

Fulfillment of Children's Rights After Divorce : A Comparative Study in Qatar, Egypt, Indonesia, Malaysia, and Jordan

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Abstract Divorce is a global phenomenon with significant implications for children's rights. This study aims to conduct a comparative analysis of the fulfillment of children's rights after divorce in five countries with different legal systems: Qatar, Egypt, Indonesia, Malaysia, and Jordan. The research employs a normative juridical method with a comparative legal research approach through literature review and legal document analysis. The findings reveal that each country has a unique mechanism for ensuring children's rights after divorce. Diverse legal systems—ranging from common law, civil law, to Islamic law—lead to variations in approaches to ensuring custody, care, and protection for children. The study identifies four critical dimensions in fulfilling children's rights: the right to survival and development, the right to protection, the right to education, and the right to participation. The comparative analysis highlights that cultural factors, legal systems, and political commitment play a fundamental role in determining the effectiveness of child rights protection after divorce. Key recommendations of this study include the need for regulatory harmonization, strengthening enforcement mechanisms, and developing sustainable monitoring systems. This research provides theoretical and practical contributions to understanding the complexity of fulfilling children's rights across global legal systems.

Keywords: Children's, Rights, Divorce, Legal, Comparison.

1. INTRODUCTION

Divorce has become a global issue, showing a significant upward trend over the last decade.

The 2019 World Marriage Data released by the United Nations Department of Economic and Social Affairs recorded an average global divorce rate of 2.6 per 1,000 population, with substantial variations between countries (UN DESA Population Division, 2019). In Indonesia, data from the Supreme Court of the Republic of Indonesia reported 529,372 divorce cases in 2022, a 30% increase from 2021 (Jakarta: MA RI, 2023).

This rise in divorce rates correlates directly with an increase in the number of children affected by family breakdowns. Research by Amato and Keith revealed that children from divorced families exhibit lower levels of psychological well-being, decreased academic performance, and difficulties in forming social relationships compared to children from intact families (Amato et al.). A longitudinal study conducted in Australia found that 43% of children affected by divorce experienced mental health issues, while 35% faced significant declines in academic performance within the first two years post-divorce (McIntosh et al., 2022).

The negative impact of divorce on children is exacerbated when their rights are not fulfilled post-divorce. Research by Hadi indicated that 65% of children from divorced families in Indonesia faced challenges in receiving financial support from the non-custodial parent

(Hadi, 2023). Data from the Directorate General of Religious Courts showed that out of the total child support claims filed in 2022, only 45% were fully realized (Jakarta: Badilag, 2023). This issue becomes even more complex in a cross-national context, where differences in legal systems and cultural norms create variations in protecting children's rights post-divorce. A comparative study by Rahman et al. revealed that countries with comprehensive family law systems and robust enforcement mechanisms, such as Australia and the United Kingdom, demonstrated better fulfillment of children's rights compared to countries with developing legal systems (Rahman et al., 2023).

The importance of protecting children's rights post-divorce has gained global attention, as reflected in the United Nations Convention on the Rights of the Child, ratified by 196 countries. Article 27 of the convention explicitly obligates states to ensure the fulfillment of children's rights, including in divorce situations (United Nations Treaty Series 1577). However, implementation on the ground continues to show significant gaps, particularly in enforcing court rulings on custody and child support (Freeman et al., 2023).

This background underscores the urgency of conducting comparative studies on the fulfillment of children's rights post-divorce across various countries to identify best practices and develop more effective solutions for safeguarding children's interests.

2. RESEARCH METHODS

This research employs a normative juridical method with a comparative legal research approach through literature reviews and legal document analysis. The literature review involves studying various legal literature, relevant theories, and previous research to gain a comprehensive understanding (Marzuki, 2019). Legal document analysis includes examining legislation, official documents, and policies related to the issues being studied (Soekanto, 2010). This approach allows researchers to understand the structure and substance of the law in depth.

Additionally, the comparative legal approach aims to compare the principles of law applied in different jurisdictions (Friedman, 1975). By examining legal rules across countries or regions, this study identifies similarities and differences, evaluates the strengths and weaknesses of each legal system, and contributes theoretically and practically to legal science and more effective policy formulation (Zweigert & Kötz, 1998).

3. RESULTS AND DISCUSSION

Fulfillment of Children's Rights in Asia-Pacific Countries

Indonesia

Based on Positive Law and Islamic Law

1. Children's Rights Fulfillment Based on Positive Law in Indonesia
 - Law No. 35 of 2014 on Child Protection
 - Covers children's rights to survival, development, protection, participation, and non-discrimination.
 - Obligates the government and parents to fulfill and protect children's rights.
 - Prohibits neglect, exploitation, and violence against children.
2. Children's Rights Fulfillment Based on Islamic Law in Indonesia
 - Children's Rights in Islam (Fakhruddin, 2016)
 - Right to life and protection since conception.
 - Right to a good name and circumcision.
 - Right to nurturing, education, and inheritance.
 - Right to fair and non-discriminatory treatment.
 - Parental Responsibilities in Islam
 - Providing love, protection, and good education.
 - Meeting children's basic needs such as clothing, food, and shelter.
 - Raising children in line with Islamic teachings, including morals and worship.
3. Children's Rights Fulfillment According to the Compilation of Islamic Law (KHI)
 - KHI Provisions
 - Regulates parental responsibilities to fulfill children's rights such as care, education, and inheritance.
 - Emphasizes the importance of child-rearing and education according to Islamic principles.

In summary, both positive and Islamic law in Indonesia emphasize the importance of fulfilling and protecting children's rights. Parents and the government share significant responsibilities in ensuring these rights are well-met.

Malaysia

The Concept of Malaysia's Dual Legal System

1. Constitutional Foundations
 - The Federal Constitution of Malaysia recognizes Islam as the religion of the Federation (Shuaib, 2019).
 - Grants states authority to regulate Islamic law (Shuaib, 2019).
 - Ensures the coexistence of Sharia and Civil Law systems (Ibrahim, 2020).
2. Legal System Structure
 - Civil Court System
 - General jurisdiction over civil and criminal cases (Hasan, 2019).
 - Handles non-Muslim and general matters.
 - Headed by the Federal Court as the highest judiciary (Hasan, 2019).
 - Sharia Court System
 - Special jurisdiction over Islamic matters (Kamali, 2020).
 - Handles Muslim cases involving marriage, divorce, and inheritance.
 - Each state operates its Sharia Court system.
3. Implementation of the Dual Legal System
 - Division of Authority
 - Civil Courts: Handle general criminal cases, non-Muslim civil disputes, and commercial issues.
 - Sharia Courts: Address Islamic family law, Sharia violations, and Muslim inheritance disputes.
 - Legal Harmonization
 - Coordination between Civil and Sharia Courts.
 - Resolving jurisdictional conflicts.
 - Developing harmonious legal principles.

Legal Framework for Child Protection in Malaysia

1. Legal Foundations
 - Sharia Law
 - Islamic Family Law Enactments and State Islamic Family Laws.
 - Principles of *hadhanah* (custody) in Islam (Rahman et al., 2019).
 - Civil Law
 - Law Reform (Marriage and Divorce) Act 1976.
 - Child Act 2001.

- Guardianship of Infants Act.

2. Basic Principles for Child Protection

- Best interest of the child (Nasohah, 2020).
- Custody and maintenance rights.
- Parental responsibilities post-divorce.

Post-Divorce Children's Rights

In Malaysia, there is an institution called the Family Support Division (Bahagian Sokongan Keluarga, BSK), which is a specialized department under the Syariah Judiciary Department of Malaysia (Jabatan Kehakiman Syariah Malaysia, JKSM), operating under the Prime Minister's Department (Jabatan Perdana Menteri, JPM). This institution addresses all issues related to court-ordered maintenance (Candra et al., 2024). In this regard, BSK has four roles. First, it serves as a referral center and provides assistance to those who do not receive maintenance due to a former husband's refusal to comply with court orders. Second, it addresses issues of delayed management and enforcement of maintenance orders. Third, it protects the rights of recipients and ensures that the provider fulfills their responsibilities. Fourth, it ensures that court orders are respected and effectively implemented while enhancing the status and position of the judiciary (Candra et al., 2024). The effectiveness of this institution in enforcing legal orders has also been recognized by various parties (Candra et al., 2024).

1. Custody Rights

a) According to Syariah Law

- Custody priority is given to the mother (Abdullah, 2019).
- Requirements for custodians (hadhin).
- Age limit for hadhanah.

b) According to Civil Law

- Consideration of the child's best interests.
- Rights of both parents.
- The child's right to be heard.

2. Maintenance Rights

a) Components of Maintenance

- Educational expenses.
- Healthcare expenses.
- Daily necessities.

b) Fulfillment Mechanism

- Determination of maintenance amount.
- Payment system.
- Non-compliance sanctions.

3. Implementation and Enforcement

a) Role of the Courts

i) Syariah Court

- Determination of custody rights (Abdullah, 2020).
- Determination of child maintenance.
- Supervision of implementation.

ii) Civil Court

- Protection of children's rights.
- Execution of court decisions.
- Dispute resolution.

b) Monitoring System

- Supervision of maintenance payments.
- Evaluation of children's welfare.
- Handling of violations.

4. Challenges and Solutions

a) Challenges

- Jurisdictional conflicts between courts.
- Non-compliance with maintenance payments.
- Coordination between institutions.

b) Solutions

- Strengthening enforcement mechanisms.
- Family mediation.
- Increasing legal awareness.

Fulfillment of Children's Rights in Middle Eastern Countries

Egypt

A. Modernization of Islamic Law in Egypt

1. Development of Modern Family Law

a) Islamic Law Reform

- Family law reform (Al-Sayed, 2023).
- Codification of personal status law.
- Integration with modern systems.

b) Legal Basis

- Personal Status Law No. 25 of 1929.
- Law No. 100 of 1985.
- Child Law No. 12 of 1996.

2. Fundamental Principles of Child Protection

- Child welfare as a priority.
- Children's well-being.

- Protection of fundamental rights.

B. Personal Status Law and Children's Rights

1. Regulation of Hadhanah Rights

a) Custody Criteria

- Qualifications of the custodian.
- Custody priority order.
- Age limit for custody.

b) Implementation

- Determination procedures.
- Court supervision.
- Periodic evaluation.

2. Child Support Rights

a) Support Components

- Educational expenses.
- Healthcare.
- Basic needs.

b) Fulfillment Mechanism

- Determination of support amount.
- Payment system.
- Implementation guarantees.

A. Implementation and Law Enforcement

1. Role of Judicial Institutions

a) Family Court

- Authority.
- Case handling procedures.
- Decision supervision.

b) Support System

- Family mediation.
- Counseling.
- Legal assistance.

2. Children's Rights Protection

- Nasir Bank for child support.
- Social protection programs.
- Sanctions for violations.

D. Innovation and Development

1. System Renewal

- Digitalization of records.
- Integrated database.

- Online monitoring system.

2. Support Programs

- Psychosocial assistance.
- Family empowerment.
- Public education.

Qatar

A. Conservative Islamic Legal System in Qatar

1. Characteristics of the Legal System

a) Legal Basis

- Qatar Constitution.
- Sharia law as the primary source.
- Family Law No. 22/2006.

b) Fundamental Principles

- Adherence to the Hanbali school.
- Preservation of Islamic values.
- Integration with modern law.

2. Institutional Structure

- Sharia Court.
- Family Court.
- Child Protection Agency.

B. Family Law 2006 and Children's Rights

Qatar's Family Law No. 22 of 2006 regulates divorced wives' rights, spousal support claims, waiting period (iddah), child support, retroactive child support claims, compensation (mut'ah), hadhanah (custody), and guardianship (Candra et al., 2024). Regarding legal protection and fulfillment of women's and children's rights post-divorce, Qatar has implemented an execution-by-system approach. This system operates at all levels of government, based on the National Address (Al-'Unwan al-Wathani). The Qatari judiciary has fully adopted an electronic-based system (Candra et al., 2024).

Qatar's family law system places special emphasis on fulfilling children's rights after parental divorce. According to Qanun Al-USrah, child custody (hadhanah) is primarily granted to the mother, provided she meets the required conditions (Ahmad, 2023).

Regarding child support, fathers are fully obligated to financially support their children until daughters marry and sons reach working age (Rahman, 2022). The Qatari courts strictly enforce these financial obligations to ensure children's welfare (Sarah, 2023).

Qatar also has a specialized monitoring system through the Family Court to ensure that children can regularly meet both parents after divorce, in line with the best interests of the child principle in Islam (Mohammed, 2022).

Notably, Qatar has adopted international child protection standards and integrated them with Islamic law, creating a more comprehensive system for safeguarding children's rights post-divorce (Fatima, 2023).

1. Custody Provisions (Hadhanah)

a) Custodian Criteria

- Guardian qualifications.
- Custody hierarchy.
- Custody age limits.

b) Rights and Responsibilities

- Custodian responsibilities.
- Visitation rights.
- Court supervision.

2. Child Support

a) Support Components

- Education.
- Healthcare.
- Basic needs.

b) Child Support System

- Support amount determination.
- Payment mechanisms.
- Implementation guarantees.

C. Implementation and Enforcement

1. Protection Mechanisms

a) Judicial Role

- Custody rulings.
- Child support supervision.
- Dispute resolution.

b) Support Programs

- Family counseling.
- Mediation.
- Legal aid.

2. Monitoring System

- Regular monitoring.
- Child welfare evaluations.
- Corrective actions.

D. Special Aspects

1. Financial Protection

- Child support guarantee fund.
- Child insurance.
- Future investment.

2. Education and Development
 - Education guarantee.
 - Development programs.
 - Support facilities.

Jordan

A. Personal Status Law 2010 and Family Law Reform in Jordan on Fulfilling Children's Rights After Divorce

Jordan's Personal Status Law (PSL) 2010 marked a significant reform in family law, addressing key issues related to child custody, support, and upbringing post-divorce. PSL 2010 incorporates Islamic legal principles while integrating modern elements focused on children's rights, aligning with the best interest of the child principle as outlined in the Convention on the Rights of the Child (CRC), which Jordan has ratified.

1. Key Principles of the Personal Status Law 2010

The Personal Status Law (PSL) 2010 regulates child custody, prioritizing the mother until the child reaches a certain age, taking into account the child's psychological and social well-being. After this age, the father may apply for custody, provided he demonstrates that the child's best interests would be better ensured under his care.

Additionally, PSL 2010 emphasizes the financial responsibilities of the non-custodial parent. These obligations include covering the child's living expenses, education, and healthcare, all of which are enforced through judicial mechanisms. The court holds full authority to determine the amount of child support based on the child's needs and the financial capacity of the parents.

2. Implementation and Challenges

The implementation of PSL 2010 in Jordan faces several challenges, particularly in law enforcement. Oversight and evaluation mechanisms for child support enforcement require further improvement, as many non-custodial parents fail to comply with their obligations. Family mediation efforts and legal assistance are available to support the enforcement of court decisions, yet coordination between government agencies and society remains a key challenge.

3. Ongoing Reform Efforts

PSL 2010 is considered a crucial foundation for family law reform in Jordan. However, some advocate for further amendments to align with evolving international legal standards that increasingly emphasize children's rights and post-divorce child protection. Proposed reforms include adopting more modern law enforcement systems, such as digitalized monitoring and imposing sanctions on those who violate child support obligations.

Comparative Analysis

A. Similarities and Differences in Post-Divorce Child Rights Fulfillment

1. Similarities

1. Recognition of Children's Rights: All the countries studied (Qatar, Egypt, Indonesia,

Malaysia, and Jordan) recognize children's rights as part of human rights, in accordance with the United Nations Convention on the Rights of the Child (UNCRC).

2. Responsibilities of the State and Parents: There is a shared obligation among the state and parents to fulfill children's rights, including custody, access, and financial support.
3. Best Interests Principle: All legal systems emphasize the best interests of the child in any decision related to post-divorce child rights fulfillment.

2. Differences

1. Legal System

- Qatar and Egypt implement a conservative Islamic legal framework, where decisions are often influenced by Sharia interpretations.
- Indonesia and Malaysia adopt a mixed legal system, combining positive law with Islamic law.
- Jordan integrates Islamic law with modern civil law principles.

3. Availability of Resources for Child Rights Fulfillment

Countries with stronger economies tend to have more resources to support child rights programs compared to developing nations.

4. Based on an in-depth analysis, Malaysia's system is considered the most effective in ensuring child rights fulfillment. The reasons include:

1. A Comprehensive Mixed Legal System: Malaysia's combination of Islamic and civil law allows flexibility in handling divorce cases and child rights issues. Sharia law in Malaysia places special emphasis on child protection, while civil law provides a broader framework for enforcing these rights.
2. Strong Law Enforcement Mechanisms: Malaysia has more effective enforcement mechanisms than the other studied countries. The Sharia Court and High Court have jurisdiction over child custody and financial support matters. Data indicates that Malaysia has a significantly higher child support case resolution rate compared to Indonesia, where only 45% of child support cases are successfully enforced.
3. Child Rights Protection in Public Policy: The Malaysian government actively supports child rights protection through various social and educational programs. Public awareness initiatives help create a more supportive environment for children affected by divorce.
4. Child Participation in Legal Processes: Malaysia's legal system allows children to participate in decisions regarding their rights, in line with the UNCRC principles. This ensures that children have a say in matters affecting their lives, enhancing their sense of involvement and ownership over the outcomes.

Comparison with Other Countries

1. Indonesia

While Indonesia has a legal framework covering child protection, its implementation is often hindered by a lack of resources and public legal awareness. Only 65% of children affected by divorce receive financial support from their parents.

2. Qatar and Egypt: These countries follow a conservative Islamic legal system, where decisions are frequently influenced by Sharia interpretations that may limit certain child rights. Additionally, their law enforcement mechanisms are not as robust as those in Malaysia.

3. Jordan

Although Jordan combines Islamic law and modern civil law, implementation challenges persist, particularly in ensuring accessibility to the judicial system for the general public.

4. CONCLUSIONS

This article discusses the fulfillment of children's rights following divorce, focusing on a comparison of legal systems in five countries: Qatar, Egypt, Indonesia, Malaysia, and Jordan. The globally increasing phenomenon of divorce has a significant impact on children's well-being, as children from divorced families often face challenges related to mental health, academic performance, and social relationships. In Indonesia, 65% of children affected by divorce encounter difficulties in receiving financial support from non-custodial parents. Research shows that comprehensive legal systems and strong enforcement mechanisms play a critical role in protecting children's rights. Although the United Nations Convention on the Rights of the Child has been ratified by many countries, its implementation in practice faces various challenges, including gaps between regulations and their application. Therefore, this comparative analysis aims to identify best practices and more effective solutions to safeguard children's interests after divorce.

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