does not establish an unrestricted claim to custody. Rather, custodial entitlement is connected to the responsibility to protect and fulfil the child's essential needs (Fajar et al., 2021).

The classical jurisprudential framework nevertheless developed preferential arrangements for determining custody following marital dissolution. Several Islamic legal schools prioritize mothers or particular female relatives during specified stages of childhood, while recognizing the custodial roles of fathers and other relatives under particular circumstances. Such arrangements historically reflected assumptions concerning children's dependency, emotional attachment, maternal caregiving, and the developmental requirements of early childhood. However, differences among juristic traditions demonstrate that the allocation of custody cannot be understood through a single universally applicable hierarchy. Variations in custodial eligibility, duration, and transfer of responsibility indicate that classical Islamic jurisprudence accommodates different legal approaches to protecting children according to their circumstances.

The existence of custodial preferences does not necessarily imply that a designated parent possesses an absolute right to retain custody regardless of the child's welfare. Classical legal reasoning recognizes circumstances in which custodial arrangements may be reconsidered when the preferred caregiver cannot fulfil the responsibilities associated with *ḥaḍānah*. Incapacity, neglect, harmful conduct, and other circumstances affecting caregiving ability may consequently become relevant to determining whether custodial priority remains appropriate. This possibility demonstrates that the protective purpose of custody occupies an important position within Islamic jurisprudence, even when its application is expressed through predetermined custodial categories (Fajar et al., 2021).

A critical distinction therefore emerges between the formal allocation of custodial priority and the substantive justification for maintaining a particular caregiving arrangement. Preferential custody rules may provide legal predictability and reflect established assumptions concerning children's needs. Nevertheless, their legitimacy in particular circumstances depends on whether their application continues to fulfil the protective purposes for which they were developed. Where the child's safety, emotional well-being, or developmental circumstances differ substantially from those underlying a general custodial preference, reliance on that preference without further examination may become insufficient to ensure adequate protection.

This distinction should not be interpreted as requiring the complete abandonment of classical custody doctrine. Instead, it establishes the importance of examining the relationship between its normative foundations and contemporary conditions. Classical jurisprudential rules retain significance as sources of Islamic legal reasoning, but their application requires attention to custodial responsibilities, the prevention of harm, and the actual ability of caregivers to provide appropriate protection. The jurisprudential recognition of caregiving qualifications and circumstances affecting custodial eligibility provides an important foundation for interpreting *ḥaḍānah* through the substantive welfare of children.

Contemporary Indonesian research illustrates why this distinction is relevant to judicial decision-making. Rika (2021), examining 31 court decisions concerning divorce and custody disputes in Indonesia, found that custody was awarded to mothers, fathers, or both parents according to the circumstances of

individual cases and assessments of parental capability. Judicial reasoning also considered potential psychological and social consequences for children. These findings indicate that custody adjudication does not necessarily involve the mechanical application of predetermined parental priority and that individualized circumstances may influence judicial outcomes.

Nevertheless, the same research identified limitations in the consideration of domestic violence and children's participation in custody proceedings. Histories of domestic violence were not adequately assessed in the decisions examined, while children's views were not consistently heard. These findings reveal a gap between recognizing child welfare as a general objective and applying comprehensive protective considerations in judicial reasoning. The fact that courts consider parental capability does not independently demonstrate that all relevant dimensions of a child's welfare have been sufficiently evaluated.

Nasution and Nasution (2021) similarly discuss challenges concerning the implementation of Islamic family law and the effective protection of children's rights. Read alongside Rika's (2021) findings, this scholarship suggests that the availability of legal provisions governing custody does not automatically secure substantive protection. The quality of custody decisions also depends on how judicial institutions interpret relevant legal norms, assess factual evidence, and consider the consequences of competing caregiving arrangements.

The principal issue is therefore not whether classical Islamic custody doctrine contains concern for children's welfare, but how that concern can be translated into transparent and sufficiently comprehensive standards of legal assessment. Traditional custodial priorities provide a doctrinal starting point, while contemporary child-protection considerations require closer examination of safety, psychological development, emotional relationships, caregiving capacity, and individual circumstances. The existence of welfare-oriented elements within classical jurisprudence makes conceptual reconstruction possible without presenting Islamic custody doctrine and contemporary child protection as necessarily opposing legal approaches.

Accordingly, the analysis identifies the normative foundation of *ḥaḍānah* as the responsibility to secure care and prevent harm rather than an unconditional privilege arising from parental gender or formal status. This interpretation provides the foundation for integrating Islamic legal reasoning with contemporary standards of children's rights. It also establishes why the determination of custody requires a distinction between general legal preferences and the substantive interests of the individual child.

Integrating Maṣlaḥah and the Best Interests of the Child

The reconstruction of *ḥaḍānah* requires a normative framework capable of connecting established Islamic legal principles with contemporary child-protection standards. The literature indicates that *maṣlaḥah* and the best interests of the child provide complementary perspectives for this purpose, although they originate from different legal and intellectual traditions. Both direct attention toward the protection of welfare and the prevention of harm, but their conceptual foundations, normative authority, and analytical functions should not be treated as identical.

Within Islamic legal reasoning, *maṣlaḥah* concerns the realization of legitimate benefit and

the prevention of harm in accordance with the objectives and principles of the Shari'ah. Its relevance to child custody lies in the capacity to evaluate whether particular caregiving arrangements fulfil the protective responsibilities associated with *ḥaḍānah*. A welfare-oriented interpretation therefore examines the consequences of custody rather than treating parental entitlement as sufficient justification for allocating responsibility. Nevertheless, *maṣlaḥah* cannot be applied as an unrestricted appeal to desirable outcomes. Its use must remain connected to authoritative Islamic legal principles and a defensible account of the benefits and harms associated with particular arrangements.

The best-interests principle provides a complementary framework grounded in contemporary international children's rights law. Article 3(1) of the United Nations Convention on the Rights of the Child establishes that the best interests of the child must be a primary consideration in actions concerning children (United Nations, 1989). The United Nations Committee on the Rights of the Child (2013) further explains that the principle performs three interconnected functions: a substantive right, a fundamental interpretative legal principle, and a rule of procedure. These functions demonstrate that the principle is not merely an ethical aspiration but requires consideration within substantive legal interpretation and the procedures through which decisions affecting children are reached.

Applied to custody, the best-interests principle directs legal reasoning toward the particular child's circumstances rather than relying exclusively on generalized assumptions concerning parental suitability. Relevant considerations include physical and psychological safety, emotional security, developmental needs, family relationships, continuity of care, access to education and health services, and the child's views. However, the broad scope of the principle also creates interpretive challenges. Without clearly articulated criteria, decision-makers may invoke the child's welfare while relying on subjective assumptions or insufficiently examined evidence. Its effective implementation therefore requires individualized, reasoned, and transparent assessment.

The relationship between *maṣlaḥah* and the best-interests principle can be understood through a distinction between normative justification and practical evaluation. *Maṣlaḥah* provides an Islamic legal orientation explaining why custody should secure benefit and prevent harm. The best-interests principle offers a child-focused framework for identifying the circumstances and interests that must be examined in determining an appropriate custody arrangement. Their integration consequently enables Islamic legal reasoning to engage more explicitly with contemporary understandings of children's safety, psychological development, and participation without disregarding the normative foundations of *ḥaḍānah*.

This integration does not imply that the two principles are interchangeable. The best-interests principle possesses specific legal functions within international children's rights law, whereas *maṣlaḥah* operates within Islamic jurisprudential reasoning and its established methodological boundaries. Their conceptual relationship must therefore be demonstrated through the functions they perform rather than through an assertion of complete doctrinal equivalence. Recognizing this distinction is essential to maintaining both methodological integrity and the normative legitimacy of the proposed reconstruction.

A significant implication of this relationship concerns the interpretation of custodial preferences. Classical provisions prioritizing particular caregivers may remain relevant when they correspond to the actual needs of the child. Nevertheless, a child-centered application of *maṣlaḥah* requires reassessing those preferences when credible evidence indicates that their application may expose the child to harm or fail to provide adequate care. In such circumstances, the legal assessment must examine whether an alternative arrangement better fulfils the protective purposes of custody while remaining consistent

with applicable legal requirements.

This interpretation also requires distinguishing parental rights from parental responsibilities. Biological or legal parenthood establishes important family relationships, but it does not automatically demonstrate that one particular custody arrangement will provide the most beneficial environment for a child. The capacity to provide safe, continuous, and developmentally appropriate care becomes relevant to determining how custodial responsibilities should be allocated. Accordingly, a parent-centered allocation of entitlement must be evaluated through its relationship with the child's substantive interests rather than treated as the final objective of custody adjudication.

The integration further requires that welfare-based reasoning remain evidence-sensitive. General assertions that a parent is more suitable because of gender, income, social position, or formal custodial priority should not replace examination of the child's actual circumstances. Claims concerning stability, caregiving capacity, and emotional protection require consideration of relevant information, including caregiving history, living arrangements, safety concerns, educational needs, and established emotional relationships. This approach strengthens the transparency of legal reasoning and reduces the risk that broad appeals to welfare will conceal unexamined assumptions.

From this perspective, the central contribution of integrating *maṣlahah* and the best-interests principle lies in transforming child welfare from a general justificatory objective into a structured consideration within custody reasoning. Islamic legal principles provide the normative foundation for protecting children, while contemporary child-rights standards assist in specifying the dimensions of welfare requiring attention. Such integration creates a conceptual basis for reconciling classical custody doctrine with individualized child protection without assuming that either tradition independently provides a complete solution to contemporary custody disputes.

Reconstructing Ḥaḍānah through Child-Centered Custody Assessment

The preceding analysis demonstrates that reconstructing *ḥaḍānah* requires more than recognizing the importance of children's welfare as an abstract legal objective. Effective reconstruction must establish identifiable considerations through which competing custodial arrangements can be assessed. The proposed child-centered approach therefore shifts the analytical emphasis from predetermined parental status toward the demonstrated capacity of available caregivers to protect and promote the child's physical, psychological, emotional, educational, and social well-being.

Physical and psychological safety constitute fundamental considerations within this assessment. Exposure to violence, abuse, neglect, coercion, or destructive parental conflict may significantly affect whether a custody arrangement can fulfil its protective purpose. These risks require direct examination rather than being treated as secondary concerns when determining custodial preference. A caregiver's formal entitlement or general reputation cannot adequately establish suitability where credible evidence identifies threats to the child's safety. The significance of this consideration is reinforced by Rika's (2021) findings concerning the incomplete assessment of domestic violence in the Indonesian custody decisions examined.

The second consideration concerns emotional security and continuity of care. Children's welfare is influenced by established caregiving relationships, emotional attachments, and the stability of their daily environment. A custody

determination should consequently examine the child's existing relationships with parents, siblings, and other significant caregivers, together with the possible consequences of changing caregiving arrangements. Continuity of care may support emotional stability, but it should not be treated as an absolute consideration when maintaining an existing arrangement would expose the child to serious harm. The relevant assessment must balance the protective value of established relationships with the need to ensure a safe and supportive environment.

Developmental needs constitute another essential component of child-centered custody. Caregiving capacity must be considered in relation to the child's access to education, health care, appropriate moral guidance, and opportunities for intellectual and social development. These needs may vary according to age, maturity, health conditions, and individual circumstances. Consequently, the suitability of a custody arrangement cannot be determined exclusively through the general characteristics of the proposed custodian. It requires examination of whether the available arrangements can respond to the particular child's present and reasonably foreseeable developmental needs.

Social and environmental stability also influences the assessment. Residential relocation, changes in schooling, parental employment, remarriage, economic insecurity, and adjustments in caregiving responsibilities may affect children's daily experiences. Such circumstances should not automatically determine custody outcomes, but they may be relevant to evaluating the practical consequences of alternative arrangements. A parent possessing greater financial resources, for example, is not necessarily the most appropriate custodian if other aspects of caregiving would compromise the child's emotional security or safety. Similarly, economic disadvantage should not independently establish parental unsuitability where appropriate care and protection can otherwise be maintained.

The distinction between material capacity and substantive caregiving ability is particularly important. Financial resources may contribute to housing, education, nutrition, and medical care, but they represent only one dimension of the child's welfare. A comprehensive evaluation must consider how resources are utilized, whether caregiving responsibilities are consistently fulfilled, and whether the child benefits from an environment characterized by protection and emotional support. This approach prevents custodial determinations from equating economic superiority with overall parental suitability.

The child's own views constitute an additional consideration within individualized custody assessment. Classical Islamic jurisprudence includes age-sensitive discussions concerning children's preferences and the circumstances in which those preferences may influence custodial arrangements. Contemporary children's rights standards make participation more explicit by recognizing children's entitlement to express their views in matters affecting them, with appropriate weight given according to age and maturity (United Nations, 1989; United Nations Committee on the Rights of the Child, 2013).

Children's participation should nevertheless be understood through appropriate safeguards. The opportunity to express a preference does not establish an unrestricted right to determine the final custody outcome. Decision-makers

must consider the child's maturity, vulnerability, emotional circumstances, and possible exposure to parental influence. The purpose of participation is to ensure that the child's perspective forms part of the assessment rather than requiring the child to bear responsibility for resolving parental conflict. Rika's (2021) observation that children's views were not consistently heard in the custody decisions examined illustrates the relevance of improving this aspect of judicial reasoning.

These considerations demonstrate that child welfare cannot be adequately assessed through a single indicator. Physical safety, psychological security, continuity of care, developmental opportunities, economic circumstances, and children's participation interact in ways that may differ across individual cases. A strength in one dimension does not necessarily compensate for serious risks in another. Consequently, custody decisions require a holistic assessment capable of identifying both the benefits and potential disadvantages associated with each feasible arrangement.

On this basis, the study proposes a five-stage conceptual framework for reconstructing *ḥaḍānah*. The first stage establishes the relevant classical Islamic legal foundations, including custodial preferences, eligibility requirements, and responsibilities associated with child protection. This stage preserves the jurisprudential context of custody and identifies the normative principles governing parental or custodial claims.

The second stage involves *maṣlahah*-based evaluation of the benefits and potential harms associated with competing custodial arrangements. This assessment examines whether each arrangement is capable of fulfilling legitimate protective purposes and whether its foreseeable consequences may expose the child to avoidable harm. The relevance of custodial preferences is considered within this broader evaluation rather than treated as sufficient justification in itself.

The third stage applies the best-interests principle to identify the child's particular welfare needs. Physical and psychological safety, emotional continuity, developmental requirements, education, health, social relationships, environmental stability, and participation are examined in relation to the child's circumstances. This stage provides the analytical connection between the normative objective of protecting children and the practical considerations necessary for determining appropriate care.

The fourth stage concerns individualized custody determination. Available evidence is evaluated to identify the arrangement most capable of protecting the particular child's welfare. The decision must distinguish between general assumptions about parental suitability and demonstrated caregiving capacity. Its justification should explain why the selected arrangement is preferable to feasible alternatives, particularly where material risks or competing welfare considerations arise.

The fifth stage incorporates continuing review of children's welfare. Custodial suitability may change as children develop or as relevant family circumstances evolve. Relocation, changes in caregiving capacity, emerging safety concerns, or significant developmental needs may affect whether an existing arrangement remains appropriate. Nevertheless, continuing review does not

imply that every change should automatically result in new litigation or the transfer of custody. Rather, it recognizes that materially changed circumstances may justify reconsideration through legally appropriate procedures.

These five stages are not proposed as a mechanical formula that necessarily produces identical results across custody disputes. Their purpose is to establish a transparent structure for legal reasoning while preserving flexibility to respond to individual circumstances. The relative importance of particular considerations may differ according to the child's age, maturity, needs, and available caregiving arrangements. However, the framework establishes that relevant welfare factors must be examined and that custodial preferences should be justified through their relationship with substantive child protection.

The proposed reconstruction therefore offers a conceptual transition from a predominantly entitlement-oriented understanding of custody toward a responsibility-centered approach. Custodial rights remain legally significant, but their exercise must be interpreted through the duties of protection, care, and development. By integrating classical jurisprudential foundations, *maṣlahah* evaluation, individualized best-interests assessment, and continuing review, the framework provides an analytical basis for determining custody in accordance with the child's circumstances without disregarding the normative integrity of Islamic family law.

Implications for Contemporary Islamic Family Law and Judicial Decision-Making

The proposed reconstruction has important implications for contemporary Islamic family law, particularly in the interpretation and adjudication of post-divorce custody disputes. Its principal implication lies in distinguishing the formal allocation of custodial entitlement from the legal justification required to establish that an arrangement adequately protects the child's welfare. Classical custodial preferences retain normative relevance, but their application should be accompanied by an assessment of the child's individual circumstances and the demonstrated caregiving capacities of the available custodians.

Within judicial decision-making, this approach requires greater attention to the relationship between normative legal provisions and factual evidence. A court should not merely identify the parent who appears to satisfy a general custodial preference. Instead, the reasoning should address the child's safety, caregiving history, psychological circumstances, developmental requirements, family relationships, and relevant environmental conditions. Where competing arrangements are available, the decision should explain how these considerations support the selected outcome. Such reasoning strengthens transparency and makes the connection between legal principles and the child's welfare more explicit.

The importance of this approach is illustrated by research concerning Indonesian custody adjudication. Rika (2021) found that judges considered different parental circumstances and occasionally awarded custody outside conventional preferences. Nevertheless, the incomplete treatment of domestic violence and children's views demonstrates the continuing challenges associated

with comprehensive welfare assessment. These findings indicate that flexibility in allocating custody does not necessarily establish that every relevant protective consideration has been addressed.

A child-centered framework therefore requires particular attention to safety-related evidence. Where allegations of domestic violence, neglect, or abuse arise, they should be examined as substantive issues affecting the child's welfare rather than treated merely as incidental aspects of marital conflict. The relevance of these circumstances extends beyond whether a parent formally satisfies custodial eligibility requirements. They may directly affect the child's physical security, emotional development, and capacity to maintain healthy relationships. Consequently, judicial reasoning should identify material safety concerns and explain their significance for the custody determination.

The framework also has procedural implications concerning children's participation. Opportunities for children to express their views should be adapted to their age, maturity, and circumstances, while protecting them from intimidation, manipulation, and unnecessary involvement in parental disputes. The best-interests principle requires more than acknowledging the importance of participation in general terms. It calls for procedures through which relevant views can be obtained and assessed appropriately, without treating children's preferences as automatically decisive (United Nations Committee on the Rights of the Child, 2013).

A further implication concerns the need to avoid substituting generalized assumptions for individualized evidence. Parental gender, financial position, social status, or formal custodial priority may be relevant within particular legal frameworks, but none independently establishes that a specific arrangement will best protect a child. The proposed reconstruction therefore encourages judicial reasoning that distinguishes legally recognized custodial preferences from the actual capacities and circumstances of potential caregivers.

This distinction becomes especially important where legal certainty and individualized justice appear to generate competing considerations. Predetermined custodial rules may contribute to predictability and consistency, while child-centered assessment requires sensitivity to factual differences between cases. The proposed framework does not eliminate this tension. Rather, it offers a structured means of examining how general legal rules can be interpreted alongside the protective purposes they are intended to serve. Judicial discretion should consequently remain accountable to relevant legal norms and supported by reasons that can be critically evaluated.

The integration of *maṣlaḥah* and the best-interests principle also has implications for the relationship between Islamic jurisprudence and contemporary children's rights standards. Their interaction should not be interpreted as replacing Islamic legal reasoning with an external framework. Instead, the proposed model assigns complementary analytical functions to the two principles. *Maṣlaḥah* provides a normative basis for evaluating benefit and harm within Islamic legal interpretation, while the best-interests principle assists in identifying the particular rights, needs, and circumstances that should inform child-centered custody decisions.

This distinction enables contemporary Islamic family-law scholarship to move beyond generalized assertions concerning the compatibility of Islamic law and children's rights. The more significant question is how the relationship between these principles can be translated into identifiable standards of reasoning and procedural protection. By specifying relevant welfare considerations and their place in custody assessment, the framework provides a conceptual pathway for connecting normative justification with practical legal evaluation.

The proposed model also recognizes that custody remains an ongoing responsibility. Children's needs, parental circumstances, and caregiving environments may change after a judicial determination. Legal systems therefore require appropriate procedures for reconsidering arrangements when material developments create serious questions about their continuing suitability. Nevertheless, stability itself remains an important component of children's welfare, and unnecessary changes in custody may produce additional emotional and developmental difficulties. Continuing review must consequently be understood as a safeguard for meaningful changes in circumstances rather than an invitation to repeated disputes without sufficient justification.

From a theoretical perspective, the principal contribution of this study lies in distinguishing three interconnected elements of custody reconstruction: normative legitimacy, individualized welfare assessment, and procedural accountability. Normative legitimacy ensures that custody determinations remain grounded in defensible Islamic legal reasoning. Individualized welfare assessment requires attention to the child's actual circumstances and the capacities of available caregivers. Procedural accountability ensures that relevant evidence is considered, material risks are addressed, and the reasons supporting custodial decisions are sufficiently transparent.

These elements provide an analytical foundation for evaluating whether custody decisions genuinely prioritize the child's welfare or merely reproduce generalized assumptions about parental entitlement. Their integration also responds to the limitations identified in contemporary Indonesian judicial practice by emphasizing the explicit consideration of domestic violence, children's participation, and the practical consequences of caregiving arrangements (Rika, 2021; Nasution & Nasution, 2021).

Nevertheless, the proposed framework remains a normative-conceptual contribution rather than an empirically validated model of judicial effectiveness. The study does not establish that its application will automatically improve custody outcomes or eliminate the difficulties associated with judicial discretion and institutional implementation. Further research is necessary to examine how courts apply welfare-related principles, assess relevant evidence, and interpret competing custodial claims within particular national legal frameworks.

Future empirical investigation could assess the extent to which custody judgments address physical and psychological safety, caregiving continuity, children's views, and the reasons for preferring one arrangement over another. Comparative doctrinal research could further examine how different Islamic legal traditions and contemporary family-law jurisdictions integrate custodial preferences with individualized child protection. Such research would help clarify

both the legal boundaries and practical implications of the proposed reconstruction.

Ultimately, the integration of *maṣlaḥah* and the best-interests principle offers a conceptual foundation for interpreting *ḥaḍānah* as a responsibility centered on children's protection and development rather than an unconditional entitlement attached to parental gender or status. The reconstruction preserves the relevance of classical jurisprudential foundations while emphasizing the need for evidence-sensitive, individualized, and reviewable custody determinations. Its significance lies in connecting the normative objectives of Islamic family law with a more explicit framework for safeguarding children's safety, emotional security, developmental needs, and overall welfare in contemporary custody adjudication.

CONCLUSIONS

This study concludes that child custody (*ḥaḍānah*) in classical Islamic family law is not merely a parental entitlement but a legal responsibility grounded in caregiving, protection, and the fulfilment of children's needs. Although classical jurisprudence establishes custodial preferences and eligibility requirements based on parental relationships and specific legal conditions, these arrangements also contain welfare-oriented considerations that allow custody to be reconsidered when a custodian cannot adequately protect the child. Contemporary Islamic family law increasingly recognizes the importance of psychological well-being, developmental needs, safety, and the individual circumstances of children. Nevertheless, the application of these considerations remains insufficiently systematic when traditional custodial preferences and the actual welfare of a child appear to conflict.

Regarding the second research question, this study proposes that *maṣlaḥah* and the best-interests-of-the-child principle can be integrated through complementary normative and operational functions. *Maṣlaḥah* provides the substantive foundation within Islamic legal reasoning by directing custody decisions toward the realization of benefit and the prevention of harm, whereas the best-interests principle translates this orientation into criteria for evaluating the circumstances of individual children. These criteria include physical and psychological safety, emotional stability, continuity of care, educational and developmental needs, parental caregiving capacity, social environment, and the child's views in accordance with age and maturity. Their integration offers a basis for moving beyond exclusively status-based or gender-based custody determinations toward individualized decisions grounded in the child's demonstrable welfare.

The principal contribution of this study is a conceptual framework for reconstructing *ḥaḍānah* through five interconnected stages: classical normative foundations, *maṣlaḥah*-based assessment, best-interests evaluation, individualized custody determination, and continuing consideration of the child's welfare as circumstances change. This framework seeks to preserve the normative integrity of Islamic family law while strengthening its capacity to address contemporary child-protection concerns. It also provides a conceptual basis for more transparent and context-sensitive judicial reasoning in custody disputes.

However, because this study relies on qualitative doctrinal and literature-based analysis, the proposed framework has not yet been empirically evaluated across judicial decisions or different national legal systems. Future research should therefore examine its application in comparative case-law studies and investigate how clearly defined welfare indicators can improve the consistency, justification, and child-centredness of custody decisions in contemporary Muslim family law.

Furthermore, the proposed integration challenges the assumption that the determination of custody should primarily depend on predetermined custodial hierarchies or the formal status of parents. Although classical legal rules remain important as normative reference points, their application should be interpreted in light of the purposes of Islamic law and the concrete circumstances affecting the child's welfare. This approach does not seek to replace Islamic legal traditions with an external legal standard; rather, it demonstrates how the best-interests-of-the-child principle can be incorporated into Islamic legal reasoning through the concept of *maṣlaḥah*. Accordingly, custody decisions should be supported by reasoned assessments of relevant evidence, including the capacity of each parent to provide stable care, the child's physical and emotional needs, the potential risks associated with each custodial arrangement, and the implications of disrupting established caregiving relationships. By connecting established Islamic legal principles with a structured assessment of children's circumstances, the proposed framework offers a basis for reconciling normative continuity with legal responsiveness and for positioning the child's welfare as a central consideration in contemporary Islamic family law.

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