



Moderation of Madhhab in West Sumatra Towards Hadhanah of Minors Whose Mothers Remarry

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Abstract

This study examines the implementation of the fiqh madhhab of West Sumatran society regarding the *hadhanah* rights of minors whose mothers remarry. The study aimed to map the moderation of the West Sumatran madhhab of society, known as the Shafi'i madhhab. This research uses qualitative methods with a sociological approach to law. Seventeen cases were found in 3 research locations: Pariaman, Luhak Agam, and Luhak Lima Puluh Kota. The location was chosen because it is an area with a higher level of moderation than other regions in West Sumatra. The location of this study was determined using a purposive random sample technique. In the people of West Sumatra, the right of *hadhanah* remains with the mother, even if the mother remarries. This opinion is in harmony with that of the Maliki Madhhab. The matrilineal kinship system in Minangkabau also supports this: the child belongs to the mother and her family. When the mother's father is divorced, the child follows his mother. However, in 3 cases, it was found that the father took away the rights of a minor whose mother remarried. Basically, the people of West Sumatra have practiced the moderation of *mazhab*. This is evident from their practice, where they indirectly practice the diversity of *mazhab* opinions in the case of *hadhanah* of minors whose mothers remarry.

Keywords: Madhhab Moderation, Hadhanah, the Mother Who Remarried

Abstrak

Penelitian ini mengkaji tentang penerapan madzhab fiqih masyarakat Sumatera Barat terkait hak hadhanah anak di bawah umur yang ibunya menikah lagi. Penelitian ini bertujuan untuk memetakan madzhab moderasi masyarakat Sumatera Barat yang dikenal dengan madzhab Syafi'i. Penelitian ini menggunakan metode kualitatif dengan pendekatan sosiologi hukum. Ditemukan sebanyak tujuh belas kasus di 3 lokasi penelitian yaitu Pariaman, Luhak Agam, dan Luhak Lima Puluh Kota. Lokasi tersebut dipilih karena merupakan daerah yang tingkat moderasinya lebih tinggi dibandingkan daerah lain di Sumatera Barat. Penentuan lokasi penelitian ini dilakukan dengan teknik purposive random sample. Pada masyarakat Sumatera Barat, hak hadhanah tetap berada pada ibu, sekalipun ibu menikah lagi. Pendapat ini selaras dengan pendapat Madzhab Maliki. Sistem kekerabatan matrilineal di Minangkabau juga mendukung hal tersebut: anak menjadi milik ibu dan keluarganya. Apabila ayah ibu bercerai, maka anak mengikuti ibunya. Akan tetapi, dalam 3 kasus ditemukan bahwa sang ayah merampas hak anak di bawah umur yang ibunya menikah lagi. Pada dasarnya, masyarakat Sumatera Barat telah mengamalkan moderasi mazhab. Hal ini terlihat dari praktik mereka, di mana secara tidak langsung mereka mengamalkan keberagaman pendapat mazhab dalam kasus hadhanah anak di bawah umur yang ibunya menikah lagi.

Kata Kunci: Moderasi Mazhab, Hadhanah, Ibu yang Menikah Kembali

Introduction

This research discusses the practice of religious moderation in the people of West Sumatra in solving problems when the child is still young and whose mother remarried. The province of West Sumatra is inhabited by various ethnicities, tribes, races, and religions, the majority of which are Muslim and comprise the Syafi'i sect.¹ *Hadhanah* is the care of young children, whether male or female, idiot but not yet *tamyiz*.² *Hadhanah* This is a responsibility that both parents must carry out.³ However, when a divorce occurs, problems arise regarding child custody rights.

¹ Arifki Budia Warman, Elimartati, Dodon Alfiander, Ashabul Fadhli, & Wardatun Nabilah, "From Communal to Individual: Shifting Authorities of Family Dispute Resolution in Minangkabau Society," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23, No. 2, (2023), p. 161–183.

² M.J. Ackerman, "Child custody evaluation practices: Where we were, where we are, and where we are going," *Professional Psychology: Research and Practice*, no. Query date: 2023-12-28 09:12:44 (2021). Abdurrahman Al-Masyhur, "Bughyah al Mustarsyidin," *Kediri: Hidayatut Tulab, t. th*, 1994; Adelina Nasution, Pagar Pagar, dan 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 (2022), p. 890–890; M. Taufan Perdana Putra dan M. Alfaris, "Reality of Indonesian Marriage Law Concerning Post-Divorce Child Custody," *Radiant* 2, no. 2 (2021), p. 152–60; Angela Melani Widjaja dkk., "The Application of the Best Interest of the Child Principle as a Basis for Determining Child Custody," *Unram Law Review* 4, no. 2 (2020), p. 163–73.

³ Mohamad Salman Podungge dan Siah Khosyi'ah, "The Portrait of Children Custody Rights in Indonesia: A Study of Mother's Rights in Child Custody from Gender Perspective," *Khazanah Sosial* 4, no. 3 (2022), p. 545–55.

Referring to the word of Allah, Surah al-Baqarah (2) verse 233 explains that it is the father's responsibility to cover food and clothing. At the same time, the mother is responsible for caring for him.

Ulama agreed to give rights to children who haven't yet *mumyyiz* to his mother. As the hadith of the Prophet SAW explains, the mother is more entitled to provide gifts for children who are still small as long as their mother is not married to someone else. As the hadith narrated by Abu Daud (hadith number 2276) explains, the ulama agreed that the maintenance of children (gift) should be done with the mother as long as she is not married yet.

However, there is a *khilafiyah* among scholars regarding the right *hadhanah* for remarried mothers.⁴ First, the opinion states the loss of child custody rights for unmarried mothers.⁵ This opinion is presented by the majority of scholars, such as the followers of Imam Hambali, namely Ibnu Qudaimah, in his book *al-Mughni*. Ibnu Qudaimah believes that a mother will lose custody of her child if the mother remarries, and custody will pass to the mother from the father (grandmother from the father's side) to the mother's sister.⁶

Imam al-Shirazi from the *Shafi'iyah* group also agrees with Ibnu Qudaimah. In his book *al-Muhadzdzab*, he says that a mother will lose her right shift against his son when he marries again because he will be busy serving his new husband.⁷ Muhammad Zayid al-Abyani confirmed this opinion in his book *al-Ahkam al-Syar'iyah*. Imam al-Abyani thinks that a mother will not lose custody of her child if she marries the child's mahram, as the child's uncle and her new husband are willing to be with the child.⁸ However, if the mother marries someone else, the mother's child custody rights will be lost.⁹

Ibn 'Abidin further stated that the cause of the cessation of a mother's custody of her child was when the mother remarried other than the child's mahram.¹⁰ Meanwhile, Ibn Husain Ibn Umar al-Masyhur, in his book *Bugyah al-Mustarsidin*, emphasized that mothers who have remarried have no right to shift towards their

⁴ Muhammad Fitri Adi, "Hadhanah Rights of Children (Not Mumayyis) Based on Compilation of Islamic Law and Child Protection Act," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (2023), p. 9–22.

⁵ M. Djawas., K. Hasballah, S. Devi, M.A. Kadir, Y. Abda, "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law", *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022), p. 207-219.

⁶ Ibnu Qudamah al-Maqdisi, "Al-Mughni Fi Fiqh al-Imam Ahmad b Hanbal" (Riyadh: Dar' Alam al-Kutub, 1997).

⁷ Imam Abu Ishaq Al-Imam, *I. al-Syairazi al-al-Fairuzabadi. Al-Muhadzdzab fii Fiqh al-Imam al-Syafi'i Daar al Kutub al Ilmiyah* (Daar al Kutub al Ilmiyah, 1992).

⁸ Syukrawati, Imaro Sidqi, Siti Maymanatun Nisa, Zufriani, Doli Witro, "Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis," *Al-Ahkam* 34, no. 1, (2024), p. 121-146.

⁹ Edward R. Canda, Leola Dyrud Furman, and Hwi-Ja Canda, *Spiritual Diversity in Social Work Practice: The Heart of Helping* (Oxford University Press, USA, 2019),

¹⁰ Ibn 'Abidin, *Raddu al-Muhtar*. (Dar al-Kitab al-'Alamiyah, 2003).

child, whether the man she is married to has a mahram relationship with her child or not.¹¹

After the child's *tamyiz*, until he grows up or can stand on his own, he has the right to freedom to choose between following his father or mother. This is because, at that age, children already tend to choose who they like more. This is based on the hadith of the Prophet Muhammad in Sunan Abu Daud.

Second, Ibn Hazm's opinion states that the child maintenance rights of mothers who remarry do not expire. This is stated in the book *al Muhalla* as follows:

مونا ما واما قولنا انه لا يسقط حق الام في الحضانة بزواجها اذا كانت مامونة وكان الذي تزوجها فللنصوص التي ذكرنا ولم يخص عليه الصلاة والسلام زواجها من غير زواجها

"As for our question: "In fact, a mother's custody rights are not lost because the mother is married, if the mother is a makmun (a person who can be trusted in worldly and religious matters) and the person who marries her is also makmun." This is based on the texts mentioned, while the Prophet did not differentiate between married and unmarried."

Based on Ibn Hazm's (1990) statement above, it is clear that the child *hadhanah* of mothers who have remarried do not become invalid. The basis for Ibn Hazm's argument regarding this issue is the Hadith narrated by Anas bin Malik as follows, on the authority of Anas bin Malik, he said:

عن انس بن مالك قال قدم رسول الله صلى الله عليه وسلم المدينة ليس له خادم فاخذ ابو طلحة بيدي غلام كيبس فليخدمك؟ قال : فانطلق بي الى رسول الله صلى الله عليه واله وسلم فقال: يا رسول الله ان انسا فخدمته في السفر والحضر وذكر الخير فهذا انس في حضانة امه, ولها زوج وهو ابو طلحة بعلم رسول الله صلى الله عليه واله وسلم

The translation from Anas bin Malik said:

"When the Messenger of God SAW came to Madinah, he did not have an assistant. Then Abu Talhah invited me to meet the Prophet SAW. Then Abu Talhah said: "O Messenger of Allah, may Allah bless him and grant him peace. Anas is indeed an intelligent child, so he should serve you". Anas said: "I served him while traveling and at home." he was Anas, who was in the care of his mother. The mother had a husband named Abu Talhah, and the Prophet SAW knew it (Ibn Asad Ibn Idris Ibn 'Abdillah Ibn Hayyan, 1995).

Based on the hadith above, Ibn Hazm strengthens his opinion that rights are not lost on *Hadhanah* for a mother who remarries. The marriage of the child's mother

¹¹ Al-Masyhur, "Bughyah al Mustarsyidin"; F Aulia, "Analisis Hukum Terhadap Hak Asuh (Hadhanah) Anak Akibat Perceraian," *Pro Justicia: Jurnal Hukum dan Sosial*, no. Query date: 2023-12-28 10:34:49 (2022), <https://jurnal.iairm-ngabar.com/index.php/projus/article/view/266>.

to another man does not preclude Hadhanah.¹² Several events strengthened Ibn Hazm's views during the Prophet Muhammad SAW. For example, Anas Ibn Malik was still raised by his mother, even though his mother had remarried Abu Talhah. Furthermore, Umm Salmah's children were still under his care, even though Umm Salmah had married the Prophet Muhammad SAW. Likewise, Hamzah's (Rasulullah SAW's uncle) daughter is still cared for by her aunt, even though her aunt has remarried. Ibn Hazm's view shows that remarriage is not a primary consideration in the appropriateness of raising children.

The opinion of the majority of scholars regarding child custody generally emphasizes that the mother has custody (*hadhanah*) over children who are not yet *mumayyiz*.¹³ In this context, the majority of scholars, including the schools of Shafi'i, Hanafi, and Maliki, agree that as long as the mother does not remarry, she has the right to take care of her children.¹⁴ However, if the mother marries a man who is not the child's mahram, some scholars argue that the custody can be transferred to another person, such as the paternal grandmother or the mother's sister.¹⁵ For example, in the Hambali school of thought, the stricter opinion states that custody is lost if the mother remarries. Meanwhile, Ibn Hazm in the Zahiri school argues that the mother's custody rights remain in place even if she remarries, as long as her husband is considered capable in terms of responsibility.¹⁶ So, despite the differences of opinion, in general, the majority of scholars emphasize the importance of the mother's role in childcare, especially at the age of not yet *mumayyiz*, with some exceptions that depend on specific situations.

Specifically, the research related to the moderation practice of madhhab moderation of the West Sumatra community in settlement cases gift minors whose mothers remarried has never been conducted, but research was found regarding child rearing by mothers, performed by Catherine Lenain and Billie Taylor with the title *Qualitative Exploration of Parenting Representations Amongst Mothers with Young Children on the Edge of Care*,¹⁷ concluded that mothers are at risk of losing custody

¹² MF Firdaus, "Pengasuhan Anak yang Belum Mumayyiz kepada Ayah Kandung Menurut Kompilasi Hukum Islam," *Jurnal Az-Zawajir*, no. Query date: 2023-12-28 10:34:49 (2020), <http://www.ejournal.iaitfdumai.ac.id/index.php/jaz/article/view/262>.

¹³ Nur Afifah binti Rahma, "Penyelesaian Sangketa Hadhanah Di Mahkamah Tinggi Syariah Malaka Tengah dalam Perspektif Pembaharuan Hukum Islam", *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 12, no. 01 (December 1, 2018), p. 1–28.

¹⁴ Abd Rahman Dahlan, et.al., "Women's Post-Divorce Rights in Malaysian and Indonesian's Court Decisions," *AHKAM: Jurnal Ilmu Syariah*, 23, No. 1 (2023), p. 191-212.

¹⁵ Tarmizi M.Jakfar, Nur Azizah Fayyadhah Binti Baharuddin Nur Azizah Fayyadhah Binti Baharuddin, "Peran Majelis Sulh dalam Penyelesaian Hak Hadhanah Pasca Perceraian (Studi Kasus di Mahkamah Syariah Kabupaten Tawau, Provinsi Sabah, Negara Malaysia)", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 1 (2018), p. 197-218.

¹⁶ Muhammad Iqbal Juliansyahzen, Eva Fadhilah, Syufaat Syufaat, Anisatuz Zahro, "Between Sharia, Gender, and Science in the Construction of 'Iddah: The Response of Banyumas' Ulama," *El-Mashlahah* 14, No. 1 (2024), p. 189-210.

¹⁷ Catherine Lenain dan Billie Lever Taylor, "A Qualitative Exploration of Parenting Representations Amongst Mothers with Young Children on The Edge of Care," *Child & Family Social Work* 28, no. 3 (Agustus 2023), p. 600–611.

of their children and are vulnerable to having their voices rarely heard, and not receiving support to obtain custody of their children.¹⁸ Child custody encompasses parental rights and responsibilities for raising and nurturing their children.¹⁹ Furthermore, in his research, Brophy explains that the debate regarding child custody rights is a result of divorce. The mother can lose custody of her child because she experiences sexual deviation.²⁰ Furthermore, research conducted by Rivhaldha et al. explains that the judge gives custody to the mother until the children are adults, while the father is responsible for providing support. The mother's caregiving period ends when the child is an adult and can choose whether to be with his mother or father. This means that child custody can also be resolved through litigation.²¹

Research conducted by Beckmeyer et al. regarding child care by married couples after divorce concluded that cooperation between parents is needed to ensure the welfare of children after divorce.²² Furthermore, research conducted by Ackerman concluded that child custody must be by applicable forensic standards.²³ Meanwhile, Zartler, in his book, explains that divorce can potentially cause stress for parents. They have to take full responsibility for raising children because they do not get emotional support in managing conflicts that occur with their ex-partners.²⁴ Furthermore, research conducted by Francia et al. focused on the issue of violence that appears in the household,²⁵ resulting in divorce and leaving trauma for both the divorced couple and their children.²⁶ The main problems related to divorce, which

¹⁸ Lyndal Khaw, et.al., “‘The system had choked me too’: Abused mothers’ perceptions of the custody determination process that resulted in negative custody outcomes,” *Journal of Interpersonal Violence* 36, no. 9–10 (2021), p. 4310–34.

¹⁹ Nur Triyono and Asmuni, “The Implementing Joint Custody Post Divorce In Indonesia: a Philosophical Viewpoint”, *De Jure: Jurnal Hukum dan Syariah* 15, No. 2 (29 December 2023), p. 314-330.

²⁰ J. Brophy, “Child Care and The Growth of Power: the Status of Mothers in Child Custody Disputes,” *Women-in-Law: Explorations in Law, Family, and Sexuality*, no. Query date: 2023-12-28 09:12:44 (2022), p. 97–116.

²¹ Tammi Axelson dan Jennifer Gentile, “Are Child Custody Evaluations Beneficial to Family Law Judges? A Study From the Judicial Perspective,” *Family Court Review*, no. Query date: 2023-12-28 09:47:43 (2023), <https://doi.org/10.1111/fcre.12772>; Saraswati 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).

²² J.J. Beckmeyer, “A Multidimensional Perspective on Former Spouses’ Ongoing Relationships: Associations With Children’s Postdivorce Well-Being,” *Family Relations* 70, no. 2 (2021), p. 467–82.

²³ Ackerman, “Child custody evaluation practices: Where we were, where we are, and where we are going.”

²⁴ U. Zartler, “Children and parents after separation,” *Research Handbook on the Sociology of the Family*, no. Query date: 2023-12-28 09:12:44 (2021), p. 300–313.

²⁵ Nita Triana, “Urgency Critical Legal Studies Paradigm for The Protection of Women Victims of Domestic Violence in The Divorce Case,” *Syariah: Jurnal Hukum dan Pemikiran* 18, No.2 (2018), p. 167-191.

²⁶ E. Denne, “Understanding How Social Worker Compassion Fatigue and Years of Experience Shape Custodial Decisions,” *Child Abuse and Neglect* 95, no. Query date: 2023-12-28 09:12:44 (2019).

leave behind psychological and emotional trauma over a long period, can be felt by mothers, fathers, and their children. Post-divorce trauma from parents must be removed.²⁷

Subsequent research conducted by Kuvalanka et al. explained that parents would lose their rights to care for their children both physically and legally because they experience transgender and gender-nonconforming (TGNC).²⁸ Research by Baude et al. concluded that childcare for divorced parents would be better if done together than caring for children alone.²⁹ Conflicts that occur between parents after divorce will cause mental health problems, especially in parenting³⁰ children together, risk factors such as strict arrangements, and concerns about children's safety.³¹ Subsequent research by Sanford L. Braver concluded that parenting children with father and mother after divorce resulted in good benefits for children.³² Iksan and Ahmad Ali Mashudi, in their research, explained that apostate mothers do not have the right to get custody of their children because they are afraid they will have a bad influence, either directly or indirectly, on the child.³³ This was agreed upon by the majority of ulama, saying that it was the right gift the apostate mother gave because the gift not only cared for children physically but also covered children's religious education.³⁴

²⁷ Morgan Shaw dan Robert Geffner, "Alienation and Reunification Issues in Family Courts: Theory, Research, and Programs in Child Custody Cases," *Journal of Family Trauma, Child Custody & Child Development* 19, no. 3 (2022), p. 203–13.

²⁸ M. Bergström, "Children with Two Homes: Psychological Problems in Relation to Living Arrangements in Nordic 2- to 9-year-olds," *Scandinavian Journal of Public Health* 47, no. 2 (2019), p. 137–45; K.A. Kuvalanka, "An Exploratory Study of Custody Challenges Experienced by Affirming Mothers of Transgender and Gender-Nonconforming Children," *Family Court Review* 57, no. 1 (2019), p. 54–71.

²⁹ Amandine Baude dkk., "Adjustment of Children in Joint Custody and Associated Variables: A Systematic Review," *Journal of Child Custody* 16, no. 4 (2019), p. 313–38.

³⁰ "Parenting Styles, Coparenting, and Early Child Adjustment in Separated Families with Child Physical Custody Processes Ongoing in Family Court - PubMed," diakses 24 Oktober 2024, <https://pubmed.ncbi.nlm.nih.gov/34438520/>.

³¹ M. Bergström, "Importance of living arrangements and coparenting quality for young children's mental health after parental divorce: A cross-sectional parental survey," *BMJ Paediatrics Open* 5, no. 1 (2021); K. Clements-Nolle, "Adverse Childhood Experiences and Psychological Distress in Juvenile Offenders: The Protective Influence of Resilience and Youth Assets," *Journal of Adolescent Health* 64, no. 1 (2019), p. 49–55; K. Ford, "Adverse childhood experiences: A retrospective study to understand their associations with lifetime mental health diagnosis, self-harm or suicide attempt, and current low mental wellbeing in a male Welsh prison population," *Health and Justice* 8, no. 1 (2020).

³² Sanford L. Braver dan Ashley M. Votruba, "Does Joint Physical Custody 'Cause' Children's Better Outcomes? 1," *The Routledge international handbook of shared parenting and best interest of the child*, 2021, p. 63–77.

³³ Iksan Iksan dan Ahmad Ali Mashudi, "Tracing the Judicial Reasoning of Non-Muslim Mothers' Parenting Rights: Comparative Fiqh of the Four Mazhabs and the Compilation of Islamic Law," *Shakhsiyah Burhanayah: Jurnal Penelitian Hukum Islam* 7, no. 1 (2022), p. 101–24.

³⁴ Mulki Al-Sharmani, "Child Custody in Islamic Law: Theory and Practice in Egypt since the Sixteenth Century," *Journal of the American Oriental Society* 141, no. 3 (2021), p. 735–37.

In the legal context,³⁵ Ackerman emphasizes the need for forensic standards in determining child custody.³⁶ Research by Bariq Habibi et al. noted that the Banda Aceh Syar'iyah Court awarded the mother full *hadhanah* rights, even exceeding the plaintiff's request, by considering the material facts.³⁷ Asni emphasized the importance of a quick decision to prevent losses for the winning party,³⁸ while Jamal et al. explained that the decision on *hadhanah* rights in Manado Syar'iyah Court was based on sociological considerations to avoid negative impacts on the child.³⁹ Finally, Adelina et al. point out that despite the existence of uniform Islamic legal products, there are disparities in judges' decisions in the Aceh Sharia Court, which are influenced by testimonies, fact-finding, and the condition of the child, making it important to consider the mental and environmental aspects of the child in custody determinations.⁴⁰

Based on some of the literature above, this study highlights the importance of cooperation between parents and the psychological impact experienced by them and their children, including the legal implications. This research offers novelty by focusing on the moderation of madhhab in the implementation of family law regarding child custody in Minangkabau society. In this context, custody is generally in the hands of the mother, in accordance with the matrilineal kinship system that recognizes that children belong to the mother. However, custody can be transferred to the father if the mother abandons the child.

This research uses qualitative methods with a legal sociology approach. The research locations were in Pariaman, Luhak Agam, and Luhak Lima Puluh Kota. This location was chosen because it has a higher level of moderation than other West Sumatra areas. Determining the location of this research used a purposive random sampling technique.⁴¹ There are two types of data sources used in this research. First,

³⁵ Suci Ramadhan dan Jm Muslimin, "Indonesian Religious Court Decisions on Child Custody Cases: Between Positivism and Progressive Legal Thought," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (10 Juni 2022), p. 89–100.

³⁶ Ackerman, "Child custody evaluation practices: Where we were, where we are, and where we are going."

³⁷ Bariq Habibi, Tarmizi M. Jakfar, dan Hajarul Akbar, "Penyelesaian Perkara Hadhanah (Studi Terhadap Pertimbangan Hakim Pada Kasus No. 0138/Pdt.G/2015/Ms.Bna dan No. 13/Pdt.G/2016/Ms.Aceh)," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 2 (31 Desember 2021), p. 470–87.

³⁸ Asni Asni, "Putusan Serta Merta Dalam Perkara Hadhanah Di Pengadilan Agama Dalam Rangka Perlindungan Anak," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (11 Juni 2021), p. 67–82.

³⁹ Ridwan Jamal, Rosdalina Bukido, dan Yasin Yasin, "Pertimbangan Perkara Pemeliharaan Anak di Pengadilan Agama Manado," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 November (11 November 2021), p. 204–22.

⁴⁰ Nasution, Pagar, dan Asmuni, "The Disparity Of Judge's Verdict On Child Custody Decision In Aceh Sharia Court."

⁴¹ A. Muri Yusuf, *Metode Penelitian Kuantitatif, Kualitatif & Penelitian Gabungan* (Prenada Media, 2016).

primary data sources,⁴² Namely, data sourced directly from the field, namely the results of interviews with perpetrators. Primary sources in this research were obtained directly from the parties involved in the case, such as their parents, religious figures, and academic circles, through interviews. Meanwhile, secondary data is supporting data in this research, namely in the form of literature or documentation data such as Islamic Madhhab of Jurisprudence books, books about Islamic law in Indonesia, Islamic Civil Law in Indonesia, journals, and other literature related to the theme of this research. The data collection tools used were interviews, observation, and documentation.⁴³

Data collection was done through interviews with 18 informants. The interview was conducted to obtain an overview of the madhhab moderation of West Sumatra society in resolving the *hadhanah* of underage children whose mothers remarried. The collected data was identified to get the central concept in the madhhab moderation of the West Sumatra community to solve the *hadhanah* of underage children whose mothers remarried. Then, the data is classified based on the information provided by the informant, conceptually categorized and analyzed, and presented descriptively.

The Practice of Madhhab Moderation in the West Sumatran Community in Resolving Hadhanah of Remarried Mothers

Hadhanah can be carried out well if both parents live in harmony and peace.⁴⁴ The question of gift becomes a serious matter if there is a divorce between husband and wife. His parents' kinship system complicates childcare (gift). For example, in a matrilineal kinship system, the birth of a daughter is highly expected because it will continue the bloodline.⁴⁵ On the other hand, the birth of a male child cannot continue the lineage.⁴⁶ If the boy marries and has children, the children will only add to his wife's family.⁴⁷

This differs from the patrilineal system, where the lineage is based on the father. Boys function to continue the lineage, while girls serve to become children

⁴² Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D*, vol. 25 (Bandung: Alfa Beta, 2008).

⁴³ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, XI (Bandung: PT Remaja Rosdakarya, 2000).

⁴⁴ Véronique Leclair, Annick St-Amand, dan Ève-Line Bussièrès, "Association between child custody and postseparation coparenting: A meta-analysis.," *Canadian Psychology / Psychologie canadienne* 60, no. 2 (2019), p. 90–101.

⁴⁵ Achmad Gusti Malayudha, Widya Sari, dan Angga Puja Asiandu, "Indonesian Inheritance System Based on Islamic Law, Civil Code, Matrilineal Customs, and Gender Equality Perspectives," *SANGKĒP: Jurnal Kajian Sosial Keagamaan* 6, no. 1 (2023), p. 55–73.

⁴⁶ Zainal Azwar., Mhd. Ilham Armi, Zulfan, Ahmad Bakhtiar Jelani, and Ahmad Luthfy Nasri, "Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey", *Journal of Islamic Law* 5, no. 1 (February 29, 2024), p. 62-85.

⁴⁷ Hamda Sulfinadia dkk., "Implementation of Aqiqah in the Bulan Maulid in Nagari Padang Laweh West Sumatra Perspective'Urf," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (9 November 2023), p. 465–84.

and continue the descendants of other families. So, not having sons in a patrilineal family is considered extinct.⁴⁸

Based on the conditions above, after a divorce occurs in the matrilineal kinship system that exists in West Sumatra society, problems arise regarding child custody rights. This is due to differences in the wishes of the two parents, which gives rise to legal issues in controlling children after divorce, such as who will look after and care for their children and what rights both parents must provide them.⁴⁹ Conditions like these lead to child maintenance disputes (*gift*). Thus, the problem gift There were 17 cases of minors whose mothers remarried in 3 research areas based on a higher level of religious moderation compared to other regions of West Sumatra.

These areas are Pariaman, Luhak Agam and Luhak Lima Puluh Kota. A more detailed explanation can be seen in the following table:

Table 1. Hadhanah Minor Children Whose Mothers Remarried

No	Hadhanah	Amount			Amount
		Pariaman	Luhak Agam	Luhak Fifty Cities	
1	Mother (Maliki Madhhab)	3	3	4	10
2	Father (Hanafi, Shafi'i and Hanbali Madhhab)	2	2	2	6
3	Sharing father with mother	0	1	0	1

Based on the table above, it can be seen that there are 17 cases regarding gift minors whose mothers remarry. First, nine (9) cases of gift remained in the mother. Second, seven (7) gifts were moved to the father, and third, one (1) case was a gift shared between the father and mother. The following is an explanation of each of the cases above based on location and madhhab of jurisprudence:

The first location, Pariaman, found five (5) cases of a minor child whose mother remarries. Three (3) cases of children under this age remain with the mother, and in two (2) cases, custody is transferred to the father.

Sample case gift minor children remain with their mother even if the mother remarries. The case that happened to Ay, here are the results of the interview excerpt:

“I divorced my husband in 2019 because it was no longer possible to continue the marriage. This was due to complete household problems,

⁴⁸ Ellyne Dwi Poespasari, “The Development of Inheritance Customary Legal Norm on Minangkabau Indigenous Society,” *Tribuna Juridica* 10, no. 2 (2020), p. 328–34.

⁴⁹ Starkweather and Keith, One Piece of the Matrilineal Puzzle: the Socioecology of Maternal Uncle Investment, *Philosophical Transactions of the Royal Society B: Biological Sc*

coupled with the layoff of my children's father. We have one (1) daughter, who is three (3) years old. I have custody of the child because, according to traditional understanding, the person who has the child is the woman or wife. Then, 6 (six) months later, I met my soulmate and continued my second marriage. And child custody remains with me, and my ex-husband has never used it until now. My husband and I already have our own lives, and he has also remarried.⁵⁰”

Based on the interview quoted above, it can be understood that Gift Ay's underage child remains with his mother. This means that Ay has implemented the opinion of the Maliki Madhhab. The right to custody of children under a remarried mother is also supported by local customs that apply to this day.

The same case also happened to Bi; custody of the child remained with her mother, even though her mother was married to another man. This information is in line with the following interview quote:

“I divorced in 2018 from my husband because frequent arguments could not be reconciled. My husband no longer provides support and does not care about his children. We have two (2) children: one (1) daughter (Aq), aged seven and a son aged four (4) years. In 2020, under the pressure of my extended family, I remarried. All the children remain in my care because I understand that according to Minang's custom, the person who has the child is a woman. My ex-husband just obeyed, and we have our own lives.⁵¹”

From the interview excerpt above, it can be understood that gift minor children remain with their mother, even if the mother remarries another man. Bi's actions are in accordance with the Maliki Madhhab and also with the Minangkabau Custom, which adheres to the matrilineal kinship system.

The following case happened to Si; custody of the child rests with Si. However, when I remarried another man and took Si away, the child's care was transferred to Si's family in the village, and there was no lawsuit from her ex-husband. The following is an excerpt from the interview:

"My daughter divorced her first husband around 2020, during COVID-19, because she was laid off and had no job and no effort to look for work. They already have one (1) daughter (Sf), initially raised by her mother. However, after her mother remarried another man, my daughter cared for her because Si accompanied her husband outside Malaysia to become a migrant worker. Si's ex-husband has not made any claim for child custody.⁵²”

⁵⁰ Interview Ay, Pariaman, October 2023.

⁵¹ Interview Bi, Pariaman, October 2023.

⁵² Interview Rh, Pariaman, October 2023.

Based on the three interview quotes above, it can be understood that in the cases above, gift If the child is a minor after the mother remarries to another man, the child's care remains with the mother and the mother's family. This is because, according to the custom that they understand (Minangkabau), the wife's family has children. This is due to the influence of matrilineal kinship, which prevails in Minangkabau.

The following is an example case gift. For minors whose mother remarries, custody of the child passes to the father. As happened in the Dd case, this information can be understood from the results of the interview as follows:

“I separated from Mr. in 2021 because our household could no longer be maintained; we often quarreled, we had disagreements that could no longer be reconciled. We have three children: Fd is eight (8) years old, Fk is six (6) years old, and Fs is four (4) years old. Initially, all our children were raised by their mothers, but as they grew older, their needs became more fantastic, and my ex-wife was only a farm laborer. Then, the family looked for a mate, and they got married. However, their lives are not any better. Because I felt sorry for the children, I asked for custody from their mother's extended family, and two (2) people were given to me, just by family, and my ex-wife granted this. My mother and my sister also took care of my two children. Meanwhile, Fs' youngest child, four (4) years old, is still being cared for by his mother. In my opinion, toddlers are better raised by their mothers.⁵³”

Based on the statement above, it can be understood that at the start of the divorce, all custody of the children rested with the mother, namely three (3) children, boys aged eight (8) years, six (6) years, and four (4) years. This means that the three children of the couple, Mr and Dd, are underage. However, after her mother married another man, her economic life did not improve, so custody of her first and second children was given to her father. This was because his father had a better economy, and his child's care was assisted by his paternal grandmother and his father's sister. Next, the divorce case that occurred with Id, here are the results of the interview:

“I divorced An in 2019, and we have a daughter who is ten (10) years old. At the start of the divorce, the mother took custody of the child. In 2021, his mother remarried. However, six months later, my ex-wife started to show bad manners, such as coming home late and often arguing with her second husband in front of the children. Then, I asked my ex-wife for custody, and this was granted. My ex-wife was also pregnant at that time.⁵⁴”

⁵³ Interview Dd, Pariaman, December 2023.

⁵⁴ Interview ID, in Pariaman, December 2023.

Based on these last two cases, custody of minor children in this area is given to the mother, but due to two (2) factors, *the* child can move to the father and his father's family. The two factors in question are: 1) The father's economy is better than the mother's. 2) The mother has bad morals, and it is feared that this will disrupt the child's psychological growth and development.

The second location, Luhak Agam, found six (6) cases related to gift minors whose mothers remarried. There are five rights cases of gift present in the mother and one (1) cash gift given to the father.

The following is an example of a case regarding gift minors whose mothers remarry. As was the case with Ls, here is an excerpt from his interview:

"I will be divorced in 2019, and the child is under my care. In 2022, under the pressure of my extended family, I remarried and am now pregnant with my 3rd child. Even though I have married and become pregnant again, I am still able to care for and care for my children. Meanwhile, his father still provides his living. Until now, there has been no lawsuit from my ex-husband regarding custody of the children.⁵⁵"

Furthermore, Ll had a divorce case, and he had three children, who were looked after by Ll. The following are the results of the interview:

"I divorced my husband (Ai) in 2018 because he was having an affair with another woman. All children are in my care as their mothers. Up to now, his father has provided his daily living allowance regularly, even though it is not enough for the needs of our three children. My mother and extended family assist me in caring for and raising children. Likewise, custody of the three of Them remained with me after I married for the second time. His father was not there to fight over him. Moreover, my ex-husband already has his own life, too.⁵⁶."

Furthermore, the divorce case occurred with Hm, who has two children. Child custody remains with Hm. The following are excerpts from the interview:

"I divorced in 2021, and we have two (2) toddler daughters, Di, who is one (1) year old, and Sk, four (4) years old. This divorce was caused because SS was fired from his job. He was too lazy to look for work and often got angry. I wouldn't say I liked the situation, so I asked for a divorce. Both children are in my care. At the end of 2022, I will remarry a man with a more stable job, and to this day, I still have custody of our two children. There are no demands from my ex-husband. "Regarding child support, until now, the father has provided nothing."⁵⁷

⁵⁵ Interview LS, Luhak Agam, 10 November 2023.

⁵⁶ Interview LL, Luhak Agam, 10 November 2023.

⁵⁷ Interview HM, in Luhak Agam, 11 November 2023.

The following case happened to LC, as in the interview excerpt below:

"I divorced Lb in 2018, and both children are under my care. A loss of trust caused the divorce, so we often quarreled, not allowing us to continue the marriage. Then, in 2021, I married another man. But then my ex-husband asked for custody of his two children. I'm afraid I have to disagree, but if I persist, we will continue to fight, and in the end, for the child, my son will care for his father, and the child will also want to follow him. My youngest daughter remains in my care, and I will not give her to her father."⁵⁸

In the divorce case that happened to Ri, she has three children, and custody of the children remains with Ri, even though Ri remarried. This statement can be understood from the following interview excerpt:

"I divorced my husband (Dn) in 2021, and we already have three (3) children: two (2) girls, Tn, who is six (6) years old, and Ta, who is four (4) years old and one (1) a boy (Fd) aged two (2) years. After I divorced, custody of the children rested with me. I can't provide childcare to a father who has remarried to another woman, and this gambler often comes home at night. If child care is given to the father, I am afraid that the future of these children Will be ruined. I will raise these children even without the father's help with child support costs."⁵⁹

The divorce case occurred between Lw and Ft, but the interview was conducted with Ft's mother, Js. Child care was transferred to LW because Ft remarried. This statement can be understood from the interview excerpt below:

"My son Ft divorced in 2018, and they have one (1) son, who is five and a half years old (5.5). At the beginning of their divorce, the child was raised by the mother (my child is Ft), but after Ft married another man in 2020, the father took custody of my child. This was because Ft was neglectful of his child, and I had repeatedly reminded him, but he didn't listen. That is the result of not listening to what parents say."⁶⁰

The same thing was also expressed by Lw, Ft's ex-husband, following excerpts from his interview:

"It's true, I divorced Ft in 2018. I left custody of my child with the mother because our child was three (3) years old at that time. In 2020, Ft remarried a man given to her by her extended family. However, after Ft remarried, I saw that Ft was no longer serious about taking care of our children, was often scolded, lacked attention, and was often abandoned for work reasons. I was worried about the child's

⁵⁸ Interview LC, in Luhak Agam, December 2023.

⁵⁹ Interview RI, in Luhak Agam, December 2023.

⁶⁰ Interview Js, Luhak Agam, 10 November 2023.

psychological development, so I asked my ex-wife to give me care of the child, and I told her she could see her whenever she wanted. At first, it was difficult for Ft to give it, but I said that if I couldn't ask for it amicably, then I would ask for child custody through the Religious Court. Then, because Ft didn't want to deal with the Religious Courts, custody of the children was given to me."⁶¹

Based on the six cases in Luhak Agam related to *Hadhanah*, Underage children whose mothers remarry show that if the mother's condition is good (moral). The economy is also good, and custody of the child remains with the mother. This can be seen from the three (3) cases that occurred. However, if the mother's morals are not good and the father is concerned about the child's growth and development, custody of the child shifts to the father. As in Lw's divorce case with Ft, custody of the child was transferred to the father because the wife remarried. However, something else happened in the LC case: child custody was Divided, one daughter was looked after by her mother, and the boy was cared for by his father, so there would be no commotion over child custody.

In the third location, Luhak Fifty Cities, six (6) cases were found gift minors whose mothers remarried, four (4) cases gift minor children are cared for by their mothers, and two (2) other cases gift minor children are with their father. The following explains the case gift that minor children are raised by their mothers. For example, in the divorce case of TS, who already has three children, custody remains with the mother even though she has remarried. As the following interview excerpt:

"I divorced Mf in 2017 because our household could no longer be maintained. We have two (2) daughters, Nd, aged seven (7) years; Rs, aged four (4) years; and one son, aged two (2) years. Then, in 2019, I remarried another man. After I get married, custody of my children remains with me. Meanwhile, Mf is still providing for her children, although not enough, because Mf already has a new family too."⁶²

Next is the divorce case of En, who already has two children. Here is an excerpt from the interview:

"I divorced Rn in 2020, and we have two (2) minors, one male (Fn) who is two years old and one (1) female (Ts) who is still six months old. In 2020, I will marry again, and the care of my two children will still be with me, and his father, until now, is still providing for his children".⁶³

Next, the divorce occurred to Tp, who already had a child, but custody of the child remained with the mother even though she had remarried. The following is an excerpt from the interview:

⁶¹ Interview LW, in Luhak Agam, 10 November 2023.

⁶² Interview TS, Luhak Fifty Cities, November 11, 2023.

⁶³ Interview EN, in Luhak Fifty Cities, November 11, 2023.

"I divorced Ew around 2018, and we have a daughter (Fa) who is seven (7) years old. However, in 2019, Ew remarried another man because of pressure from his extended family. Then, the child is still raised by the mother. Let the children be with their mothers because I think girls are better off being raised by their mothers, and children are close to their mothers. Meanwhile, I still provide income, including my children's other needs."⁶⁴

Furthermore, Ai's divorce case occurred, and she had a child. Ai still has custody of the child even though he has remarried. The following is an excerpt from the interview:

"I divorced Ez in 2021 because he had an affair with another woman. Since we divorced, custody of the child (Rk) is with me. In 2022, I married again, and the child remains in my care. Since my divorce with Ez until now, he has never paid for his child".⁶⁵

In contrast to the case above, which occurred in Nagari Luhak Limapuluh Kota, minor children are with their father when their mother remarries. Like the divorce case that happened to Mr., when Ar remarried, Mr. Ar took custody of the children. The following is an excerpt from the interview:

"I divorced Ar in 2019, and we have an only child, a daughter (Ww) aged ten (10) years. In 2020, my ex-wife (Ar) remarried, and the marriage only lasted six (6) months, and then divorced again. I still let our child be raised by his mother. However, in 2021, Ar remarried another man. Still, since then, I have taken over custody of the child because, in my opinion, having been married and divorced three times, plus Ar's bad morals, is not good for the child's development. My wife agreed to this, and now custody of the child is with me, the father."⁶⁶

Next is the divorce case that happened to Is; he already has two children. Initially, Tr had custody of the children, but when Tr remarried, Tr's parents took care of the two children. Then, I took custody of the child from Tr's parents. As the following interview excerpt:

"I divorced Tr in 2020, at the beginning of Covid-19. We have two (2) daughters aged eight (8) years and six (6) years. At the beginning of my divorce from Tr, he cared for the child. However, in 2022, Tr remarried another man, and then she followed her husband to Jakarta. My two daughters were being looked after by my in-laws in his village

⁶⁴ Interview TP, Luhak Fifty Cities, November 11, 2023.

⁶⁵ Interview AI, Luhak Fifty Cities, December 2023.

⁶⁶ Interview TN, Luhak Fifty Cities, November 11, 2023.

while he was ancient, and I couldn't bear to burden my ex-in-laws. Then I took care of our daughter, and now she is in my care.”⁶⁷

Based on the description of the six cases above, it can be understood that a gift to a child under age whose mother remarried belongs to the mother. However, the father takes this if the mother has poor morals, which is feared Could Interfere with her child's psychological development, or the mother may be negligent in caring for her child.

The Implications of Madhhab Moderation of West Sumatra Society in the Settlement *Hadhanah* Minors whose mothers remarried

Moderation in madhhab emerged without the people of West Sumatra realizing it, especially in the practice of *hadhanah* for minors whose mothers remarried. For example, in the case of AR, child custody was given to him because his wife had poor morals, which was feared to interfere with the child's development. When the mother remarried, this decision was in accordance with the opinion of the majority (Hanafi, Shafi'i and Hanbali). Meanwhile, in EW's case, her 7-year-old child remained her dependent after she remarried, in line with the opinion of the Maliki Mazhab. From the description above, it can be concluded that the people of West Sumatra have applied various opinions of the existing madhhab scholars, so that no negative implications arise in the community.

Religious moderation in the field of family law in West Sumatra has a positive impact on the local community. These impacts include: 1) The practice remains valid; a person's practice or legal action is considered valid if the conditions and pillars are met. Likewise, the scholars of the madhhab have different opinions on the implementation of family law, including giving to minors whose mothers remarry.⁶⁸ Granting according to the madhhabs is called *talfiq*. For people who are interested in doing *talfiq*, it is permissible because it is done to seek benefits, not merely for convenience. Therefore, *talfiq* depends on the intention of the person doing it. One's intention will determine the attitude in choosing the madhhab based on the search for benefits. The practice of madhhab moderation in the field of family law in West Sumatra society has also fulfilled its conditions and pillars, so the implications of madhhab moderation in the practice are valid. This is in line with the explanation given by the following religious leaders of Luhak Lima Puluh Kota:

"Discrepancies in whether or not goods are returned result from the cancellation of the marriage proposal, or the maintenance of minor children whose mothers remarried or related to the waiting period for wives whose husbands have disappeared, that is normal, and indeed the sect's scholars have also had different opinions before. Differences of opinion in the field of the family include *furu'iyah* studies, which

⁶⁷ Interview IS, Luhak Fifty Cities, December 2023.

⁶⁸ Brophy, "Child Care and The Growth of Power: the Status of Mothers in Child Custody Disputes."

have become a realm for differences of opinion. This is legal as long as the terms and conditions are met."⁶⁹

Based on the interview quoted above, it can be understood that Madhhab differences in the practice of West Sumatra society in the field of family law are a common occurrence and reflect the existence of madhhab moderation. This act implies that a person's practice is considered valid when the implementation's principles and conditions are met. *Second*, it does not divide Muslims. The differences in community practice in family law in West Sumatra society have their dynamics.⁷⁰ These differences do not divide people; no one feels that the opinion they follow is the most correct. What they do is appreciated by others without causing conflict and disputes. The following is an interview excerpt from a religious figure in Pariaman:

"There are differences in opinion regarding the madhhabs of thought carried out by this community, for example, regarding the care of minors whose parents are divorced, which is practiced differently by the community in this area. This is the dynamic of the different madhhabs of thought practiced by the people of this region. So far, there have been no social divisions, conflicts, or disputes. They respect each other."⁷¹

Based on the two interview quotes above, it can be understood that the differences in madhhabs of the jurisprudence of West Sumatran society, specifically in Family Law, do not break the unity of the people and do not cause conflict or dispute. Instead, the people are harmonious and peaceful. *Third*, fostering an attitude of tolerance, differences in madhhabs of jurisprudence in family law in the people of West Sumatra do not give rise to conflict; they respect each other's opinions carried out by their brothers.⁷² People are aware of sect differences; jurisprudence is a blessing, not to divide the people. They know that madhhab scholars had different opinions long before them. The existence of differences in the madhhab of opinion practiced by the people of West Sumatra has fostered an attitude of tolerance among sects because the primary sources of each madhhab of thought are the Koran and Sunnah. Differences of opinion in the field of jurisprudence In general, this is caused by two things, namely differences in using propositions and differences in understanding the same propositions.⁷³ The attitude of religious sect tolerance that emerged in West Sumatran society as a result of the different madhhabs of thought

⁶⁹ Interview RR, Luhak Fifty Cities, November 5, 2023.

⁷⁰ Y. Cao, "Caregiver Engagement in the Behavioral Health Screening and Assessment for Child Welfare-Involved Children: Child Welfare and Behavioral Health Workers' Perspectives," *Journal of Public Child Welfare* 13, no. 1 (2019), p. 101–24.

⁷¹ Interview IB, Pariaman, October 2023.

⁷² Clements-Nolle, "Adverse Childhood Experiences and Psychological Distress in Juvenile Offenders: The Protective Influence of Resilience and Youth Assets."

⁷³ L.L.F. Costa, "Gender Stereotypes Underlie Child Custody Decisions," *European Journal of Social Psychology* 49, no. 3 (2019), p. 548–59.

being practiced can be understood from interview quotes from religious figures in Luhak Agam:

"The differences in madhhabs of jurisprudence in the field of family law in West Sumatra society have indirectly fostered an attitude of madhhab tolerance. They do not claim that the opinion they practice is the most correct. The existence of different madhhabs of opinion makes it easier for Muslims to do good deeds."⁷⁴

People who are used to differences naturally develop an attitude of tolerance toward different madhhabs of thought, and differences in madhhabs of jurisprudence cannot be avoided. 4) Differences of Opinion Bring Grace and Benefit. Islam is a perfect religion. There are differing madhhabs of opinion in jurisprudence in general and in family law in particular.⁷⁵ The differences in madhhabs of thought bring grace and benefit, making it easier for Muslims to do good deeds. Therefore, it is salvation for all nature. The existence of a plurality of madhhabs of jurisprudence is a blessing and mercy given by Allah SWT for which we must be grateful.

Islam is a religion of peace. Upholding Islamic teachings in social life does not mean being treated with blind fanaticism. However, it must be done in tolerance, harmony and peace. Because Islam teaches safety to everyone, without having to confuse each other. The quality of charity and worship must continue to be improved so that the Islamic community becomes better and benefits many people. The following religious figure in Pariaman conveyed similar things:

"One thing that must be understood is that differences in madhhab of opinion bring blessings and grace, so that it can make it easier for someone to do good deeds. For example, in the case of caring for a minor whose mother remarried, only one opinion is used, for example, the Shafi'i Madhhab which states that the mother's right to care for her child is lost. Then, it is given to the father; if the father has bad morals, what will happen to the child? There is another madhhab of opinion that allows that if the mother remarries, it does not terminate the mother's custody of her child. This gives blessings to the child and grace to the mother."⁷⁶

Based on the quote above, the different madhhabs of jurisprudence provide *maslahah* and grace. Islam supports this as the religion of Rahmat al-'Alamin.

Right *gift* Minors whose mothers remarry only move to their fathers when it is caused by two (2) factors: first, the mother has bad morals, which are feared to be detrimental to the child's growth and development; second, the father has a better economic and social status than the mother, provided the boy is over five (5) years

⁷⁴ Interview BY, Luhak Agam, 11 November 2023.

⁷⁵ Aulia, "Analisis Hukum Terhadap Hak Asuh (Hadhanah) Anak Akibat Perceraian."

⁷⁶ Interview IM, Pariaman, October 2023.

old, and this is expected to improve the child's future.⁷⁷ When the divorce starts, the right *hadhanah* is with the mother, not because the mother remarried another man, but because the mother has terrible morals and a worrying economy, which will interfere with the child's growth and development. Then, the right gift is given to his father.⁷⁸

Practicing the opinions of different madhhabs of thought makes it easier for Muslims to worship. When you cannot carry out the opinion of the first madhhab of thought, you can practice the opinion of the other madhhab.⁷⁹ There is no obligation to follow a madhhab of thought, but it cannot be denied that a person's practice does not deviate from the opinion of the existing madhhab of thought. The difference between these madhhabs of jurisprudence is only in matters of *furu'iyah* and does not enter the realm of *Usuluddin*.⁸⁰ Likewise, the practice of madhhab moderation in settlement gifts whose mother remarried in West Sumatra was done in compliance with the conditions and principles, so the implication of madhhab moderation is valid.⁸¹ The differences in community practice in family law in West Sumatra society have their dynamics. These differences do not divide people; no one feels that their opinion is the most correct. What they do is appreciated by other communities without causing conflict and disputes.⁸²

Differences between madhhabs of jurisprudence in the field of resolution gift whose mother remarried in West Sumatra, there was no conflict, they respected each other's opinions carried out by their siblings. People are aware of sect differences; jurisprudence is a blessing, not to divide the people. They know that scholars of the madhhab had different opinions long before them. The existence of differences in the madhhab of opinion practiced by the people of West Sumatra has fostered an attitude of tolerance among sects because the primary sources of each madhhab of thought are the Koran and Sunnah. Differences of opinion in the field of

⁷⁷ S Fitrotun, "Perlindungan Anak Dalam UU Nomor 35 Tahun 2014 dalam Perspektif Fikih Hadhanah," *Istidal: Jurnal Studi Hukum Islam*, no. Query date: 2023-12-28 10:34:49 (2022).

⁷⁸ Lia Noviana, Lukman Santoso, dan Mega Puspita, "Interpreting Legal Rights: Disparities in Judicial Treatment of Children Born Out of Wedlock in East Java, Indonesia," *Lex Scientia Law Review* 8, no. 1 (22 September 2024), p. 321–54.

⁷⁹ BA Gani dan A Mughnia, "Konsep Hadhanah Perspektif Mazhab Syafi'i dan Implementasinya dalam Putusan Mahkamah Syar'iyah Kota Banda Aceh Nomor 314/Pdt G/2017/MS Bna," *El-Hadhanah: Indonesian Journal Of ...*, no. Query date: 2023-12-28 10:34:49 (2021), <https://journal.ar-raniry.ac.id/index.php/Hadhanah/article/download/1615/845>.

⁸⁰ S Gunardi dkk., *Hadhanah Menurut Mazhab Syafie Dan Mazhab Hanafi Serta Undang-Undang Keluarga Islam Di Malaysia: Tinjauan Awal*, Query date: 2023-12-28 10:34:49 (oarep.usim.edu.my, 2020).

⁸¹ G Gushairi, "Konsep Shared Parenting dalam Hadhanah Pasca Perceraian; Kajian Perundang-Undangan Perkawinan Islam Kontemporer," *Hukum Islam*, no. Query date: 2023-12-28 10:34:49 (2020).

⁸² H Hamzah, OS Mukhlas, dan ..., "Hak-hak Perempuan Pasca Perceraian dalam Hukum Positif dan Hukum Islam," *Usroh: Jurnal Hukum ...*, no. Query date: 2023-12-28 10:34:49 (2022).

jurisprudence In general, this is caused by two things, namely differences in using propositions and differences in understanding the same propositions.⁸³

Madhhab moderation in family law is in line with tradition in this region. In the case of gift minors whose mothers remarry, ten (10) right shifts were said to his mother, while six (6) cases of right shifts were taken by the father and one (1) case of sharing childcare between father and mother.⁸⁴ If you look at the opinion of the madhhab of thought that states that the mother does not die by remarrying, it is the Maliki Madhhab. In general, Minangkabau and West Sumatra are characterized by a matrilineal kinship system, where the bloodline is connected to the mother. The child's tribe is also connected to the mother's lineage. There is an understanding in this area that the mother has the child, so when a divorce occurs, the child goes with the mother while the husband returns to his extended family. Implementing it *to give* minors while their mother has remarried another man in the ten (10) cases mentioned above means that they have implemented the opinion of the Maliki Madhhab of thought. This opinion of the Maliki Madhhab aligns with the tradition in West Sumatra, which adheres to a matrilineal kinship system.

Conclusion

West Sumatran society chooses a moderate stance on childcare for several fundamental reasons. Firstly, in the matrilineal kinship system, the mother has more rights to care for minor children, where the child is considered as the mother's property. The practice of moderation was seen in 17 cases related to the parenting rights of children whose mothers remarried. The resolution of these cases did not refer to just one madhhab of thought, but rather incorporated a range of views from the four madhhabs (Hanafi, Maliki, Shafi'i and Hanbali), reflecting an acknowledgment of differences and respect for variations in family law practice. Secondly, despite the differences of opinion, there was general agreement that parenting by either the mother (based on the Maliki view) or the father (based on the Jumhur view) was valid, subject to certain conditions. This shows flexibility in the application of the law and an emphasis on the welfare of the child. Thirdly, this moderate attitude contributes to the unity of the Muslim community. People respect each other's different views, which in turn encourages tolerance among different groups. This attitude creates a harmonious atmosphere where the values of compassion and mutual respect are prioritized. Fourth, differences of opinion in the practice of law are considered a blessing, which provides space for Muslims to exercise goodness and adapt practices to the existing social context. Thus, West Sumatran moderation in childcare reflects a commitment to broader Islamic values and provides significant benefits for families and communities.

⁸³ Y Harlina dan S Asiyah, "Putusan Hakim Pengadilan Agama Pekanbaru tentang Hadhanah Pasca Perceraian Menurut Perspektif Hukum Islam," *Jurnal An-Nahl*, no. Query date: 2023-12-28 10:34:49 (2020).

⁸⁴ V Mareta dan MJ Achmad, "Perlindungan terhadap Pengabaian Hak Asuh Anak Akibat Perceraian," ... *Journal of Law* ..., no. Query date: 2023-12-28 10:34:49 (2022).

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Interview:

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- Interview Bi, Pariaman, October 2023.
- Interview Rh, Pariaman, October 2023.
- Interview IM, Pariaman, October 2023.
- Interview RR, Luhak Fifty Cities, November 5, 2023.
- Interview LS, Luhak Agam, 10 November 2023.
- Interview LL, Luhak Agam, 10 November 2023.
- Interview Js, Luhak Agam, 10 November 2023.
- Interview LW, in Luhak Agam, 10 November 2023.
- Interview HM, in Luhak Agam, 11 November 2023.
- Interview TS, Luhak Fifty Cities, November 11, 2023.
- Interview EN, in Luhak Fifty Cities, November 11, 2023.
- Interview TP, Luhak Fifty Cities, November 11, 2023.
- Interview TN, Luhak Fifty Cities, November 11, 2023.
- Interview BY, Luhak Agam, 11 November 2023.
- Interview Dd, Pariaman, December 2023.
- Interview ID, in Pariaman, December 2023.
- Interview LC, in Luhak Agam, December 2023.
- Interview RI, in Luhak Agam, December 2023.
- Interview AI, Luhak Fifty Cities, December 2023.
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