

Comparison of the Legal Construction of Hadhanah Rights in Saudi Arabia, Turkey and Indonesia

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Abstract

Hadhanah is an act that must be carried out by their parents, because without hadhanah it will result in the child becoming abandoned and his life will be wasted. Fiqh scholars agree that the principle of caring and educating is an obligation for parents, because if children are still young, it will have a damaging effect on the child and their future can even threaten the existence of their soul. This study aims to investigate and analyze the protection of hadhanah rights in three countries, namely Saudi Arabia, Turkey, and Indonesia. This research will use normative research methods. The results of this research are hadhanah rights in Islam in Saudi Arabia, Turkey, and Indonesia. Saudi Arabia, with its legal system based on the Hambali madhhab, emphasizes the protection, education, and custody of children supervised by Islamic authorities. Turkey, with its more moderate civil law, ensures the fulfillment of children's rights in divorce decisions, with attention to the protection, care, and education of children. In Indonesia, the Marriage Law and the Compilation of Islamic Law affirm the protection and maintenance of children in accordance with the principle of Islamic hadhanah rights. Turkey is considered more responsive to the changing times by integrating modern values in the protection of children's rights, followed by Indonesia's progressive adaptation. The contribution of this research is that this analysis is expected to provide in-depth insights into the development and implementation of Islamic family law in various countries with different backgrounds.

Keywords: Children, Hadhanah, Islam



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INTRODUCTION

Humans are made in pairs as "husband and wife" and between the two have a mutual desire to live together. This biological desire can be channelled properly with the "bond of marriage". (Yoki Pradikta et al., 2024) In marriage, the couple will have a peaceful life in an atmosphere of love, grace and tenderness. A life full of pleasure is "the gift of Allah SWT which is very valuable for humans" (Amalia et al., 2018). In Surah Ar-Rum verse 21 Allah says:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Meaning: *And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.*

The above evidence explains the meaning of a sign of how the life of a married couple in a household should be shaped. It is only through love that marriage will be "peaceful and lasting". Having a peaceful life, husband and wife are expected to be able to carry out the next

goal of marriage which is "to raise pious offspring and always pray for their parents." Happy offspring are "offspring that soothe the heart and soothe the soul", which in Qur'anic terminology is referred to as "*qurrata a'yunin*" (Candra, 2022).

This verse contains several important messages. Firstly, Allah created pairs of the same kind (i.e. male and female) as a sign of His power. This shows that the relationship between husband and wife is part of Allah's will and is part of His plan in creating human beings. Secondly, the verse mentions that one of the purposes of the creation of this pair is for humans to feel inclined and secure towards their partners.(Firdawaty et al., 2023) This emphasises the importance of a harmonious relationship between husband and wife, where both support, complement and feel comfortable with each other. Thirdly, the verse also reveals that between husband and wife, Allah created love and affection. This shows the importance of having positive feelings and understanding for each other in the marriage relationship. Throughout the verse, Allah reminds us that the marriage relationship is not something to be taken lightly, but rather a sign of His greatness that needs to be considered by reasonable people. A harmonious and loving relationship between husband and wife is part of Allah's plan that must be preserved and strengthened.

The reasons why certain verses or chapters were revealed or written in the Qur'an vary depending on the historical context and situation at the time. Surah Ar-Rum verse 21, for example, had several purposes in its revelation.(Pradikta et al., 2023) Firstly, the verse teaches about the wisdom of Allah in creating life partners who complement each other, creating affection and longing between them, as a reminder of the greatness and wisdom of Allah. Secondly, the verse encourages people to contemplate the signs of Allah's greatness in the creation of life partners, so that it is hoped that people can get to know and get closer to Allah. Thirdly, this verse teaches about the purpose of marriage, which is to find peace, love, and care for each other, so that marriage is not only a social bond but also a spiritual bond full of wisdom. Fourthly, this verse provides guidelines for married life, by teaching to respect, love and care for each other, which can be the foundation for a harmonious and happy married life. Therefore, this verse has a lot of wisdom and lessons that can be taken for human life, so it is important to understand the reason why this verse was revealed and written in the Qur'an.

To achieve the goal of marriage in order to get pious and solehah offspring in accordance with the law of marriage and it is a must for husband and wife to be able to carry it out, this can only be realised if the household is always full of "peace and tranquility" and "a life that is always based on devotion to Allah Swt".(Mu'in et al., 2023) It is therefore imperative that a family life of peace and devotion is realised not only for the married couple but especially for the benefit of their offspring. For this purpose, married couples are required to be able to restrain themselves, to be able to avoid things that might lead to household breakdown. If the husband and wife no longer love and respect each other, then it is certain that something will go wrong in the household, and that atmosphere means that they have gone out of Allah's guidance.

In Islam, Hadhanah is a foetus that is in the womb. The protection of Hadhanah rights is an important part of family law (sharia law) in Islam. Child maintenance or also called childcare and in Islam is called "hadhanah". Hadhanah has both etymological and terminological meanings (Domo et al., 2018). Etymologically, hadhanah comes from the word hadhana-yahdhunuhadhnan which means caring for a child or holding a child (Rahman, 2019). In terms

of terminology, hadhanah has a varied definition, as expressed by several schools of thought: 1. Hanfiah Fukaha define hadhanah as an effort to educate children carried out by someone who has the right to care for them. 2. Shafi'iyah scholars, hadhanah is educating a person who cannot take care of himself with what is beneficial to him and protecting him from what harms him, even though the person is an adult (Fitrotun, 2022). Such as helping with cleaning his body, washing his clothes, oiling his hair, and so on. Similarly, holding the child in the cradle and rocking it so that it can sleep quickly (Martati & Firdaus, 2018).

Child maintenance due to divorce in the language of Jurisprudence is called hadhanah. Al-Shah'ani, said that hadhanah is taking care of someone (child) who cannot be independent, educating, and maintaining it to avoid everything that can damage and bring mudharat to him (Hidayat & Isyaaq Maulidan, 2021). Child care is basically the responsibility of both parents (Asparidon & Elimartati, 2022). This includes various things, economic problems, education, and everything that is the basic needs of children. In Islam, economic responsibility falls on the shoulders of the husband as the head of the household. Although in this case, it does not rule out the possibility that the wife can help the husband in bearing these economic obligations (Islami & Sahara, 2019). Therefore, the most important thing is cooperation and help between husband and wife in raising children and bringing them to adulthood.

One aspect is the matter of rights and obligations for childcare after divorce (Maghfirah & Gushairi, 2020). The issue of child maintenance after divorce is a very important issue (Triyanita & Prananingtyas, 2023). This is related to Islamic doctrine, which emphasises the idea that children are a divine responsibility that must be nurtured and guarded diligently (Jumroh, 2018). Therefore, it is imperative for parents to assume responsibility for this obligation. Realising that children are entrusted to their parents, it is necessary to instil a mindset that always puts children at the forefront and seeks to uphold their rights, which include the right to protection, the right to grow and develop, the right to education, the right to financial independence, and the right to inheritance, and the right to fair treatment. Parents are obliged to fulfil these rights. Even in the event of divorce, it is important to ensure that these rights are fully upheld possible. Therefore, Islamic law establishes regulations relating to childcare called hadhanah. In addition, many Muslim countries have subsequently established comprehensive laws to regulate the rights and obligations relating to child custody after divorce (Najitama, 2023).

Children are a mandate as well as a gift from Allah SWT, which we must always protect because they have dignity and human rights that must be upheld (Tarmizi, Yulia Pradiba, 2023). In terms of the life of the nation and state, children are the future. Hadhanah according to Fiqh terms is to take care of children from all kinds of dangers that might befall them, protect their body and soul, maintain security and cleanliness, seek education, until they are able to stand alone in facing life as a Muslim. Hadhanah is an act that must be carried out by the parents, because without hadhanah, the child will become neglected and his life will be wasted. Fiqh scholars agree that the principle of caring and educating is an obligation for parents, because if the child is still young it will result in damage to the child and their future and can even threaten the existence of their soul (Hamzah et al., 2022).

The analysis will focus on the legislation in each country, including the influence of the dominant Shafi'i Mazhab and local approaches to Islamic family law. The article will also

explore aspects such as parenting requirements, the age of the child in choosing a guardian, and procedures for child maintenance and maintenance. In addition, it will discuss the social, cultural and gender implications of the implementation of hadhanah rights, as well as how family law in the three countries faces the challenges of a rapidly evolving era.

The legal construction of hadhanah (childcare) rights in the three countries of Saudi Arabia, Turkey and Indonesia illustrates different approaches to the application of Islamic legal principles. In Saudi Arabia, childcare (hadhanah) is generally governed by a conservative interpretation of Sharia law, with the father being the dominant custodian, especially in the case of male children. Turkey, as a country that adopted a legal system based on the civil code after reforms in the early 20th century, has a more secular approach to childcare arrangements, although it still takes into account general Islamic values. Meanwhile, in Indonesia, the Islamic family law system regulates hadhanah by considering moderate Islamic principles, giving the choice of care to the mother if the child is not yet mumayyiz (adult) and considering *maslahah* (the welfare of the child) as the main principle in determining custody. Thus, these three countries show variations in the interpretation and implementation of Islamic law related to hadhanah, reflecting the cultural, social and legal diversity in their respective contexts.

Sarilah (2024) *Hadhanah in Indonesian and Algerian Family Law Systems*. The results of this study concluded that there are similarities and differences between the provisions of hadhanah in Indonesia and Algeria. The similarities include the settlement of hadhanah through the court, the juridical rules of hadhanah, the granting of hadhanah to the mother for children who are not yet mumayyiz, and the father's obligation to provide maintenance after divorce. The differences lie in post-maternal care, the age at which the child can choose a custodian (12 years old in Indonesia, 10 years old for males and marriageable age for females in Algeria), the requirements for child carers, the criteria for loss of hadhanah rights, and the more detailed regulation of child maintenance costs in Algeria. Overall, Indonesia appears to be more aware of the gender dimension of hadhanah implementation than Algeria.

Lutfi Abdul Latif (2020) *Hadhanah Provisions in Indonesia and the Maldives*. From a comparative analysis of family law between Indonesia and the Maldives, both have experienced a departure from the principles of the Shafi'i school of jurisprudence, the majority school in both countries. Vertically, they both stipulate the parenting period and the age for choosing a guardian, but do not regulate the care of children who go abroad. Horizontally, they have similarities in the establishment of hadhanah as a written rule, who is entitled to hadhanah, and who pays for child maintenance. However, there are differences such as the conditions of childcare and the age limit for choosing a guardian. Diagonally, Indonesia stands out with its childcare requirements and age limit for choosing a foster guardian, while the Maldives has strict rules regarding childcare until a certain age according to the Islamic calendar, with the possibility of extension upon application to the court.

Badriyah (2022) *Consideration of Judges in Indonesia and Malaysia in giving Hadhanah Rights to Fathers from the Perspective of Maslahah and Gender Justice*. The results of this study are: First, the arguments of the plaintiff and the defendant are always oriented towards the argument of the incompetence of each party in caring for the child. Second, not all decisions on child custody cases in Indonesian Religious Courts are based on the principle of *maslahah*, in contrast to the decision of the Malaysian Syariah Court. The reasons used by judges to give

child custody to the father are related to the best interests of the child. Three, female presiding judges are more intolerant of women who cannot prove their primacy over children.

This study aims to compare the legal construction of hadhanah rights in Saudi Arabia, Turkey and Indonesia. Unlike previous studies that focus on comparisons with countries such as Algeria and the Maldives, this study explores the differences and similarities in the implementation of hadhanah law from the perspective of positive law and the principles of Shafi'i Mazhab Jurisprudence in the three countries. The research method used is normative research, which analyses various laws and regulations, court decisions, and scholars' opinions in interpreting and applying hadhanah rights. The purpose of this comparison is to provide a deeper understanding of how the legal construction of hadhanah can be different and similar among the three countries, as well as provide a basis for policy recommendations or legal changes that can improve the protection of hadhanah rights more effectively.

This research provides an in-depth analysis of the legal construction of hadhanah rights in Saudi Arabia, Turkey and Indonesia using a normative approach. The focus is on identifying differences and similarities in the protection of hadhanah rights, using statutory data, court decisions, and scholarly views. The research provides a basis for legal policy recommendations that further strengthen the protection of hadhanah rights, as well as exploring the social and cultural implications of family law in the three countries.

RESEARCH METHODS

This research will use normative research methods. Normative studies on the protection of Hadhanah rights in various countries such as Saudi Arabia, Turkey, and Indonesia can provide a deeper understanding of how Islamic law is applied in each country. The purpose of comparing the three countries is to identify the differences and similarities in the application of Islamic law related to Hadhanah rights, assess the effectiveness of the protection of Hadhanah rights in each country, and understand the cultural, social, and legal factors that influence the implementation of the law. By understanding the variations in the application of the law, this study can provide valuable insights that can be used to propose policy recommendations or legal changes that favour the protection of Hadhanah rights.

The normative method in this study will analyse from legislation, court decisions, legal theories or from the opinions of scholars. The normative method was chosen to analyse the protection of Hadhanah rights because it allows the analysis of existing legal texts, such as legislation, court decisions, and scholars' opinions. With this method, it is possible to understand the implementation of Islamic law related to Hadhanah in various countries, identify differences and similarities in the protection of Hadhanah rights, and provide a basis for policy recommendations or legal changes that are more favourable to the protection of Hadhanah rights. The data analysis technique in this research will use Islamic legal theory and comparative legal theory. Islamic legal theory will be used to understand the legal foundations related to Hadhanah in Islam, while comparative legal theory will be used to analyse the differences and similarities in the application of Hadhanah law in Saudi Arabia, Turkey and Indonesia. The combination of these two theories will assist in compiling a comprehensive analysis and provide recommendations based on an in-depth understanding of the legal and social context in the three countries.

RESULTS AND DISCUSSION

The Concept of Hadhanah Protection in Indonesia

In Indonesia, the protection of Hadhanah rights is regulated in various laws governing the family, such as Law Number 1 Year 1974 on Marriage and Law Number 35 Year 2014 on Child Protection. The prevailing norms emphasise the importance of protecting the foetus from the womb, as well as its rights to good care (Heryanti, 2021).

The maintenance of children, which is the obligation of parents, must be fulfilled because failure to maintain children in providing for their needs, especially religious provisions, is not only detrimental to the child concerned, but both parents will suffer no small loss. This is formulated in Law Number 1 of 1974 concerning Marriage Article 45 states that (1) Both parents are obliged to maintain and educate their children as well as possible (2) The parental obligations referred to in paragraph (1) of this article apply until the child is married or can stand on his own, which obligation continues even though the marriage between the two parents has broken down (Nasution, 2019).

Hadhanah in the Compilation of Islamic Law is regulated in Article 105 with the following details (1) maintenance of children who are not yet mumayyiz or not yet 12 years old is the right of the mother (2) maintenance of children who have mumayyiz is left to the child to maintain between the father or mother as the holder of the maintenance rights and (3) maintenance costs are borne by the father (Renata Thalyssa Kiara & Khairani Bakri, 2022). Article 105 of the Compilation of Islamic Law discusses more about children who are not yet mature or mumayyiz. Mumayyiz can be understood as a child who is not yet mature, so he is not yet able to take care of himself (Kamarusdiana et al., 2021). Children who are mumayyiz still need the care of their parents until they grow up and can live independently (Winanda Putri & Hidayatul Imtihanah, 2021). If the child is an adult, he will choose his own way of life for his future. Parents will only accompany them, not intensively accompany them like they used to when the child was young. Divorced parents then the child still has the right to hadhanah. Hadhanah for a child who is not yet an adult and whose parents are divorced, the custody rights are obtained by the mother, while the father pays for the hadhanah costs. Meanwhile, when the parents divorce, the father still bears the cost of care until the child grows up. The father's obligation referred to here is to fulfil and provide all the needs needed by his child. The father will directly bear with his ability because it is his obligation imposed on him (Nasution, 2019).

To maintain and protect the interests of children, Law Number 23 of 2002 concerning Child Protection Article 4 explains that every child has the right to be able to live, grow, develop, and participate reasonably in accordance with the dignity of humanity, and receive protection from violence and discrimination. Article 5 explains that every child has the right to a name as a personal identity and citizenship status, Article 6 Every child has the right to worship according to their religion, think, and express according to their level of intelligence and age, under the guidance of parents (Fitri, 2019).

The relationship between children and their parents is explained in Article 7 that (1) Every child has the right to know their parents, be raised, and cared for by their own parents. (2) In the event that for some reason the parents cannot ensure the growth and development of the child, or the child is neglected, the child has the right to be cared for or appointed as a foster child or adopted child by other people in accordance with the provisions of the applicable laws

and regulations. Maintenance of children's health is explained in Article 8 Every child has the right to obtain health services and social security in accordance with physical, mental, spiritual, and social needs. Article 9, (1) Every child has the right to receive education and teaching in order to develop their personality and level of intelligence in accordance with their interests and talents. (2) In addition to the rights of children as referred to in paragraph (1), children with disabilities are also entitled to special education, while children who have excellence are also entitled to special education (Maghfirah, 2017).

In Indonesian law, there are several regulations governing child maintenance, both in the religious aspect and the aspect of protection and fulfilment of children's rights in general. (Asnawi., 2023) However, in particular, there are two regulations that are directly related to the concept of hadhanah rights in Islam, namely Law Number 1 Year 1974 on Marriage and the Compilation of Islamic Law (KHI). In Law Number 1 Year 1974 on Marriage, Article 45 regulates the obligation of parents to maintain and educate their children as well as possible (Mursalin, 2015). This is in accordance with the concept of hadhanah rights in Islam which emphasises the responsibility of parents to provide good care to their children, including in terms of religious education (Pancarani et al., 2020).

Furthermore, the Compilation of Islamic Law (KHI) also regulates child maintenance in Article 105 and Article 106 (Mahmudah et al., 2019). Article 105 explains that the maintenance of children who are not yet mumayyiz or immature is the right of the mother, while the maintenance of children who have mumayyiz is left to the child to choose between the father or mother (Aulia & Mufikoh, 2022). This reflects the principle of hadhanah rights in Islam which gives priority to the mother in the care of young children. Furthermore, when the child has grown up, Article 98 KHI explains that parents still have an obligation to care for and develop the property of children who are not yet adults (Priyadi, 2021). This shows that parents' obligations towards children continue even though the children have grown up, in accordance with the principle of hadhanah rights which emphasises the need for protection and fulfilment of children's rights (Ramlah, 2021).

The main reason why Indonesia regulates hadhanah rights is to ensure the protection and fulfilment of children's rights, which are integral to the welfare and development of children. Firstly, Indonesia recognises the importance of the family as the basic unit of society and the responsibility of parents in educating and maintaining their children. This is reflected in Law No. 1/1974 on Marriage, which emphasises the obligation of parents to maintain and educate their children to the best of their ability, even if the marriage between the parents ends. (Mu'in, Fathul, Firdaweri, 2022)

Secondly, the protection of children's rights is regulated to ensure that children get their basic rights as described in Law No. 35/2014 on Child Protection. This includes the right to live, grow, develop, and participate in accordance with human dignity, and to be protected from violence and discrimination. With this law in place, the Indonesian government aims to provide a safe and supportive environment for children's development.

Third, from the perspective of Islamic law, the Compilation of Islamic Law (KHI) provides guidance on hadhanah rights that reflect the Islamic values adopted by the majority of Indonesian society. (Rahman et al., 2022) KHI regulates that the maintenance of a minor child is the right of the mother, while children who are mumayyiz have the right to choose between

their father or mother. This arrangement aims to provide legal certainty and protection for children in situations of parental separation, while respecting religious principles.

Fourth, in the international context, Indonesia as a member of the global community is committed to complying with various international conventions on children's rights, such as the Convention on the Rights of the Child which has been ratified by Indonesia. By regulating hadhanah rights, Indonesia shows its seriousness in protecting children's rights in accordance with international standards. Overall, the regulation of hadhanah rights in Indonesia is motivated by the desire to protect the welfare of children, provide legal certainty, respect religious values, and fulfil international commitments. These efforts are expected to create a favourable environment for children's development and ensure that their rights are properly protected.

The Concept of Hadhanah Protection in Turkey

Discussion In Turkey, the protection of Hadhanah rights is governed by laws that reflect Islamic values but also reflect the secularist tendencies of the state. Nonetheless, the rights of the unborn child to protection and proper care are legally recognised. Guardianship of children in Turkey is regulated in the Turkish Civil Code at article 182: "When the court decides on divorce or judicial separation, the judge shall hear the mother and father as much as possible and accept the opinion of the guardian and guardianship authority if the child is under guardianship and then regulate the rights of the parents and the personal relationship with the child. In regulating the child's personal relationship with the parent without custody, the child's interests in terms of health, education and morals should be prioritised (Purkon, 2020). The couple is obliged to contribute to the cost of childcare and education to the extent of their financial ability (Rachmatulloh, 2021). The judge may make a decision on the amount of money to be paid for these expenses in the form of income in future years according to the social and economic conditions of the parties" (Burhanusyihab, 2023).

Turkey, which predominantly adheres to the Hanafi school of thought, divides child custody into two periods. First, when the child is under the age of seven, according to the Hanafi school, the mother has the right to care for him. Boys until he can dress himself, eat alone, while girls until she menstruates or reaches the age of puberty. As for the maintenance of child care, it is taken from the children's own property, if the children have no property then it is the father's obligation (Ismail and Munawaroh, 2019). Then when the age is above seven years, Imam Hanafi argues that children after the age of seven, mothers and grandmothers are more entitled to care for them, girls until they reach the age of menstruation or adolescence. Tend to be cared for by women because at that age they need knowledge about femininity, the behaviour of a woman, and how to take care of the house. Then after puberty, the girl needs more care and supervision from bad people, which is the duty of the father.

Child guardianship in Turkey is regulated in the Turkish Civil Code in article 182: "When the court decides on divorce or judicial separation, the judge shall hear the mother and father as much as possible and accept the opinion of the guardian and guardianship authority if the child is under guardianship and then regulate the parental rights and personal relationship with the child. In the arrangement of the child's personal relationship with the parent without custody, the interests of the child in terms of health, education and morals should be prioritised. The couple is obliged to contribute to the cost of childcare and education to the extent of their

financial ability. The judge may make a decision on the amount of money to be paid for these expenses in the form of income in the coming years according to the social and economic conditions of the parties".

In Turkey, the concept of child guardianship set out in its civil law, specifically in Article 182 of the Turkish Civil Code, is closely related to the principles of the right to hadhanah in Islam. The right to hadhanah, or the human right of children to be watched over, cared for and protected, is reflected in efforts to ensure that the best interests of children are prioritised in all decisions relating to divorce or judicial separation of parents (Utama, 2016).

First of all, in divorce or judicial separation proceedings, the court is required to listen to the opinions of both the mother and father as much as possible. This shows the importance of considering the views of both parents in deciding matters relating to their children, which is in accordance with the principle of equal parental rights in Islam. Furthermore, the court must also consider the opinions of guardians and guardianship authorities if the child is under guardianship. This reflects the need to involve those with legal responsibility and authority in relation to the guardianship of children in the decision-making process affecting those children. Then, in regulating parental rights and personal relationships with children, the interests of the child in terms of health, education and morals should be given priority. This is in line with the principle of hadhanah rights in Islam which emphasises the need to protect and meet the physical, emotional and spiritual needs of children. In addition, divorced spouses are also required to contribute to the cost of childcare and education to the extent of their financial means. This demonstrates the responsibility of parents to provide adequate protection and maintenance for their children, in accordance with the principles of hadhanah rights in Islam.

Thus, in the context of child custody in Turkey, the right to hadhanah is reflected in efforts to ensure that the best interests of children are prioritised in all decisions relating to divorce or judicial separation, as well as in ensuring that the children receive proper protection, care and maintenance from their parents.

The strong reason behind the regulation of Hadhanah rights in Turkey is based on the combination of Islamic values and secularism principles applied in the country's legal system. Although Turkey has a long history as the centre of the Islamic caliphate, major changes took place in the early 20th century when Mustafa Kemal Atatürk led the movement to establish a secular Turkish Republic. Atatürk's reforms included the separation of religion and state and the adoption of a modern civil law system. In this context, the Turkish Civil Code, particularly Article 182, reflects an attempt to strike a balance between Islamic principles and modern civil law approaches in regulating Hadhanah rights.

Turkey predominantly adheres to the Hanafi school of thought, which influences the regulation of family law, including Hadhanah rights. The Hanafi school provides detailed guidance on childcare, such as the mother's right to care for children under the age of seven and the father's obligation to provide maintenance if the child has no assets. These principles are adopted in the Turkish Civil Code, which emphasises the best interests of the child in decisions regarding divorce or judicial separation. Court proceedings in Turkey require hearing the opinions of both parents as well as guardians and custodial authorities, reflecting the values of equality and participation in Islam.

In addition, legal arrangements in Turkey demonstrate a commitment to ensuring the welfare of the child through financial contributions from both parents according to their means. This reflects the moral and religious responsibility to provide proper protection, education and maintenance for children. Turkey also considers the health, education, and moral interests of the child in every decision, which is in accordance with the principles of Hadhanah rights in Islam.

By integrating Islamic values and modern civil law principles, Turkey endeavours to create a comprehensive and fair legal system. The regulation of Hadhanah rights in Turkey reflects a commitment to ensuring the best interests of children are prioritised, as well as providing adequate protection, care and maintenance from their parents. This combination demonstrates Turkey's efforts to maintain its Islamic identity while implementing modern principles in the family law system.

The Concept of Hadhanah Protection in Saudi Arabia

In Saudi Arabia, the protection of Hadhanah rights is based on Islamic law interpreted in accordance with conservative Islamic teachings. The prevailing norms here emphasise the importance of safeguarding the life and welfare of the foetus from the womb, as well as providing strong legal protection of Hadhanah rights (Sofiana & Meinintias, 2023).

The country was born from the political dialectic of the Najd tribe of Muhammad Ibn al-Saud's family and the wahabism religion of Muhammad bin Abdul Wahab which later gave birth to the kingdom of Saudi Arabia which stands firmly as a kingdom based on Islamic law (Suhartono, 2018). As one of the largest Muslim countries in Middle East Asia that controls four-fifths of the area in the Arabian Peninsula, being the birthplace of the Prophet Muhammad SAW as well as being the centre of the Hajj and Umrah pilgrimages and being a country that declares the Koran and hadith as the basis of its state constitution (Ibrahim, 1986). This is stated in the basic law of government in Chapter 1 Article 1 that the book of Allah and the Sunnah of the Prophet are the constitution of the state of Saudi Arabia, while the position of the government gets authority from the Koran and Sunnah to implement Sharia contained in Article 7 (Najitama, 2023).

Article 1: "The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. its constitution is Almighty God's Book, The Holy Qur'an, and the Sunna (Traditions) of the Prophet (PBUH). Arabic is the language of the Kingdom. The City of Riyadh is the Capital." Article 7: "Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference of this Law and the other laws of the State."

Therefore, there are no specific laws or regulations governing family law in this country. So that Saudi Arabia's position is a country with uncodified law, so that its marriage law is based on the books of fiqh madhab that it adheres to (Salma, 2017). The madhhab adopted by Saudi Arabia is the Hambali madhhab as the state madhhab (Noor, 2023). Thus, in terms of family law Saudi Arabia is in accordance with the Hambali madhab, namely the implementation of marriage and other matters related to it such as divorce and reconciliation are generally handled by local religious scholars or institutions that are considered authorised in handling religious matters of Muslims (Muslih, 2016).

In relation to the implementation of family law, this country has several reactualisations of Islamic family law, namely in exercising judicial power, a qodhi heads the court body (Latif, 2020). The power of a Qadhi is only limited to legal issues and regulations issued by Sharia (Putra, 2021). If the case concerns regulations promulgated by the King's decree, then the one entitled to adjudicate is not the Qadhi, but the Governor or the head of the local area (Qodir, 2017).

Hadhanah rights are the basic rights of children to be supervised, cared for and protected by parents or legal guardians. In the context of Islamic family law, the concept of hadhanah rights is very important as it concerns the responsibility of parents or guardians towards their children. In Saudi Arabia, where the family law system is based on the Hambali madhhab, the concept of hadhanah rights is closely related to the rules contained in Hambali fiqh. For example, regarding the parenting period, as mentioned in the discussion, Saudi Arabia maintains the concept of parenting until the age of 7-8 years for boys and until marriage for girls. This means that parents or guardians have full responsibility for their children until that age. However, it is important to note that in Islam, the right of hadhanah also includes the right of the child to be provided with protection, education, and good maintenance by the parents or guardians. Therefore, in addition to the responsibility to provide physical care, parents or guardians also have a moral and religious obligation to provide religious, moral, and social education to their children. In practice, in Saudi Arabia, religious institutions and Islamic authorities play an important role in ensuring the fulfilment of hadhanah rights. For example, sharia courts and local clerics can be watchdogs in determining whether or not hadhanah rights have been fulfilled. They can reprimand or direct parents or guardians who do not fulfil their obligations towards children (Bunyamin, 2019).

The government of Saudi Arabia also plays a role in ensuring the protection of children's rights through policies and laws related to child and family welfare. Although there are no specific laws governing family law in Saudi Arabia, Islamic principles and religious teachings inform the formation of policies related to hadhanah rights and the protection of children.

The strong reasons behind the regulation of Hadhanah rights in Saudi Arabia are based on a number of factors rooted in the country's history, religion and culture. Saudi Arabia bases its legal system on the Quran and the Sunnah of the Prophet Muhammad, which are set out in the country's Constitution. The Constitution of Saudi Arabia, known as the Basic Law of Government, affirms that the book of Allah and the Sunnah of the Prophet are the basis of the country's constitution. Article 1 and Article 7 emphasise that the country's laws are derived from the Quran and Sunnah, covering all aspects of life, including family law. Saudi Arabia adheres to the Hambali madhhab, one of the four main madhabs in Islamic fiqh, which provides strict guidelines on family law, including the right to Hadhanah. The regulation of Hadhanah rights in the Hambali madhhab emphasises the responsibility of parents or guardians to provide good care and protection to their children in accordance with Islamic principles. Clerics and religious institutions in Saudi Arabia play an important role in interpreting and enforcing Islamic family law. In an uncoded legal system such as that in Saudi Arabia, clerics have the authority to provide fatwas and judgements regarding family matters, including Hadhanah rights. They ensure that the laws applied are in accordance with Islamic teachings and the best interests of the child. Islam places great emphasis on safeguarding the life and well-being of

the child, from foetus to adulthood. Hadhanah, as part of family law, aims to protect the rights of children to proper care, education and protection. Islam teaches that children are a trust from God that must be guarded and properly maintained by parents or guardians. Saudi Arabia was born from the political dialectic of the Najd tribe of Muhammad Ibn al-Saud's family and the wahabism of Muhammad bin Abdul Wahab. Wahabism emphasised the pure and strict application of Islamic teachings, which became the basis for the formation of state laws and policies, including in the regulation of Hadhanah rights that followed conservative Islamic principles. In Saudi Arabian society, the family is considered a basic unit that is very important in maintaining the sanctity and morality of society. The protection of Hadhanah rights through Islamic law aims to ensure that children are raised in an environment that conforms to Islamic values, which in turn maintains the sanctity of the family and society. As such, the regulation of Hadhanah rights in Saudi Arabia is based on a strong commitment to the teachings of Islam, which includes the moral and religious obligation to protect and nurture children. The combination of the legal basis of sharia, the role of the ulama, and the conservative culture makes the regulation of Hadhanah rights in Saudi Arabia very important and relevant in the context of the country.

Differences in the Legal Basis and Norms of Hadhanah Protection				
Aspects	Indonesia	Turkey	Saudi Arabia	
Legal Basis	<ul style="list-style-type: none"> – Law No 1 Year 1974 on Marriage – Law No 35 Year 2014 on Child Protection 	Turkish Civil Code	<ul style="list-style-type: none"> – Prinsip Islamic principles – No specific law, refers to fiqh 	
Legal Norms	Compilation of Islamic Law Article 105	Islamic values in the context of secularism	Conservative teachings	Islamic
Approach	Combination of Islamic values with positive legal principles	Islamic values with secular tendencies	Conservative application of Islamic law	
Hadhanah rights	<ul style="list-style-type: none"> – Maintenance rights to the mother for children who have not yet reached puberty – Children who have mumayyiz can choose between father or mother 	<ul style="list-style-type: none"> – Priority to the mother for children who have not yet reached the age of seven – Parenting can be handed over to the father or grandmother after 	<ul style="list-style-type: none"> – Maintenance of boys until 7-8 years of age – Maintenance of girls until marriage 	
Principle of Protection	<ul style="list-style-type: none"> – Protection of the foetus in the womb – A child's right to good care 	<ul style="list-style-type: none"> – Children's interests in all divorce-related decisions – Hanafi school 	<ul style="list-style-type: none"> – The best interests of the child are prioritised in all divorce-related decisions – Application of classical fiqh in childcare 	

Although Indonesia, Turkey and Saudi Arabia base the protection of Hadhanah rights on Islamic teachings, there are differences in the legal basis and norms governing such protection. Indonesia combines Islamic values with positive laws, such as Marriage Law No. 1 Year 1974 and Child Protection Law No. 35 Year 2014. The Compilation of Islamic Law Article 105 regulates child maintenance rights, with the mother holding the primary rights for children who are not yet mumayyiz, and the child choosing between father or mother after mumayyiz. In Turkey, the protection of Hadhanah rights reflects both Islamic and secularist values, with the Turkish Civil Code emphasising the interests of the child in decisions of divorce or parental separation. The Hanafi school of thought, which is predominantly followed, gives priority to the mother for children who have not reached the age of seven, after which care can be given to the father or grandmother. Saudi Arabia, meanwhile, applies Islamic law conservatively without specific legislation, but refers to Islamic principles in family law decision-making. Child rearing is governed by classical fiqh principles that are still applied, with boys being reared until the age of 7-8 and girls until marriage. The main differences lie in the approach to family law applied, the way Islamic principles are implemented, and the guarantee of protection of Hadhanah rights in each country.

Similarities in the Legal Basis and Norms of Hadhanah Protection

The legal basis and norms of Hadhanah protection in Indonesia, Turkey and Saudi Arabia have some similarities in the context of protecting children's rights. These three countries recognise that the protection of Hadhanah rights is an integral part of human rights and have regulated this in their laws. (Habib Shulton Asnawi, 2022) The obligations of parents or guardians to maintain, educate and protect children are set out in detail in each country's legislation. In addition, the laws in all three countries emphasise the best interests of the child in all decisions affecting them, especially in the context of divorce, maintenance and education. Children's right to proper health care, education and moral protection is also guaranteed.

Religious authorities and religious institutions play an important role in ensuring the fulfilment of Hadhanah rights in accordance with religious teachings and religious norms prevailing in the three countries. Although implementation and enforcement may vary, the three countries generally have a strong commitment to protecting Hadhanah rights and providing adequate protection for children in accordance with religious teachings and universal human values.

All three countries base the protection of Hadhanah rights on the teachings of Islam as the main foundation in their family law. The best interests of the child take precedence in all decisions regarding divorce or separation of parents, and the right to maintenance of the child by the mother is recognised in certain situations. Thus, although there are differences in the details of implementation, the three countries have similarities in the legal basis and norms of Hadhanah protection which are rooted in Islamic teachings and the best interests of the child. The protection of Hadhanah rights in the modern era, the three countries, namely Indonesia, Turkey and Saudi Arabia, have fundamental similarities rooted in Islamic teachings. The principle of the best interests of the child is recognised and prioritised in every legal decision regarding the maintenance, divorce and education of children. In addition, religious authorities and religious institutions in all three countries play an important role in enforcing and ensuring the fulfilment of Hadhanah rights in accordance with religious norms.

However, there are differences in the way the three countries implement and enforce the law. Indonesia tends to be more flexible in adapting Islamic law to secular national laws, allowing for adaptation to social change and modern laws. Turkey, despite basing its family law on Islamic teachings, has a more moderate approach and is heavily influenced by civil law, reflecting the country's history of secularism. Saudi Arabia, in contrast, applies sharia law in a more strict and literal manner, with a strong emphasis on traditional Islamic teachings.

Of the three countries, Turkey is perhaps more contextualised in protecting Hadhanah rights in the modern era. A more moderate legal approach and integration of modern values in its legal system allows Turkey to be more responsive to social change and the needs of the times. This includes attention to children's rights in the context of globalisation, technology and rapid social change. An approach that combines traditional values with the demands of modern times allows Turkey to provide more comprehensive and relevant protection for children.

Indonesia has also shown significant progress in adapting its family law to a more inclusive and progressive national law, including the protection of children's rights in various aspects of life such as education, health and social welfare. (Habib Shulton Asnawi dan M. Anwar Nawawi, 2022) Meanwhile, Saudi Arabia, with its more conservative approach, remains strongly committed to the protection of children's rights, although it may require more customisation to fully respond to the needs of the modern era. Thus, Turkey is considered to be more contextualised in providing protection of Hadhanah rights in the modern era, followed by Indonesia which also shows significant adaptation.

CONCLUSION

This study concludes that the concept of hadhanah rights in Islam, which is the right of children to be supervised, cared for and protected by parents or legal guardians, has significant implications in family law in Saudi Arabia, Turkey and Indonesia. In Saudi Arabia, its family law system based on the Hambali school of thought emphasises the importance of child protection, education and maintenance in the rules of Hambali fiqh, with the role of religious institutions and Islamic authorities. In Turkey, the civil law takes into account the principles of hadhanah rights in Islam, with courts obliged to ensure the best interests of the child in divorce or separation decisions, as well as the fulfilment of the child's rights to protection, care and education. In Indonesia, the concept of hadhanah rights is reflected in Law No. 1/1974 on Marriage and the Compilation of Islamic Law (KHI) which focus on the protection, education, and maintenance of children in accordance with the principles of hadhanah rights in Islam. The implementation of the concept of hadhanah rights is important to ensure that children's rights are respected and protected, and to create an environment conducive to the optimal development of children in society.

Of the three countries, Turkey is perhaps more contextualised in protecting hadhanah rights in the modern era. Its more moderate legal approach and integration of modern values in its legal system allows Turkey to be more responsive to social changes and the needs of the times. This includes attention to children's rights in the context of globalisation, technology and rapid social change. An approach that combines traditional values with the demands of modern times allows Turkey to provide more comprehensive and relevant protection for children.

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