

From Classical Fiqh to Legal Codification: The Legal Transformation of Child Custody Age Limits in Indonesia and Egypt

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Abstract

Determining the age limit for child custody (*ḥaḍānah*) remains a significant issue in Islamic family law because of the divergent juristic interpretations of the termination of maternal custody and the transfer of custodial rights. This study critically examines the determination of child custody age limits within Islamic legal theory by comparing codification in the legal systems of Indonesia and Egypt. It employs a normative-comparative approach to analyze the transformation of classical *fiqh* principles into positive law and its implications for legal certainty and child protection. *ḥaḍānah*. This research adopts a normative legal method using statutory and comparative law approaches. The findings reveal that Islamic jurisprudence does not prescribe a universal age limit for child custody, but instead accommodates diverse juristic opinions based on different schools of legal reasoning. Indonesian law grants maternal custody until the child reaches the age of 12 years, whereas Egyptian law generally extends maternal custody until the age of 15 years, after which the child may choose the custodial parent. Despite these differences in legal formulation and approach, both countries codify child custody age limits to promote legal certainty and safeguard the best interests of children. The study concludes that the modern codification of *ḥaḍānah* reflects a dynamic adaptation of classical *fiqh*, balancing doctrinal diversity, contemporary social needs, and the effective protection of children's rights.

Keywords: *Ḥaḍānah, Age Limit of Custody, Islamic Jurisprudence, Islamic Family Law, Legal Codification*

Abstrak

Penetapan batas usia hak asuh anak (*ḥaḍānah*) merupakan isu penting dalam fikih keluarga Islam karena perbedaan penafsiran para ulama mengenai berakhirnya hak pengasuhan ibu dan peralihan hak asuh anak. Penelitian ini bertujuan untuk menganalisis secara kritis penetapan batas usia hak asuh anak berdasarkan teori hukum Islam dengan membandingkan proses kodifikasi dalam sistem hukum Indonesia dan Mesir, melalui analisis normatif-

komparatif mengenai transformasi prinsip-prinsip fikih klasik ke dalam hukum positif serta implikasinya terhadap kepastian hukum serta perlindungan anak. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan perbandingan hukum. Hasil penelitian menunjukkan bahwa fikih Islam tidak menetapkan satu batas usia hak asuh anak yang berlaku universal, melainkan memberikan ruang bagi perbedaan ijtihad berdasarkan metodologi mazhab. Dalam hukum Indonesia, batas usia hak asuh anak sampai anak berusia 12 tahun, sedangkan Mesir pada umumnya menetapkan hak asuh ibu hingga anak berusia 15 tahun sebelum anak diberikan hak untuk memilih pengasuhnya. Meskipun memiliki perbedaan dalam formulasi dan pendekatan hukumnya, kedua negara sama-sama mengkodifikasikan batas usia tersebut untuk mewujudkan kepastian hukum dan melindungi kepentingan terbaik bagi anak. Temuan ini menunjukkan bahwa kodifikasi modern atas hak asuh anak (*ḥaḍānah*) merupakan bentuk adaptasi dinamis terhadap prinsip-prinsip fikih klasik yang memungkinkan tercapainya keseimbangan antara keberagaman doktrin hukum Islam, kebutuhan sosial kontemporer, dan efektivitas perlindungan hak-hak anak.

Kata kunci: *Ḥaḍānah, Batas Usia Hak Asuh, Fikih, Hukum Keluarga Islam, Kodifikasi Hukum.*

Istinbath: Jurnal Hukum

Website : <http://e-journal.metrouniv.ac.id/index.php/istinbath/index>

Received : 2026-02-11 | Published : 2026-06-30.



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Introduction

Child custody has become one of the most debated issues in family law across the legal system, particularly regarding the determination of custody arrangements after divorce.¹ One reason debates over child custody (*ḥaḍānah*) age limits persist lies in their implications for custody transfers after divorce. Although *ḥaḍānah* generally refers to the duty to raise, guide, and support minors who are incapable of caring for themselves,

¹ S. R. Wallace and S. S. Koerner, "Influence of Child and Family Factors on Judicial Decisions in Contested Custody Cases," *Family Relations* 52, no. 2 (2003): 180–88, Scopus, <https://doi.org/10.1111/j.1741-3729.2003.00180.x>; M. Ryznar, "The Empirics of Child Custody," *Cleveland State Law Review* 65, no. 2 (2017): 211–30, Scopus; V. Elizabeth, "Child Custody," in *The Wiley Blackwell Encyclopedia of Family Studies* (wiley, 2016), 1–6, Scopus, <https://doi.org/10.1002/9781119085621.wbefs107>.

disagreement mainly concerns the point at which maternal custody ends and is transferred to another party.² Various readings of the Qur'an, the Sunnah, and juristic reasoning led early Muslim jurists to formulate contrasting rulings, leaving no single agreed-upon age limits across legal traditions.³ As a result, uncertainty continues to persist not only within classical Islamic legal discourse but also in modern statutory developments, as states seek to balance religious principles, legal certainty, and the best interests of the child.⁴

In response to contemporary legal and social developments, several Muslim-majority countries have established fixed ages for child custody under the interpretation of *ḥaḍānah*. These laws often reflect legal policy choices as much as traditional juristic reasoning.⁵ The codification of a fixed custodial age is significant in itself: classical *fiqh* left the determination of a child's welfare (*maṣlaḥah al-walad*) to flexible, case-by-case juristic judgment, so converting that standard into a rigid statutory age represents a deliberate trade-off between legal certainty and individualized welfare assessment.⁶ As this age limit directly determines which parent retains daily care of the child after divorce, it functions as one of the clearest points at which abstract doctrinal principles are translated into outcomes that affect women's post-divorce autonomy, fathers' custodial claims, and children's stability, making it a particularly revealing site for examining how Islamic family law is domesticated within modern state legal systems.⁷

² E. M. Dane and J. A. Rosen, "View from the Bench: Parental Mental Health and Child Custody," *Family Court Review* 54, no. 1 (2016): 10–17, Scopus, <https://doi.org/10.1111/fcre.12199>; C. Bonnet, B. Garbinti, and A. Solaz, "Does Part-Time Mothering Help Get a Job? The Role of Shared Custody in Women's Employment," *European Journal of Population* 38, no. 5 (2022): 885–913, Scopus, <https://doi.org/10.1007/s10680-022-09625-4>; M. A. Saini, "Evidence Base of Custody and Access Evaluations," *Brief Treatment and Crisis Intervention* 8, no. 1 (2008): 111–29, Scopus, <https://doi.org/10.1093/brief-treatment/mhm023>.

³ Baudouin Dupret et al., *Filling Gaps in Legislation: The Use of Fiqh by Contemporary Courts in Morocco, Egypt, and Indonesia*, September 18, 2019, 405–8, <https://doi.org/10.1163/15685195-00264P03>.

⁴ Hind Ahmed Zaki, "Law, Culture, and Mobilization: Legal Pluralism and Women's Access to Divorce in Egypt," *Muslim World Journal of Human Rights* 14, no. 1 (June 2017): 1–5, <https://doi.org/10.1515/mwjhr-2016-0022>.

⁵ Yüksel Sezgin, "A Global and Historical Exploration: Legislative Reform in Muslim Family Laws in Muslim-Majority versus Muslim-Minority Countries," *Law & Policy* 45, no. 2 (2023): 110–16, <https://doi.org/10.1111/lapo.12210>.

⁶ Ahmed Fekry Ibrahim, *Child Custody in Islamic Law: Theory and Practice in Egypt since the Sixteenth Century*, Cambridge Studies in Islamic Civilization (Cambridge: Cambridge University Press, 2018), 11–18, <https://doi.org/10.1017/9781108648042>.

⁷ Nadjma Yassari, Maria Møller, and Imen Gallala-Arndt, *Parental Care and the Best Interests of the Child in Muslim Countries*, in *Parental Care and the Best Interests of the Child in Muslim Countries* (2017), 7–12, <https://doi.org/10.1007/978-94-6265-174-6>.

Egypt and Indonesia play important roles in this regard, as each country integrates religious doctrines through different legal frameworks. While one country adopts custody norms through the Compilation of Islamic Law (KHI) alongside civil law, the other regulates custody through reformist legislation rooted in fiqh and adapted to domestic legal developments.⁸ The differences in the age limits for a mother's custody rights between these two countries demonstrate how diverse doctrinal perspectives have been transformed into enforceable legal rules.⁹ These differences provide insights into the practical application of theological differences within national legal systems. Therefore, this study seeks to bridge this gap by explaining how Indonesia and Egypt have constructed the age limit for *ḥaḍānah* through legislative processes that remain rooted in the fiqh tradition while simultaneously responding to the need for legal certainty, social change, and child protection in the context of modern states.

Previous research on child custody (*ḥaḍānah*) in both Indonesia and Egypt shows that these studies can be classified into three main categories: studies on the legal framework, judicial practices, and implementation challenges. Regarding the legal framework, studies in Indonesia explain that child custody regulations are based on the Marriage Law and Compilation of Islamic Law (KHI).¹⁰ On the other hand, research on Egypt indicates that the legal system governing child custody is built upon a combination of personal status law rooted in Islamic jurisprudence (*fiqh*), child law, and constitutional reforms that strengthen the child protection orientation in the resolution of child custody disputes.¹¹

The second group focuses on judicial practices and the implementation of child custody. In Indonesia, various studies have shown that judges no longer rely solely on

⁸ Muhammad Nasir et al., "LEGAL STATUS AND CONSEQUENCES OF UNILATERAL DIVORCE: COMPARATIVE STUDIES BETWEEN EGYPT, JORDAN, TUNISIA AND INDONESIA," *Malaysian Journal of Syariah and Law* 12, no. 2 (August 2024): 457–62, <https://doi.org/10.33102/mjssl.vol12no2.614>.

⁹ Dupret et al., *Filling Gaps in Legislation*, 416–21.

¹⁰ Yassari, Møller, and Gallala-Arndt, *Parental Care and the Best Interests of the Child in Muslim Countries*; S. Rika, "Accommodating the 'Best Interests of the Child' in Custody Disputes in the Indonesian System/s of Family Law," *International Journal of Law, Policy and the Family* 35, no. 1 (2021), Scopus, <https://doi.org/10.1093/lawfam/ebab011>.

¹¹ A. Lundberg et al., "Vernacularizing the Best Interests of the Child: Comparative Insights From Three Legal Systems," *Journal of Family Theory and Review*, ahead of print, 2026, Scopus, <https://doi.org/10.1111/jftr.70043>; Noorhaidi Hasan et al., "Adaptive Discretion in Child Marriage Prevention: Street-Level Bureaucracy in Indonesia's Islamic Marriage Administration," *Journal of Islamic Law* 7, no. 1 (February 2026): 142–67, <https://doi.org/10.24260/jil.v7i1.5265>.

normative provisions but have begun to consider parenting capacity, the child's psychological condition, and the continuity of the child's care in their rulings.¹² In fact, the concept of joint custody has emerged,¹³ although it has not yet been fully implemented.¹⁴ Meanwhile, in Egypt, judicial practice still adheres to the classical pattern of granting custody preference to mothers or female relatives.¹⁵ Overall, previous research has been dominated by discussions of normative and implementation aspects in each country, while studies specifically comparing how differences in the classical *fiqh* doctrine have been transformed into the codification of age limits for child custody (*ḥaḍānah*) in Indonesia and Egypt remain relatively limited. This gap is the primary focus of this study.

This study aims to analyze the legal transformation regarding the age limit for child custody (*ḥaḍānah*) from classical *fiqh* doctrines to modern legal codification through a comparative study between Indonesia and Egypt. Specifically, this study examines how differing madhhab perspectives on the age at which a mother's custody rights end are translated into each country's positive legal system, analyzes the process of transforming *fiqh* norms into binding legal provisions, and evaluates the implications of such codification for legal certainty and the protection of the best interests of the child. This study places the process of transformation from classical *fiqh* to national law as the primary focus of analysis, thereby elucidating the dynamics of interaction between religious and state authorities in the formation of family law.

This study employs a theoretical framework that integrates the theory of Islamic legal reform to explain the mechanisms of reinterpretation and adaptation of *fiqh* doctrines in the formation of modern family law, the theory of legal codification to

¹² Achmad Kadarisman, Alfarid Fedro, and Zainal Arifin, "BEST INTEREST OF THE CHILD IN ISLAMIC FAMILY LAW: INTEGRATING MAQĀSĪD AL-SHARĪ'AH AND DOUBLE MOVEMENT THEORY IN ḤAḌĀNAH CASES," *Jurnal Al-Dustur* 8, no. 2 (December 2025): 155–74, <https://doi.org/10.30863/aldustur.v8i2.10459>; Khoiruddin Nasution and Syamruddin Nasution, "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (December 2021): 347–74, <https://doi.org/10.14421/ajis.2021.592.347-374>.

¹³ N. Triyono, "The Implementing Joint Custody Post Divorce In Indonesia: A Philosophical Viewpoint," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023): 314–30, Scopus, <https://doi.org/10.18860/j-fsh.v15i2.24370>.

¹⁴ E. Musaddad et al., "Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (2025): 1–14, Scopus, <https://doi.org/10.24090/volksgeist.v8i1.12214>.

¹⁵ Yassari, Møller, and Gallala-Arndt, *Parental Care and the Best Interests of the Child in Muslim Countries*.

analyze the process of transforming pluralistic fiqh norms into positive law that provides legal certainty, and the theory of the best interests of the child as an evaluative tool to assess the extent to which the age limits for child custody (*ḥaḍānah*), as codified in Indonesia and Egypt, are truly oriented toward the protection of children's rights, well-being, and development.

Method

This study employs a normative legal method, taking the age thresholds of *ḥaḍānah* as a central analytical focus in Islamic law and comparing how Indonesia and Egypt incorporate these rules into their national legal systems. Rather than relying on broad generalizations, it closely examines doctrinal sources from classical *fiqh* texts, along with statutory provisions, tracing developments in maternal custody rights based on age criteria across jurisdictions. Codified materials such as the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) serve as primary references for understanding Indonesia's approach,¹⁶ supplemented by relevant regulations concerning family law matters. In parallel, Egypt's position is examined through its Personal Status Law, together with related legal instruments that shape custodial outcomes under the principles of *ḥaḍānah*.¹⁷

Beginning with positive legal provisions, this study applies a rule-based analysis, along with a comparative cross-jurisdictional approach. Rather than merely listing the age limits prescribed by the law, it examines how each legal system interprets the rules concerning *ḥaḍānah* through a structured reading of statutory texts. Differences in age thresholds are explored through closer scrutiny of the legal reasoning underlying them. In this context, the formation of such limits becomes clearer when classical Islamic legal thought is examined in relation to modern legislation.¹⁸ Simultaneously, attention is directed to how each country incorporates child welfare into its legal framework. A central question in this analysis is the extent to which applicable rules correspond to the

¹⁶ Ridwan Jamal, Rosdalina Bukido, and Yasin Yasin, "Pertimbangan Perkara Pemeliharaan Anak di Pengadilan Agama Manado," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 November (November 2021): 205, <https://doi.org/10.29240/jhi.v6i2.2453>.

¹⁷ Fauzi Fauzi, "Urf and Its Role in The Development of Fiqh: Comparative Study of Family Law Between Egypt and Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (June 2024): 346–71, <https://doi.org/10.22373/ujhk.v7i1.23968>.

¹⁸ Abdul Mohamad, Rohanee Machae, and Khareng Mutsalim, "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," *Asian Social Science* 12 (December 2024): 18, <https://doi.org/10.5539/ass.v12n10p18>.

best interests of the child.¹⁹ Three elements guide this inquiry: first, the formal age boundaries established by law; second, the interaction between doctrinal tradition and legal policy in shaping those boundaries;²⁰ and third, whether the resulting legal decisions genuinely place the welfare of the child at the center. In each case, the legal meaning extends beyond the text of the rule itself.

Beginning with foundational legal sources, this study draws on both primary and interpretive materials collected through extensive library research. It is not limited to statutory provisions alone, but also examines the broader legal frameworks that regulate maternal custody, or *ḥaḍānah*, in Indonesia and Egypt.²¹ These sources include relevant provisions of Indonesia's Compilation of Islamic Law and Egypt's Personal Status Law, together with recognized pre-modern juristic writings on child custody.²² In addition to these core materials, this study relies on supporting literature, including academic monographs, peer-reviewed journal articles, expert analyses, and previous studies on Islamic family law, childcare rights, and the codification of religious legal doctrines.²³ Without relying on quantitative data, the analysis proceeds through close reading and side-by-side comparison, identifying similarities and differences between the two jurisdictions while considering how classical doctrinal positions have been reformulated within modern legal expressions governing the end of maternal custody.

This process follows four sequential stages common to doctrinal-comparative legal research. The first stage involved the collection of primary legal materials, namely the relevant statutory provisions on *ḥaḍānah* in Egypt and the Compilation of Islamic Law, together with related civil regulations in Indonesia, supplemented by secondary

¹⁹ Nasaruddin Mera et al., "Child Custody Rights for Mothers of Different Religions: Maqāṣid al-Sharī'ah Perspective on Islamic Family Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (August 2024): 1645–68, <https://doi.org/10.22373/sjhk.v8i3.23809>.

²⁰ Adelina Nasution, Pagar Pagar, and Asmuni Asmuni, "The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 2022): 890–913, <https://doi.org/10.22373/sjhk.v6i2.12758>.

²¹ Salim Rauf, Dulsukmi Kasim, and Rizal Darwis, "A Comparative Study of Indonesian and Egyptian Islamic Law on Post-Divorce Child Custody Rules," *Jurnal Ilmiah AL-Jauhari: Jurnal Studi Islam Dan Interdisipliner* 10 (October 2025): 62, <https://doi.org/10.30603/jiaj.v10i2.7105>.

²² Salsabila Firdausia, "HADHANAH IN THE CONCEPT OF COMPILATION OF ISLAMIC LAW AND LAW," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 20 (December 2020): 4, <https://doi.org/10.19109/nurani.v20i2.4849>.

²³ Asman M. Ag. Dr, "PARENTS' OBLIGATIONS ON HADHANAH BEFORE MUMAYYIZ AFTER DIVORCE: REVIEW OF NORMATIVE LEGAL STUDIES," *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW* 4 (July 2023): 5, <https://doi.org/10.37876/adhki.v4i1.83>.

materials drawn from classical *fiqh* texts and peer-reviewed scholarships.²⁴ The second stage classifies and organizes these materials thematically around the criteria used to determine the end of maternal custody, such as the custodial age threshold, standard of the child's best interest, and conditions for custody forfeiture. The third stage applies doctrinal analysis to each jurisdiction separately, tracing how classical juristic positions were selected, modified, or departed during the drafting of modern statutory rules. The fourth and final stage undertakes a comparative synthesis of the findings of the two jurisdictions, from which conclusions are drawn regarding the extent to which doctrinal divergence among the schools of *fiqh* has been absorbed into or overridden by the legislative policy choices of each state.²⁵ Such differences provide insights into the practical application of theological disagreement within national legal systems.²⁶

Results and Discussion

The Jurisprudential Foundations of Child Custody (*Ḥaḍānah*) in Islamic Law

Among the rules that shape life after divorce in Muslim communities, one of the most significant concerns is the need to care for children until they can live independently. Scholars have described this duty, known as *ḥaḍānah*, as involving not only the care of a child's physical needs but also the development of mind and character, unlike *wilāyah*, which is more closely related to authority over matters such as property or marriage.²⁷ Although its conceptual foundations are important, the main debate centers on when a mother loses the right to retain custody of the child.²⁸ This issue has generated considerable differences in opinions in both classical legal texts and modern judicial

²⁴ Athirah Saraswati, "Custody (Hadhanah) Regulations in Indonesia and Malaysia: A Developmental Psychology Perspective on Child Welfare," *Sakina: Journal of Family Studies* 8, no. 4 (December 2024): 3, <https://doi.org/10.18860/jfs.v8i4.11798>.

²⁵ Fahri Ozsungur, "Doctrinal Research Method in Law," SSRN Scholarly Paper no. 5259219 (Rochester, NY: Social Science Research Network, February 24, 2024), 4–7, <https://doi.org/10.2139/ssrn.5259219>.

²⁶ Dupret et al., *Filling Gaps in Legislation*, 416–21.

²⁷ Mera et al., "Child Custody Rights for Mothers of Different Religions," 1648.

²⁸ Umar Multazam, "The Concept of Child Custody (Hadhanah) After Divorce in the Perspective of Islamic Law," *Indonesian Journal of Islamic Law* 7, no. 1 (2024): 21, <https://doi.org/10.35719/ijil.v7i1.1956>.

practice.²⁹ Therefore, the moment of transfer from the mother's care to another party remains central to discussions among classical jurists and contemporary lawmakers.³⁰

Scripture provides broad guidance on parental responsibilities, maternal care, and the protection of children, yet it does not establish a precise endpoint for maternal custody.³¹ Because sacred texts remained open to interpretation, early Muslim jurists developed differing views across the traditions of Islamic jurisprudence. Differences in the way each school interprets religious sources and applies legal reasoning give rise to distinct rulings on how long a mother may retain custody. The stage at which a child reaches discernment often influences these rulings, although not uniformly.³² Interpretive approaches vary. However, they are all derived from the same foundational sources.

Under Hanafi rulings, boys generally leave their mothers' care at around seven years of age, while girls remain until maturity, in line with Hanafi's views on child development and gender-based responsibilities.³³ In contrast to fixed age thresholds, Shafi'i School places greater emphasis on whether the child can distinguish right from wrong, thereby allowing room for the child's preference in custodial arrangements.³⁴ In Maliki practice, daughters may remain with their mothers well beyond early childhood, reflecting a tendency toward prolonged maternal care.³⁵ Decisions within the Hanbali framework consider both the child's age and best interests in determining the transfer of custody.³⁶ No single rigid rule governs all of these schools; each establishes its own boundaries based on distinct legal reasoning.

One reason legal systems differ across Muslim majority countries lies in the way they engage with the traditional schools of Islamic thought. Rather than adopting literal

²⁹ Mohamad, Machae, and Mutsalim, "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," 20.

³⁰ Farida Nurun Nazah et al., "Gender Justice in Child Custody Disputes: The Maqāṣid al-Sharī'ah Approach in Contemporary Judicial Practice," *MILRev: Metro Islamic Law Review* 4, no. 2 (November 2025): 9, <https://doi.org/10.32332/milrev.v4i2.10790>.

³¹ Fauzi Yusoh et al., "The Right of Custody (Hadanah) for Young Children of Interfaith Couples," *International Journal of Research and Innovation in Social Science* 9, no. 30 (December 2025): 387, <https://doi.org/10.47772/IJRIS.2025.930000052>.

³² Kadarisman, Fedro, and Arifin, "BEST INTEREST OF THE CHILD IN ISLAMIC FAMILY LAW," 11.

³³ 'Alā' al-Dīn Abū Bakr ibn Mas'ūd al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'* (Kairo: Dar al Hadith, 2005), 5:173.

³⁴ Abū Zakariyyā Yahyā ibn Sharaf al-Nawawī, *Rawḍat al-Ṭālibīn wa 'Umdat al-Muṭtīn*, 3rd ed. (Beirut: al-Maktab al-Islāmī, 1991), 9:103.

³⁵ Khalīl ibn Ishāq al-Jundī, *Mukhtaṣar Khalīl* (Cairo: Dār al-Ḥadīth, 2005), 1:139.

³⁶ Ibn Qudāmah Ibn Qudāmah, *Al-Mughnī* (Cairo: Maktabat al-Qāhirah, 1969), 8:239–41.

classical rulings, many governments select doctrines that correspond more closely to contemporary legal systems and social realities. For example, Indonesia has established a fixed age for maternal custody within the framework of Islamic family law to provide greater predictability in judicial decisions.³⁷ In contrast, Egypt adopts a different age threshold shaped by its own legislative development and social considerations.³⁸ These differences in statutory age limits reveal a broader point, modern legal systems do not merely reproduce earlier juristic opinions but reformulate them by combining classical teachings with practical governance and contemporary perspectives on childcare.³⁹

Seen more closely, such variations reflect more than mere legal disagreement; they illustrate how Islamic law adapts to social change. The absence of a single fixed age in classical doctrine gives lawmakers room to integrate traditional interpretations with concerns about child welfare and the practical needs of judicial administration.⁴⁰ In this sense, the determination of custody ages in countries such as Indonesia and Egypt demonstrates how religious principles are adjusted within national legal systems without entirely losing their normative foundations.⁴¹ Through this process, the relationship between juristic thought, state governance, and the protection of children continues to develop in the modern Muslim world.

Determination of *Ḥaḍānah* Age Limits in Classical Islamic Jurisprudence

For quite some time, Islamic scholars have closely examined when maternal care may end.⁴² Following infancy, questions arise regarding who should assume responsibility for the child. Debates on custody often involve a balance between parental claims and the actual needs of the children as they grow.⁴³ While most classical views support the mother's right to retain young children in her care at an early stage, consensus

³⁷ Nasution, Pagar, and Asmuni, "The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court," 892–94.

³⁸ Kristen Stilt, Salma Waheedi, and Swathi Gandhavadi Griffin, *THE AMBITIONS OF MUSLIM FAMILY LAW REFORM*, n.d., 308–13.

³⁹ Ahmed Gad Makhoul, "Continuity and Change of Traditional Islamic Law in Modern Times: Tarjīḥ as a Method of Adaptation and Development of Legal Doctrines," *Oxford Journal of Law and Religion* 12, no. 1 (February 2023): 63–65, <https://doi.org/10.1093/ojlr/rwad010>.

⁴⁰ Mohamad, Machae, and Mutsalim, "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," 19–21.

⁴¹ Mera et al., "Child Custody Rights for Mothers of Different Religions," 1648–51.

⁴² Hakeem Ijaiya and Hakeemat Ijaiya, "Child Custody (Hadanah) in Islamic Family Law: An Anatomy of Women's Rights in Nigeria and Malaysia," *Islam and Civilisational Renewal* 274, no. 6071 (January 2018): 67, <https://doi.org/10.12816/0049541>.

⁴³ Mohamad, Machae, and Mutsalim, "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," 19.

begins to weaken when the discussion turns to the precise point at which that responsibility should be passed to another party.⁴⁴ Some rulings are based on scriptural interpretation, particularly the way certain verses or traditions are understood, while others consider a child's readiness to adapt to a different stage of care. Interpretation shapes the outcome, and the method influences judgment. In this respect, maturity is often considered more significant than time.

One of the more systematic approaches within Sunni legal traditions is found in the Hanafi School. Under this framework, custody of a son generally remains with the mother until he reaches approximately seven years of age, whereas a daughter may remain longer, in some opinions, even until adolescence.⁴⁵ Although precise age may vary across Hanafi interpretations, schools tend to rely on relatively fixed childhood stages. Considerations related to physical development, moral guidance, and children's social preparedness often influence these decisions. In this sense, the transfer of custody is not framed solely as a rigid rule, but as a shift that corresponds to a stage of development regarded as appropriate.⁴⁶

In contrast to such fixed timelines, the Maliki school tends to extend maternal custody further than most other schools. Jurists generally allow mothers to retain custody of their sons and daughters until adolescence, provided that the mother's conduct remains conducive to the child's welfare and emotional stability.⁴⁷ Grounded in consideration of practical benefits, this position places considerable weight on sustained emotional support as an important aspect of healthy development.⁴⁸ Unlike Hanafi rulings, which often rely on fixed age thresholds, the Maliki approach is more adaptive to the circumstances of each case and places greater emphasis on the child's needs than on standard numerical limits.⁴⁹

⁴⁴ Mausooma Farooq et al., "CHILD CUSTODY DISPUTES IN THE MALDIVES AND PAKISTANI FAMILY LEGAL SYSTEMS: CHALLENGES AND WAY FORWARD," *IIUM Law Journal* 32, no. 1 (May 2024): 341, <https://doi.org/10.31436/iiumlj.v32i1.906>.

⁴⁵ al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, 5:173.

⁴⁶ Mohamad, Machae, and Mutsalim, "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," 21.

⁴⁷ al-Jundī, *Mukhtaṣar Khalīl*, 1:139.

⁴⁸ Farooq et al., "CHILD CUSTODY DISPUTES IN THE MALDIVES AND PAKISTANI FAMILY LEGAL SYSTEMS," 347.

⁴⁹ Maaike Voorhoeve, *Ḥaḍāna Practices in Tunisia: Between Women's Rights and the Best Interest of the Child, 1956–2019*, October 28, 2020, 158, <https://doi.org/10.1163/15692086-12341377>.

Within the Shafi'i tradition, a child who has reached approximately seven years of age may be given the opportunity to choose between parents, provided that the court considers the child to be sufficiently mature. Rather than relying on fixed timelines alone, this approach considers the signs of discernment and sound judgments in determining custody. Judges consider a child's well-being together with his or her ability to distinguish between alternatives in everyday matters.⁵⁰ Therefore, the child's preference is given weight only when a sufficient degree of discernment becomes apparent. As such awareness does not emerge at the same age in every child, the timing may vary according to individual development.⁵¹ Accordingly, rulings in this school are shaped more by mental maturity than by chronological age alone.

Likewise, the Hanbali tradition considers a child's discernment, much like the Shafi'i School, but gives judges broader discretion in determining custodial suitability.⁵² As a result, factors beyond age, such as emotional readiness and quality of parental care, may significantly influence outcomes. In this framework, the practical assessment of a child's interests is often decisive when the court evaluates the relative suitability of each parent.⁵³ Therefore, the Hanbali doctrine combines juristic principles with contextual judicial evaluation.

From a comparative perspective, the four Sunni schools do not agree on a single fixed age for *ḥaḍānah*.⁵⁴ While the Hanafi and Maliki schools place a stronger emphasis on age-based thresholds, the Shafi'i and Hanbali schools pay greater attention to discernment, choice, and the child's well-being, as assessed on a case-by-case basis. This indicates that the latter two approaches may align more closely with the contemporary emphasis on the individual needs of the child. Simultaneously, the more structured age limits adopted by the former two schools provided clear doctrinal reference points. Over

⁵⁰ Meshal Humud Faleh Alnefaie, "CHILD CUSTODY STANDARDS IN ISLAMIC JURISPRUDENCE (An Analytical Study)," *Russian Law Journal* (Россия, Москва) 11, no. 5 (2023): 1022.

⁵¹ Mohamed Azam Mohamed Adil and Rafeah Saidon, "Religion as a Determinant of Child Welfare in Custody Cases in Malaysia and Classical Islamic Law : A Comparative Overview," *Islam and Civilisational Renewal* 274, no. 5579 (January 2017): 39, <https://doi.org/10.12816/0043454>.

⁵² Ibn Qudāmah, *Al-Mughnī*, 8:240.

⁵³ Taslima Yasmin, "Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations," *Asian Journal of Comparative Law* 12, no. 2 (December 2017): 240, <https://doi.org/10.1017/asjcl.2017.14>.

⁵⁴ Mohamad, Machae, and Mutsalim, "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," 18–26.

time, these differences have influenced legal reforms in countries such as Egypt and Indonesia, where lawmakers have drawn upon classical juristic thought without adopting it in a purely literal form.⁵⁵ From this variation emerged statutory rules intended to balance legal certainty with the need to protect and care for children.

Codification of Child Custody (*Ḥaḍānah*) Age Limits in Indonesia

Although rooted in tradition, Indonesia's approach to *ḥaḍānah* reflects a shift from a religious doctrine toward statutory rules shaped by modern governance. Formed partly through legal and political considerations, the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) was introduced in 1991 through presidential instructions aimed at promoting consistency among religious courts.⁵⁶ Rather than fragmenting judicial rulings, the state sought to establish greater uniformity across regions in which interpretations had previously varied.⁵⁷ Alongside this instrument, the Marriage Act of 1974 also played a central role in the family dissolution. Through these legal instruments, the judicial handling of Muslim child custody matters follows structured guidelines derived from *fiqh*, yet adapted to the demands of legal uniformity. Not every aspect of the classical doctrine is directly incorporated; modifications appear when judicial practice intersects with administrative needs.⁵⁸

Although the Marriage Act provides that both parents remain responsible for the care and education of their children after divorce,⁵⁹ the more detailed rules on *ḥaḍānah* are set out in Article 105 of the *KHI*. Where a child is under the age of 12 and is classified as a “*belum mumayyiz*”, meaning not yet capable of legal discernment, custody is granted to the mother. At the same time, the father remained responsible for the maintenance and financial support. Rather than leaving the determination of *tamyīz* to judicial discretion

⁵⁵ Jaime E. Mendoza, Maram Tolba, and Yasmine Saleh, “Strengthening Marriages in Egypt: Impact of Divorce on Women,” *Behavioral Sciences* 10, no. 1 (January 2020): 14, <https://doi.org/10.3390/bs10010014>.

⁵⁶ Nasution and Nasution, “Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights.”

⁵⁷ Nasution, Pagar, and Asmuni, “The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court.”

⁵⁸ Mera et al., “Child Custody Rights for Mothers of Different Religions.”

⁵⁹ Theresia Dyah Wirastris and Stijn Cornelis van Huis, “The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms,” *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (December 2024): 215–32, <https://doi.org/10.15408/ajis.v24i2.38424>.

on a case-by-case basis, Indonesian law has adopted a clear age threshold.⁶⁰ Consequently, the outcomes of custody disputes become more predictable.⁶¹

The age of 12 years occupies a significant position within Indonesia's legal framework for family matters.⁶² Rather than following the classical Islamic doctrine, in which maturity is assessed through discernment, known as *tamyīz*, the *KHI* establishes a fixed age that is uniformly applied by the courts.⁶³ While schools of Islamic law differ considerably in the point at which a child reaches such discernment, this codification replaces doctrinal variation with a single legal standard. From this perspective, the state does not seek to reinterpret religion so much as to stabilize judicial outcomes that might otherwise differ from one court to another. In practice, such clarity assists families in navigating custody disputes without becoming entangled in conflicting interpretations. Given Indonesia's legal and cultural diversity, the existence of a uniform standard also reduces the uncertainty of local practices intersecting with national law.⁶⁴

From a jurisprudential perspective, the Indonesian model does not exclusively correspond to any single *madhhab*.⁶⁵ While the recognition of maternal priority during early childhood resembles the approaches of the Shafi'i and other Sunni schools, the adoption of a fixed age of 12 years departs from classical doctrines that generally refer to approximately seven years of age, puberty, or the attainment of *tamyīz*. Therefore, the Indonesian approach may be viewed as an innovative legislative adaptation that

⁶⁰ Nispul Khoiri and Adelina Nasution, "Ḥaḍānah Conflict Resolution through Litigation: Analysis of Sharia Court Decisions in Aceh," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (December 2022): 177–98, <https://doi.org/10.18326/ijtihad.v22i2.177-198>.

⁶¹ Stijn Cornelis van Huis, *Khul' over the Longue Durée: The Decline of Traditional Fiqh-Based Divorce Mechanisms in Indonesian Legal Practice*, January 1, 2019, <https://doi.org/10.1163/15685195-00254A05>.

⁶² Nur Solikin and Moh Wasik, "The Construction of Family Law in the Compilation of Islamic Law in Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Ulumuna* 27, no. 1 (June 2023): 315, <https://doi.org/10.20414/ujs.v27i1.708>.

⁶³ Marilang Marilang, "LEGAL RELATIONSHIP BETWEEN ILLEGITIMATE CHILDREN AND THEIR BIOLOGICAL FATHER: The Analysis of Constitutional Court Decree No. 46/PUU-VIII/2010 in the Perspective of Civil and Islamic Law," *JOURNAL OF INDONESIAN ISLAM* 10, no. 2 (December 2016): 335, <https://doi.org/10.15642/JIIS.2016.10.2.335-354>.

⁶⁴ Zefrizal Nurdin, "Legal Protection of Customary Rights under Legal Pluralism and Its Impact on the Minangkabau Society: An Empirical Study in the District of Lima Puluh Kota, West Sumatra," *Cogent Social Sciences* 8, no. 1 (December 2022): 2045722, <https://doi.org/10.1080/23311886.2022.2045722>.

⁶⁵ Ade Dedi Rohayana and Ali Muhtarom, "Islamic Jurisprudence Implementation in Indonesia: Perspective of the Objectives of Islamic Law," *Global Jurist* 21, no. 2 (July 2021): 403, <https://doi.org/10.1515/gj-2020-0078>.

synthesizes elements of the classical *fiqh* with contemporary policy objectives.⁶⁶ Philosophically, this synthesis reflects an attempt to balance fidelity with Islamic legal tradition, with broader principles of legal certainty, administrative efficiency, and protection of the child's best interests.

Although the law establishes clear guidelines, religious court judges often adapt their decisions to the circumstances of individual cases.⁶⁷ Because personal conduct remains relevant, judicial determinations may consider the behavior of each parent over time. Factors such as a child's daily living environment may influence outcomes more significantly than rigid legal rules.⁶⁸ As caregiving capacity differs from one parent to another, the court may assess who is best able to meet a child's needs. This approach helps ensure that legal outcomes remain aligned with the child's welfare.⁶⁹ In this sense, the age of twelve functions not merely as a rigid cutoff point, but as one element within a broader judicial assessment.⁷⁰ Therefore, its application continues to be shaped by case-specific reviews.⁷¹

Viewed more broadly, the codification of *ḥaḍānah* in Indonesia reflects more than the mere adoption of classical religious rulings;⁷² it reveals deliberate choices made by lawmakers in response to legal and social needs. The determination of twelve years as the relevant age threshold emerged from efforts to standardize judicial decisions⁷³ and to

⁶⁶ Nasution and Nasution, "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights," 360.

⁶⁷ Fajri M. Kasim et al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (December 2022): 417, <https://doi.org/10.15408/ajis.v22i2.28747>.

⁶⁸ Iis Mardiansyah et al., "Beyond Victimhood: Rethinking Communicative Resilience and Child Transformation after Parental Divorce in Indonesia," *Frontiers in Sociology* 10 (November 2025): 1668368, <https://doi.org/10.3389/fsoc.2025.1668368>.

⁶⁹ Zanariah Binti Noor and Nazirah Lee, "Preserving Child's Faith in Malaysian Law: A Maqasidic Approach," *Uloomuna* 27, no. 1 (June 2023): 19, <https://doi.org/10.20414/ujs.v27i1.606>.

⁷⁰ Hotnidah Nasution and Ahmad Rifqi Muchtar, "Access to Justice for Women and Children in Divorce Cases in the Indonesian Religious Courts," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 2020): 370, <https://doi.org/10.15408/ajis.v20i2.15702>.

⁷¹ Saldi Isra, Ferdi Ferdi, and Hilaire Tegnau, "Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia," *Hasanuddin Law Review*, August 12, 2017, 128, <https://doi.org/10.20956/halrev.v3i2.1081>.

⁷² Viorizza Suciani Putri, Sonny Dewi Judiasih, and Hazar Kusmayanti, "The Best Interest of the Child in Islamic Family Law: Declarative and Enforceable Custody Protection in Indonesia and Malaysia," *International Journal of Nusantara Islam* 14, no. 1 (February 2026): 275, <https://doi.org/10.15575/ijni.v14i1.54393>.

⁷³ Eirik Hovden, "Understanding and Framing Change in Islamic Law: Potentials and Possible Pitfalls of the Concepts of Canonization and Codification," *Oxford Journal of Law and Religion* 12, no. 3 (October 2023): 293, <https://doi.org/10.1093/ojlr/rwae020>.

provide clearer legal guidance, while the protection of children remained a central concern in shaping the law. Compared with Egypt, this legislative path has become particularly significant. Although both countries draw on Islamic legal thought, they have developed their own models through a distinct legal trajectory.

Codification of Child Custody (*Ḥaḍānah*) Age Limits in Egypt

Egypt is one of the clearest examples of Islamic family law in the modern era. In matters such as marriage, divorce, maintenance, and child custody, the governing rules are primarily derived from Egypt's Personal Status Laws,⁷⁴ which transform traditional religious rulings into formal statutory provisions applied by national courts. Whereas classical Islamic legal thought permitted multiple interpretations across different schools,⁷⁵ the modern Egyptian model does not follow this pattern in the same way.⁷⁶ Instead, it places greater emphasis on legal consistency while still considering the need to preserve family stability, particularly for children.

Historically, changes in Egypt's *ḥaḍānah* rules reflect the broader shift in Islamic family norms from juristic interpretations to legislative codification. During the Ottoman period and later stages of Egyptian legal development, rulings were often based primarily on the Hanafi doctrine.⁷⁷ Under these earlier principles, boys generally remained in their mothers' care until approximately seven years of age, while girls might remain longer, in some views, until adolescence, although jurists differed in the precise point at which maternal custody should end.⁷⁸ As Egypt restructured its courts and statutory system over time, these inherited doctrines were gradually reformulated into clearer legal rules to promote greater consistency in judicial decisions.⁷⁹

Among the factors underlying these legal changes are transformations in family structure and social conditions.⁸⁰ Divorce has become more frequent, and increasing

⁷⁴ Nasir et al., "LEGAL STATUS AND CONSEQUENCES OF UNILATERAL DIVORCE," 461.

⁷⁵ Asni Asni, "Putusan Serta Merta Dalam Perkara Hadhanah Di Pengadilan Agama Dalam Rangka Perlindungan Anak," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (June 2021): 71, <https://doi.org/10.24090/mnh.v15i1.4115>.

⁷⁶ Zubair Abbasi, "Judicial Ijtihād as a Tool for Legal Reform: Extending Women's Right to Divorce under Islamic Law in Pakistan," SSRN Scholarly Paper no. 5702603 (Rochester, NY: Social Science Research Network, January 1, 2017), 387, <https://doi.org/10.2139/ssrn.5702603>.

⁷⁷ Monika Lindbekk, "Inscribing Islamic Shari'a in Egyptian Divorce Law," *Oslo Law Review* 3, no. 2 (March 2017): 103–35, <https://doi.org/10.5617/oslaw4081>.

⁷⁸ Dupret et al., *Filling Gaps in Legislation*.

⁷⁹ Lena-Maria Möller, *Family Law in the GCC and the Best Interests of the Child*, November 27, 2018, <https://doi.org/10.1163/15692086-12341341>.

⁸⁰ Ibrahim, *Child Custody in Islamic Law*.

attention has been paid to the welfare of children following parental separation. In this context, flexible juristic doctrines are increasingly viewed as insufficient to address contemporary disputes concerning child custody.⁸¹ Legislative reform therefore emerged as a means of establishing clearer legal standards,⁸² so that judicial outcomes would become less uncertain while remaining responsive to the realities of modern family life.⁸³

Law No. 4 of 2005 introduced significant changes to Egypt's Personal Status Law by extending the maximum period of *ḥaḍānah* to 15 years, replacing previously applied lower age limits.⁸⁴ Although mothers generally retain custody until that age, children may thereafter be given the opportunity to express their preferences regarding living arrangements subject to judicial consideration. In this respect, the age of 15 functions not merely as a numerical limit but also as the principal threshold defining the duration of maternal custody under Egyptian law.⁸⁵ This reform can be understood as a point of convergence between traditional Islamic legal principles and modern conceptions of child protection.⁸⁶ Rather than strictly adhering to a single classical juristic opinion, Egyptian lawmakers transformed flexible religious doctrines into clear statutory rules intended to support judicial administration while maintaining attention to the welfare of the child.⁸⁷ From this perspective, the extension of maternal custody until the age of fifteen may be understood as reflecting a policy choice to preserve stability in caregiving during an important stage of the child's development,⁸⁸ before the child is granted greater autonomy in determining future living arrangements.

⁸¹ Zoila Combalía, "New Social and Legal Challenges Resulting from the Presence of Islam in 21st Century European Societies," *International and Comparative Law Review* 20, no. 2 (February 2021): 113–28, <https://doi.org/10.2478/iclr-2020-0020>.

⁸² Hesham Maged, "The Effects of the Egyptian Personal Status Law On Divorce Children," SSRN Scholarly Paper no. 3636783 (Rochester, NY: Social Science Research Network, June 27, 2020), <https://doi.org/10.2139/ssrn.3636783>.

⁸³ R. Michael Feener, *Muslim Legal Thought in Modern Indonesia* (Cambridge: Cambridge University Press, 2007), <https://doi.org/10.1017/CBO9780511495540>.

⁸⁴ Haifaa G. Khalafallah, *Precedent and Perception: Muslim Records That Contradict Narratives on Women*, June 9, 2014, 42, <https://doi.org/10.1163/15692086-12341244>.

⁸⁵ Mohamad, Machae, and Mutsalim, "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," 21.

⁸⁶ Ahmed Fekry Ibrahim, "The Best Interests of the Child in Pre-Modern Islamic Juristic Discourse and Practice," *The American Journal of Comparative Law* 63, no. 4 (2015): 875.

⁸⁷ Viola Corradini and Giulia Buccione, "Unilateral Divorce Rights, Domestic Violence and Women's Agency: Evidence from the Egyptian Khul Reform," *Journal of Development Economics* 160 (January 2023): 6, <https://doi.org/10.1016/j.jdeveco.2022.102947>.

⁸⁸ Shabnam Ishaque and Muhammad Mustafa Khan, "The Best Interests of the Child: A Prevailing Consideration within Islamic Principles and a Governing Principle in Child Custody Cases in Pakistan,"

A useful comparison can be made with Indonesia. Whereas Indonesian law grants maternal custody until a child reaches the age of 12, Egyptian law extends that period to 15 years.⁸⁹ This difference in age threshold reflects distinct approaches to the application of Islamic legal doctrines.⁹⁰ Indonesian law relies on a fixed age standard tied to legal maturity, while Egyptian law allows for a longer period of maternal custody before recognizing the child's preference in determining future residence.⁹¹ However, what unites the two systems is their common objective of shaping the legal rules derived from Islamic teachings in a manner that protects children's welfare. Although their legal trajectories are not identical, similar normative aims remain visible in both systems.

Even after these reforms, Egypt's legal framework continued to distinguish between physical custody, known as *ḥaḍānah*, and *wilāyah*, which refers to legal guardianship.⁹² In general, the mother is responsible for the child's daily care and upbringing, while the father retains legal authority over matters, such as financial support and formal representation.⁹³ This structure illustrates the way in which Egyptian law preserves foundational concepts of Islamic family jurisprudence⁹⁴ while simultaneously adapting them within a modern legislative framework.⁹⁵

Although rooted in the classical legal doctrine, Egypt's approach to *ḥaḍānah* reflects changes brought about by legal development, social transformation, and evolving understanding of child welfare. The fixed custody age of fifteen, as established under the Personal Status Laws, demonstrates how religious principles may be adapted to balance

International Journal of Law, Policy and the Family 29, no. 1 (April 2015): 84, <https://doi.org/10.1093/lawfam/ebu015>.

⁸⁹ Idham Idham, Efa Rodiah Nur, and Agus Hermanto, "Dynamic Development of Family Law in Muslim Countries," *Al-'Adalah* 19, no. 1 (June 2022): 162, <https://doi.org/10.24042/adalah.v19i1.12421>.

⁹⁰ Nasir et al., "LEGAL STATUS AND CONSEQUENCES OF UNILATERAL DIVORCE," 458.

⁹¹ Zaki, "Law, Culture, and Mobilization," 4.

⁹² Nasution, Pagar, and Asmuni, "The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court," 894.

⁹³ Shaheen Sardar Ali and Sajila Sohail Khan, "Evolving Conceptions of Children's Rights: Some Reflections on Muslim States' Engagement with the UN Convention on the Rights of the Child," in *Parental Care and the Best Interests of the Child in Muslim Countries*, ed. Nadjma Yassari, Lena-Maria Möller, and Imen Gallala-Arndt (The Hague: T.M.C. Asser Press, 2017), 286, https://doi.org/10.1007/978-94-6265-174-6_11.

⁹⁴ Muhammad Zubair Abbasi and Shahbaz Ahmad Cheema, "Polygamy and Second Marriage under Muslim Family Law in Pakistan: Regulation and Impact," *Islamic Studies* 59, no. 1 (March 2020): 31, <https://doi.org/10.52541/isiri.v59i1.1168>.

⁹⁵ Dörthe Engelcke and Nadjma Yassari, "CHILD LAW IN MUSLIM JURISDICTIONS: THE ROLE OF THE STATE IN ESTABLISHING FILIATION (NASAB) AND PROTECTING PARENTLESS CHILDREN," *Journal of Law and Religion* 34, no. 3 (December 2019): 333, <https://doi.org/10.1017/jlr.2019.40>.

legal certainty with the realities of contemporary family life. Rather than reproducing earlier interpretations in a literal manner, Egyptian lawmakers reformulate doctrines where necessary so that legal practice remains responsive to present conditions. In this way, legal rules emerge not only from inherited texts but also from the new demands imposed upon them by lived social experiences.

Comparative Legal Analysis of Child Custody (*Ḥaḍānah*) Age Limits in Indonesia and Egypt

Before turning to a comparative analysis, it is worth laying out how *ḥaḍānah* is regulated in Indonesia and Egypt. Both countries draw their family laws from Islamic legal principles, yet each has translated these principles into legislation in quite different ways. In Indonesia, maternal custody is governed mainly by Article 105 of the Compilation of Islamic Law (*KHI*). Egypt, in contrast, handled the matter through its Personal Status Law, which has been revised several times since its enactment. These differing statutory approaches partly reflect how each country weighs classical Islamic jurisprudence against the demands of legal certainty and the broader principles of the child's best interests.

To make the comparison easier to follow, Table 1 sets out the main similarities and differences between Indonesian and Egyptian legal frameworks on maternal custody, covering their legal bases, statutory age limits, the general orientation of each legislation, and how much room judges are given to exercise discretion in custody decisions.

Table 1. Comparative Codification of *Ḥaḍānah* Age Limits in Indonesia and Egypt

Aspect	Indonesia	Egypt	Analytical Implication
Primary legal instrument	Compilation of Islamic Law (KHI), Article 105	Personal Status Law (as amended, including Law No. 4 of 2005)	Both jurisdictions codified Islamic family laws through statutory legislation.
Statutory age limit for maternal custody	12 years	15 years	Egypt has a longer statutory period for maternal custody than Indonesia.

Jurisprudential basis	Adaptation of the concept of <i>tamyīz</i> into a fixed statutory age	Reform of Hanafi-influenced rules through legislative policy	Neither country adopts a single classical juristic opinion without modification.
Legislative orientation	Greater emphasis on legal certainty and standardized judicial application	Longer continuity of maternal care before greater child participation in custody decisions	Different policy priorities produce different statutory outcomes when pursuing child welfare.
Role of judicial discretion	Religious Courts may consider the child's best interests despite statutory rules	Courts supervise custody arrangements and the child's preference after the statutory age	Both systems combine codified rules with judicial evaluation.

Source: Compiled by the authors

As shown in Table 1, the principal distinction between Indonesia and Egypt is not merely the numerical difference between 12 and 15 years but also the legislative philosophy underlying those figures. Indonesia's adoption of a 12-year threshold reflects the state's effort to transform the flexible concept of *tamyīz* into a uniform statutory standard that enhances legal certainty and consistency in Religious Court decisions. Given Indonesia's plural legal environment and the need for predictable adjudication, codification serves an important administrative function by reducing uncertainty in custody disputes.

In contrast, Egypt's decision to establish a 15-year threshold can be understood within the context of broader reforms to its Personal Status Law aimed at adapting classical jurisprudence to contemporary social conditions.⁹⁶ Rather than simply replicating Hanafi doctrine,⁹⁷ Egyptian legislation reformulates traditional custody rules into a statutory framework that may be interpreted as favoring a longer period of maternal care before the child assumes a more active role in determining custodial arrangements.⁹⁸ This approach reflects legislative adaptation rather than strict adherence to classical

⁹⁶ Nasir et al., "LEGAL STATUS AND CONSEQUENCES OF UNILATERAL DIVORCE," 462.

⁹⁷ Zaki, "Law, Culture, and Mobilization," 10.

⁹⁸ Abbasi, "Judicial Ijtihād as a Tool for Legal Reform," 395.

fiqh.⁹⁹ The statutory codification of custody ages across Muslim-majority states further illustrates how doctrinal norms are translated into enforceable legal standards that serve both predictability and protection.¹⁰⁰ In this regard, the Egyptian model exemplifies how contemporary legislators draw upon classical sources while simultaneously reinterpreting them in accordance with present social and legal exigencies.¹⁰¹

The divergence between these two jurisdictions is shaped by historical and sociological considerations. Indonesia's codification project emerged as part of an effort to unify Islamic family law and standardize judicial practice through the Compilation of Islamic Law,¹⁰² whereas Egypt's reforms developed incrementally through amendments to the Personal Status Law in response to changing conceptions of family relations and child welfare.¹⁰³ Consequently, although both countries derive legitimacy from Islamic jurisprudence, they operationalize its principles through different legislative strategies.¹⁰⁴

From a philosophical perspective, both legal systems pursue the overarching objective of protecting the best interests of the child (*maṣlaḥah*).¹⁰⁵ However, they implement that objective differently.¹⁰⁶ Indonesia emphasizes predictability and legal certainty by adopting an earlier statutory benchmark, while Egypt provides a longer legally recognized period of maternal custody before the child's preference becomes more significant.¹⁰⁷ Therefore, these differences should be understood not as contradictions, but as distinct policy choices reflecting each state's legal traditions, institutional needs, and socio-legal priorities. Accordingly, comparative evidence demonstrates that Islamic jurisprudence provides normative flexibility rather than a single mandatory age limit for *ḥaḍānah*. The statutory thresholds adopted by Indonesia and Egypt represent different

⁹⁹ Idham, Nur, and Hermanto, "Dynamic Development of Family Law in Muslim Countries," 172.

¹⁰⁰ Fauzi, "Urf and Its Role in The Development of Fiqh," 360.

¹⁰¹ Nasir et al., "LEGAL STATUS AND CONSEQUENCES OF UNILATERAL DIVORCE," 467.

¹⁰² Mera et al., "Child Custody Rights for Mothers of Different Religions," 1645.

¹⁰³ Nasution and Nasution, "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights," 347.

¹⁰⁴ Abbasi, "Judicial Ijtihād as a Tool for Legal Reform," 384.

¹⁰⁵ Mohamad, Machae, and Mutsalim, "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," 18.

¹⁰⁶ Nasution, Pagar, and Asmuni, "The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court," 890.

¹⁰⁷ Zaini Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (January 2024): 5, <https://doi.org/10.22373/sjhh.v8i1.16553>.

forms of legislative interpretation and codification,¹⁰⁸ illustrating how shared jurisprudential foundations can generate diverse legal outcomes while remaining oriented toward the common objective of safeguarding children's welfare.¹⁰⁹

Conclusion

This study demonstrates that Islamic jurisprudence does not establish a single universally binding age limit for *ḥaḍānah*. Instead, classical schools of law have developed different approaches based on their interpretations of *tamyīz*, child welfare, and parental responsibility. Consequently, the determination of custody age reflects the diversity of juristic reasoning rather than a fixed doctrinal rule. A comparative analysis showed that Indonesia and Egypt codify these classical principles in different ways. Indonesia, through Article 105 of the Compilation of Islamic Law, has adopted a statutory threshold of 12 years, which may be understood as an effort to standardize the concept of *tamyīz* and enhance legal certainty in judicial practice. In contrast, Egypt established 15 years as the principal statutory age for maternal custody under its Personal Status Law, providing a longer period of maternal care before the child assumes a greater role in custody decisions. These contrasting approaches suggest that Indonesia's model is relatively more administrative and standardized, whereas Egypt's model may be interpreted as placing greater emphasis on continuity of care and child welfare during adolescence. The principal contribution of this study lies in linking classical juristic differences, statutory policies, and modern legal codification within a single comparative framework. Rather than merely describing doctrinal debates or national legislation in isolation, this study demonstrates how variations among the Sunni schools of law influence legislative choices and how those choices are subsequently adapted by modern states to address legal certainty and the protection of children.

This study's findings have several practical implications. Policymakers have indicated that the codification of Islamic family law should balance fidelity to Islamic jurisprudence with evolving social realities and the best interests of children. For religious courts and judicial institutions, this study underscores the importance of consistently

¹⁰⁸ Khaiyyil Faizunan Nurun Nafi, Kamilatun Nisa', and Ahmad Taufiqur Rohman, "Digitalization in Islamic Family Law: An Opportunity or a Threat?," *International Journal of Religion and Social Community* 2, no. 2 (September 2024): 34, <https://doi.org/10.30762/ijoresco.v2i2.3498>.

¹⁰⁹ Kasim et al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh," 1.

interpreting statutory custody provisions while remaining attentive to child welfare in individual cases. More broadly, a comparison between Indonesia and Egypt may provide useful reference points for future reforms of Islamic family laws in other Muslim-majority jurisdictions. Future research should extend beyond normative legal analyses by examining judicial decisions and empirical custody practices to assess statutory age limits. Comparative socio-legal studies involving judges, litigants, and child welfare outcomes would provide a deeper understanding of whether existing age thresholds effectively protect children and whether further legislative refinement is warranted.

Declarations

Author contribution statement

A.S. conceived the study, designed the research, collected and analyzed the data, interpreted the findings, and wrote the manuscript. A.F. and M.J supervised the study, provided conceptual guidance, and critically reviewed and revised the manuscript. M.F.K. assisted in reviewing and verifying Egyptian legal material and ensuring the accuracy of the analysis related to Egyptian law. M.K.W assisted in identifying relevant classical Islamic sources and contributed to the literature review. All authors have read and agreed to the published version of the manuscript.

Declaration of interests statement

The authors declare that they have no known competing financial interests or personal relationships that could influence the work reported in this study.

AI Usage Statement

During the preparation of this manuscript, we used generative AI alone to assist with language refinement, grammar correction, and readability improvement. All substantive legal analyses, interpretation of sources, comparative evaluations, and final conclusions were reviewed, verified, and approved by the authors who take full responsibility for the content of the manuscript.

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