

## **Custody Regulations and Child Welfare: A Developmental Psychology Perspective on Hadhanah in Indonesia and Malaysia**

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### **Abstract:**

Custody (Hadhanah) is crucial in shaping a child's character and welfare. In Indonesia, the age of discernment (*mumayyiz*) is stipulated at 12 years in the Compilation of Islamic Law, while in Selangor, Malaysia, it is set at 7 years for boys and 9 years for girls in the Selangor Islamic Family Law Enactment 2003. The determination of *mumayyiz* age allows children to decide which parent to live with post-divorce, raising questions about its alignment with child development and welfare. This study aims to compare custody regulations in Indonesia and Selangor using a developmental psychology perspective to evaluate their impact on child welfare. It employs normative legal research with a comparative approach, analyzing primary, secondary, and tertiary legal sources through a literature review and inductive reasoning. The findings highlight similarities in both regulations, such as custody rights, maintenance obligations, caregiving post-divorce, and the child's right to choose. Key differences include the legal basis, age of discernment, caregiver requirements, asset protection, and custody transfer. From a developmental psychology perspective, 12 years is considered a more appropriate age for decision-making due to increased cognitive and social maturity. The study concludes that while Indonesia's age determination aligns better with developmental psychology, individual circumstances must be considered to prioritize the child's best interests, emphasizing the importance of context-sensitive custody decisions to ensure optimal child welfare.

**Keywords:** Custody, Developmental Psychology, Child Welfare.



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### **Introductionn**

As one of the foundations of family life, understanding custody (*hadhanah*) is crucial. An essential aspect of custody (*hadhanah*) is determining the age of discernment (*mumayyiz*) for children and how custody (*hadhanah*) will be implemented if the parents divorce. A prominent example is the divorce case of public figures Venna Melinda and Ivan Fadilla in Indonesia. Their divorce drew public attention, given their 18-year marriage and two

children: Varrell Bramasta, who was 17, and Athalla Naufal, who was 14 at the time of the divorce ruling. The South Jakarta Religious Court decided on joint custody (*hadhanah*), recognizing that both children had reached the age of discernment (*mumayyiz*).<sup>1</sup>

Another custody dispute involving Indonesian public figures took place between Tsania Marwa and Atalarik Syach, who divorced in August 2017. The divorce ruling awarded custody of their two children—a five-year-old son and a two-year-old daughter, both under the age of discernment (*mumayyiz*)—to Atalarik. In March 2019, Tsania, the mother, filed a claim, and in September 2019, the Cibinong Religious Court partially granted her request, awarding custody of the daughter to Tsania while custody of the son remained with Atalarik. Atalarik subsequently appealed for custody of both children, but in February 2021, the Cibinong Religious Court decided in favor of granting custody of both children to Tsania, as they were both under 12 years of age. However, Atalarik refused to relinquish the children, leading to an attempted enforcement by Tsania and the court in April 2021. This attempt was unsuccessful, and it raised concerns as the court's actions were criticized for not adequately considering the psychological well-being of the children.<sup>2</sup>

Another case in Malaysia involved the presence of a child who had reached the age of discernment in his parents' divorce mediation process. In the case of Nor Atiqah and Adam, officials called in their 14-year-old son to attend the mediation to share his perspective on custody and to allow him a choice. The child expressed his desire to live with his mother rather than his father, citing his father's family's non-Islamic faith as a factor in his decision.<sup>3</sup>

In the divorce case of Julisafarina and Mohd Jamil, both parties agreed to have their 13-year-old daughter and 7-year-old son attend the mediation process via Google Meet due to the COVID-19 pandemic. Both children expressed a preference to be in their mother's custody, while the father retained visitation rights as agreed, provided it did not interfere with the children's studies.<sup>4</sup>

There is also a case of juvenile delinquency due to parental divorce, experienced by a 15-year-old referred to as AS (name anonymized by previous researchers) in Kolongan Village, Kalawat District, Minahasa. AS, who had reached the age of discernment, was found frequently engaging in negative behaviors such as consuming alcohol, smoking, and stealing. He also felt neglected by his parents, who had left him, which led to aggressive and disruptive behavior in his community. This behavior resulted in social isolation from neighbors and a

<sup>1</sup> Rizky Aditya Saputra, "Venna Melinda Dan Ivan Fadilla Resmi Bercerai," March 2014, <https://www.liputan6.com/showbiz/read/2024410/venna-melinda-dan-ivan-fadilla-resmi-bercerai>.

<sup>2</sup> Pramesti Rizki, February 2022, <https://www.tribunnews.com/seleb/2022/02/08/5-tahun-tak-bisa-kumpul-dengan-kedua-anaknya-tsania-marwa-sempat-stress-aku-dalam-tahap-menerima>.

<sup>3</sup> Shanizah Ngatiman, Nurhidayah Muhammad Hashim, and Zuliza Mohd Kusrin, "The Presence Of Mumaiyiz Children In Making A Choice In Hadhanah Cases: A Study Of The Practice Of Majlis Sulh In Selangor Shariah Court" 31, no. 2 (2023): 42.

<sup>4</sup> Ngatiman, Hashim, and Kusrin, 42.

lack of interest in learning. AS exhibited these behaviors as a way of coping with his disappointment toward his parents.<sup>5</sup>

The Indonesian government and the state of Selangor have both issued regulations governing child custody. Indonesia's regulations on custody are outlined in Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, while Selangor's regulations are set out in Enactment No. 2 of 2003 on the Islamic Family Law Act (Selangor State). However, there are notable differences in legal authority and specific provisions. One key difference in custody regulations is the determination of the age at which a child is considered capable of discerning right from wrong, or the age at which a child is deemed *mumayyiz*. This age threshold has various implications, particularly when parents go through a divorce.

This issue presents an intriguing research topic, as demonstrated in a previous study by Fathur Rahman, who explored a comparative analysis of custody regulations in Indonesia and the state of Melaka in Malaysia. The study aimed to identify the similarities and differences in custody laws and regulations between the two countries. The findings revealed similarities in aspects such as the father's obligation to provide financial support for the child during custody. There were also parallels in the court's authority to handle disputes related to the child's welfare, transfer or assign custody rights, and determine the necessary financial and educational support for the child.<sup>6</sup> Another study conducted by Badriyah examined how judges in Indonesia and Malaysia consider granting custody to fathers from the perspectives of *maslahah* (benefit) and gender. The findings indicate that both defendants and plaintiffs presented various arguments in child custody cases, and judges generally based their decisions on the best interests of the child. However, some female judges were less tolerant of mothers who could not demonstrate their advantage in benefiting the child.<sup>7</sup>

Fundamentally, Indonesia and Malaysia have different forms of government and legal systems. Indonesia is a Republic, while Malaysia operates as a Federal Monarchy, which influences the application of legal systems in each country. Indonesia's legal system, rooted in Dutch colonial heritage, follows the civil law or Continental European system, which continues to evolve and shape various legal concepts within the country.<sup>8</sup> Meanwhile, Malaysia's legal system is based on common law, a legacy of British influence that spread across the Malay Peninsula and left a lasting impact on the country's political and legal institutions. However, Malaysia has retained Malay customary law, which is closely tied to

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<sup>5</sup> Julio M. J. Ukoli, Joffie H. Mandang, and Great E. Kaumbur, "Dinamika Psikologis Remaja Awal Korban Perceraian Orang Tua Yang Melakukan Kenakalan Remaja Di Minahasa Utara," *PSIKOPEDIA* 1, no. 1 (December 15, 2022): 48–50, <https://doi.org/10.53682/pj.v1i1.1751>.

<sup>6</sup> Fathur Rahman, "'The Regulation of Hadlanah in Indonesia and Malaysia (Comparative Study of Islamic Law Compilation and Islamic Family Law (State of Malacca) Enactment 2002)'" (Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2017), 107.

<sup>7</sup> Badriyah, "Pertimbangan Hakim Di Indonesia Dan Malaysia Dalam Memberikan Hak Hadânah Kepada Ayah Perspektif Maslahah Dan Keadilan Gender" (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2022), 208.

<sup>8</sup> Firdaus Muhamad Iqbal, "Kontribusi Sistem Civil Law (Eropa Kontinental) Terhadap Perkembangan Sistem Hukum Di Indonesia," *Jurnal Dialektika Hukum* 4, no. 2 (December 15, 2022): 193, <https://doi.org/10.36859/jdh.v4i2.1120>.

its feudal heritage, while also remaining influenced by the ethos, culture, traditions, and philosophy of English law.<sup>9</sup>

These differences, according to the author, merit further research to enhance parents' understanding of child custody (*hadhanah*) in order to build families that are harmonious, loving, and compassionate (*sakinah, mawaddah, wa rahmah*), aligning with the primary goal of marriage. This study focuses on the regulations regarding the mandatory age for custody or the age at which a child is considered to have reached discernment (*mumayyiz*) under each legal framework. This determination has significant implications for child custody arrangements following parental divorce, as children who have reached the age of discernment may choose which parent to live with, influencing both their psychological well-being and how they adjust to the situation. The author also centers this research on how developmental psychology views the ideal and appropriate age for discernment, aiming to assess which of these regulations best aligns with developmental psychology theories and analyses, while also considering the child's overall well-being.

## Method

This study is a type of normative legal research utilizing a comparative approach. It compares custody (*hadhanah*) provisions within the legal frameworks of Indonesia and the state of Selangor, Malaysia. Specifically, the study contrasts norms from Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law in Indonesia, known as the Compilation of Islamic Law (KHI), with the Islamic Family Law Act No. 2 in Selangor (2003). This research is library-based, relying on literature such as books, journals, and fiqh texts. Legal materials used are primary, secondary, and tertiary sources. Data collection employs descriptive analysis, with data processed through deductive reasoning applied systematically to the collected legal materials. This involves classifying legal sources and arranging them in a logical order. The study uses child developmental psychology as a lens to analyze and determine which provisions, between the Compilation of Islamic Law and the Selangor Islamic Family Law Act No. 2 of 2003, are more ideal. This perspective integrates cognitive and social developmental principles to assess the compatibility of the compared legal norms. The findings aim to provide insights into custody regulations that better align with children's developmental needs, particularly concerning the ideal age of discernment for decision-making in post-divorce custody arrangements.

### Custody (*Hadhanah*)

Etymologically, the word *hadhanah* is similar to *al-janb*, which means "beside" or "under the arm," and can also mean placing something near the ribs, like carrying and holding something close. It refers to caring for a child who has not yet reached the age of discernment (*mumayyiz*) or is not legally competent, as well as an adult who has lost mental capacity, as they are unable to meet their needs independently. In terminological terms, Zahabi explains

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<sup>9</sup> Narulita Yusron, trans., *Perbandingan Sistem Hukum* (Jakarta: Nusa Media, 2010), 175.

that *hadhanah* is the nurturing provided by those entitled to a young child to help develop the child's character at an age when they cannot manage this themselves.<sup>10</sup>

Fiqh scholars define *hadhanah* as the care of young children—whether boys or girls—or older children who are not yet able to provide for their own well-being. It involves protecting them from harm and anything that could be detrimental. Sayyid Sabiq further explains that *hadhanah* means caring for a young child, whether male or female, or for an older child who has not yet reached the age of discernment, regardless of anyone's preference. It involves protecting them from harm and cultivating their physical and spiritual well-being so they can eventually become independent and take on their responsibilities in life.<sup>11</sup>

### **The Compilation of Islamic Law**

The term compilation is derived from the Latin word *compilare*, meaning "to gather together," such as collecting scattered regulations into one place. According to *Kamus Lengkap Indonesia-Inggris Inggris-Indonesia* by S. Wojowasito and W.J.S. Poerwadarminta, compilation refers to an organized framework and a collection of excerpts from various books. Based on this, compilation can be defined as the activity of gathering written materials from various sources on a specific topic.<sup>12</sup>

Compilation is the process of gathering written materials from various books or writings on a particular issue. The Compilation of Islamic Law is a summary of various legal opinions found in different texts written by Fiqh scholars, which can be used as a reference by religious courts. These legal materials are processed using specific methods and then formulated in a format similar to that of other laws and regulations.<sup>13</sup> The Compilation of Islamic Law outlines the provisions of *hadhanah* in Chapter XIV, "Child Custody," from Articles 98 to 106. This section includes regulations on the age of adulthood, the legitimacy of children, parentage, breastfeeding, divorce conditions, and parental obligations during the *hadhanah* period.

On March 21, 1985, the Chief Justice of the Supreme Court and the Minister of Religious Affairs announced the Islamic Law Compilation (KHI) with the aim of providing a written guideline for judges in Religious Courts across Indonesia. This initiative was well-received and supported by scholars, who then discussed it to achieve a consensus (*ijma'*). The introduction of the Islamic Law Compilation was seen as a government response to the public's concerns over the inconsistency of Religious Court decisions on similar cases. The development of the Islamic Law Compilation occurred in two phases, the first phase involved inventorying the main materials to be included in the Compilation, and the second phase

<sup>10</sup> R Zainul Mushthofa and Siti Aminah, "Implementasi Pasal 149 (D) Kompilasi Hukum Islam Tentang Kewajiban Ayah Dalam Memberikan Biaya Hadhanah Bagi Anak Di Bawah Usia 21 Tahun," *Jurnal Ummul Qura*, no. 2 (2019): 4.

<sup>11</sup> Mushthofa and Aminah, 5.

<sup>12</sup> Mahkamah Agung RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Dengan Pengertian Dalam Pembahasannya* (Jakarta, 2011), 1.

<sup>13</sup> RI, 4–5.

focused on translating these materials from Islamic legal sources into applicable laws and regulations in Indonesia.<sup>14</sup>

The Minister of Religious Affairs stated that this presents both an opportunity and a challenge for Islamic scholars and jurists, questioning whether Islamic law can be implemented in Indonesia. Islamic studies expert Dr. Mitsuo Nakamura views this compilation project as highly strategic and of significant importance for the Muslim community. The lengthy process of drafting the Compilation of Islamic Law (KHI) ultimately led to the issuance of Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law, dated June 10, 1991, by President Soeharto of Indonesia. This instruction directed the Minister of Religious Affairs to disseminate the KHI and ensure its proper and responsible implementation.<sup>15</sup>

In essence, the Compilation of Islamic Law "can be used" as a legal reference in resolving issues in Religious Courts or Shariah Courts involving Muslim individuals. The phrase "can be used" means that it is not mandatory, or in other words, judges are not obligated to use the Compilation of Islamic Law as a legal basis for deciding cases in Religious Courts. The Compilation of Islamic Law, as a product of consensus (*ijma'*) among scholars, is part of the national legal system. It is considered unwritten law that is recognized but not compulsory in its application.<sup>16</sup> This is actually inconsistent with what is stated in the background of the Compilation of Islamic Law (KHI). Therefore, the term '*pedoman*' here should be understood as a demand or guideline that must be followed by the Religious Courts and the community.

### **The Selangor Islamic Family Law Enactment 2003**

The term "enactment" is derived from the English word "enactment," a concept introduced by the Western legal scholar Karl E. Weick to describe the idea that a specific phenomenon (such as an organization) is created through what is communicated or through communication activities. Karl E. Weick is considered one of the most influential thinkers of his generation in the field of organizational studies. Through his writings, he greatly influenced how organizational theory is studied and taught. In Malaysia, the term "enactment" is used to refer to the process of legislation, which is part of the legal framework and represents an agreement that will be implemented as law. Over time, from around the 1950s to the 1970s, attention was given to the formulation of Islamic Legislation Enactments across various states in the form of compilations. Previously, enactments were issued separately, but they were eventually consolidated into a main enactment. Each state has

<sup>14</sup> Fajar Sugianto, Denny Ardhi Wibowo, and Tomy Michael, "Kedudukan Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam Dalam Sistem Hukum Kewarisan Indonesia," *Jurnal Aktual Justice* 5, no. 1 (June 8, 2020): 26–27, <https://doi.org/10.47329/aktualjustice.v5i1.518>.

<sup>15</sup> Mustafa, "Eksistensi Kompilasi Hukum Islam Dan Problematika Penerapannya Di Indonesia," *ARJIS* 1, no. 1 (February 2022): 56.

<sup>16</sup> Sugianto, Wibowo, and Michael, "Kedudukan Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam Dalam Sistem Hukum Kewarisan Indonesia," 26.

issued its own enactment, with differing legal content.<sup>17</sup> The Selangor Islamic Family Law Enactment applies to all Muslims residing in the state of Selangor, as well as to Muslims who are residents of Selangor but do not live within the state.

The Selangor Islamic Family Law Enactment No. 2 of 2003 is a law originally derived from the Registration of Muhammadan Marriages and Divorces Enactment of 1885. This law was later compiled as part of the Selangor Islamic Law Administration Enactment of 1952, revised between 1976 and 1980, then established as the Selangor Islamic Family Law Enactment in 1984, and finally reformed into the Selangor Islamic Family Law Enactment of 2003. The restructuring of this law took place across Malaysia starting in 1980, when the Malaysian government set up the Technical Committee on Syariah and Civil Law. This committee was led by Professor Ahmad Ibrahim, a renowned legal expert in both Malaysia and Singapore.<sup>18</sup>

An important aspect included in the process of drafting Islamic family law in Malaysia is the polygamy law, which follows the concept of Pakistan's Muslim Family Laws Ordinance of 1960. The findings from studies conducted by this institution were implemented as Islamic family law across all states in Malaysia, starting with the Islamic Family Enactment in Kelantan in 1983 and then in Selangor in 1984. The 1984 Islamic Family Enactment of Selangor comprises nine main areas of discussion: marriage, marriage registration, witnesses to the marriage contract, marriage dissolution, maintenance for wives, children, and others, custody rights (hadhanah), marriage abroad, child legitimacy, and additional sanctions. In 2001, there was an effort to harmonize Islamic family enactments across Malaysia following a decision by the Council of Rulers on March 23, 2001, which stated that all Islamic laws—including the Administration of Islamic Law, Islamic Family Law, Shariah Court Evidence Law, Criminal Procedure Law, and Civil Procedure Law—should be standardized across Malaysia.<sup>19</sup>

### **Similarities and Differences in the Provisions of Child Custody (*Hadhanah*) in Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law and the Enforcement of Islamic Family Law No. 2 of 2003 in Selangor**

The muslim population in Malaysia currently makes up 63.5% of the total population, while in Indonesia it accounts for 86.7%.<sup>20</sup> Therefore, Indonesia and Malaysia are well-known for their strong Islamic cultural roots. The significant number of Muslims in both

<sup>17</sup> Mohamad Hakim, "Implementasi Enakmen Undang-Undang Keluarga Islam Negeri Pulau Pinang 2004 Mengenai Batas Umur Pernikahan (Studi Kasus Di Mahkamah Rendah Syari'ah Bukit Mertajam Pulau Pinang)," *Undergraduate Thesis* Universitas Islam Negeri Ar-Raniry Darussalam (2016).

<sup>18</sup> Ismail Hassan, "Studi Komperatif Tentang Hukum Poligami Menurut Enakmen Keluarga Islam Selangor 2003 Dan Amla Singapura 2001" (Pekanbaru, Universitas Islam Negeri Sultan Syarif Kasim Riau, 2018), <https://repository.uin-suska.ac.id/17429/>.

<sup>19</sup> Ismail Hassan, "Studi Komperatif Tentang Hukum Poligami Menurut Enakmen Keluarga Islam Selangor 2003 Dan Amla Singapura 2001" (Universitas Islam Negeri Sultan Syarif Kasim Riau, 2018), 13, <https://repository.uin-suska.ac.id/17429/>.

<sup>20</sup> Cindy Mutia, "Populasi Muslim Indonesia Terbanyak Di Asia Tenggara, Berapa Jumlahnya?," Oktober 2023, <https://databoks.katadata.co.id/datapublish/2023/10/19/populasi-muslim-indonesia-terbanyak-di-asia-tenggara-berapa-jumlahnya>.

countries has led to societies rich in Islamic values, prompting the governments in each nation to establish various regulations based on Islamic law.

One similarity between these regulations is the matter of child custody. According to Indonesia's Compilation of Islamic Law, Article 105(a) states that after a divorce, the custody of a child who has not yet reached the age of discretion belongs to the mother. Similarly, in Malaysia, the Selangor Islamic Family Law Enactment Section 83 specifies that the mother has the primary right to care for her child, whether during marriage or after divorce. A hadith supports this: Abu Daud narrates from 'Amr bin Shu'aib, who heard from his father and grandfather, that a woman came to the Prophet Muhammad (peace be upon him) and said, "O Messenger of Allah, this child of mine was nurtured in my womb, fed with my milk, and sheltered in my arms. Now his father, who has divorced me, wants to take him from me." The Prophet (peace be upon him) replied, "You have more right over him as long as you do not remarry." (Hadith narrated by Abu Daud).<sup>21</sup>

The second similarity regarding the obligation for fathers to provide financial support is that both the Compilation of Islamic Law and the Enactment of Islamic Family Law in Selangor require fathers to bear all living expenses for their children, including clothing, food, and shelter. This is outlined in Article 80 and 105 of the Compilation of Islamic Law, as well as in Section 73 of the Selangor Islamic Family Law Enactment. The third similarity lies in the caregiving arrangements after the mother. Both regulations prioritize female relatives from the mother's side as caregivers if the mother is unable to provide care. This is stipulated in Article 156 of the Compilation of Islamic Law and Section 82 of the Selangor Islamic Family Law Enactment.

The fourth similarity involves granting children who have reached the age of discretion (*mumayyiz*) the right to choose whether to live with their mother or father in the event of their parents' divorce. This right is outlined in Article 105 of the Compilation of Islamic Law and Section 85 of the Selangor Islamic Family Law Enactment. A hadith elaborates on this situation: Abu Hurairah narrated, "Once, while I was with the Messenger of Allah, a woman approached him and said, 'My husband wants to take my son – or my child – even though he has been of great help to me, fetching water from the well of Abu Inabah.' Then, the Messenger of Allah said, 'The two of you should draw lots.' Or, he said, 'You should cast lots among yourselves.' (Abu 'Asim was uncertain about the exact words of the hadith.) Subsequently, her husband arrived and said, 'Who will dispute me over my child?' The Messenger of Allah then said, 'O child, here is your father, and here is your mother. Take the hand of whichever you wish.' The child took his mother's hand, and the woman departed with him." (Hadith narrated by At-Tirmidhi).<sup>22</sup>

The fifth similarity concerns the social conditions in both countries, which have been significantly influenced by the Shafi'i school of thought (Mazhab Shafi'i) during the spread of Islam. Both countries also share a similar history regarding the arrival of Islam, which

<sup>21</sup> Al Bigha, 247.

<sup>22</sup> Musthafa Diib Al-Bugha, *Fikih Islam Lengkap*, 1st ed. (Surakarta: Media Zikir, 2010), 417.

entered through various trade routes in the Nusantara region.<sup>23</sup> Long before that, the Shafi'i school of thought that developed in Indonesia was a result of the introduction of Islam to the region around the seventh century, brought by Muslim traders from Gujarat and Malabar who were devoted followers of the Shafi'i school. There are various accounts about the spread of Islam in Malaysia, suggesting it came from China, Champa, and India through Malacca.<sup>24</sup> A clearer comparison of the similarities between the two regulations on child custody can be seen in the table below:

**Table 1.** The Similarities in Custody Provisions between Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law and the Enforcement of Islamic Family Law No. 2 of 2003 in Selangor

No.	Aspect	Similarities
1.	Sharing of Child Custody	Both rules give priority to the mother as the child's guardian after divorce.
2.	The Obligation of Nafkah	Both rules oblige the father to provide for the child within or outside the marriage.
3.	Custody After Mother	Both rules prioritize women of the mother's line as caregivers or helpers.
4.	Child's Right to Choose	Both rules give the <i>Mumayyiz</i> child the right to choose his or her caregiver.
5.	Social Conditions	The two countries share a common background of the introduction of Islam and the strong influence of the Shafi'i school of thought.

There are several aspects that can be compared in terms of the differences between the two regulations. First, regarding the legal authority of each regulation. The Compilation of Islamic Law, based on Law No. 12 of 2011, is not included in the hierarchy of legislation in Indonesia, meaning it does not have binding legal power and is not mandatory to be applied. On the other hand, the Enactment of Islamic Family Law in Selangor is legally binding for all residents of Selangor and represents a reform of Islamic law in Malaysia, particularly in Selangor.<sup>25</sup>

Second, regarding the determination of the age of discretion (*mumayyiz*) for children. The Compilation of Islamic Law, in Article 105, states that a child is considered *mumayyiz* at the age of 12. In contrast, the Enactment of Islamic Family Law in Selangor, in Section

<sup>23</sup> Anny Nailatur Rohmah and Ashif Az Zafi, "Jejak Eksistensi Mazhab Syafi'i di Indonesia," *Jurnal Tamaddun : Jurnal Sejarah dan Kebudayaan Islam* 8, no. 1 (May 12, 2020): 190, <https://doi.org/10.24235/tamaddun.v8i1.6325>.

<sup>24</sup> Saifullah, *Sejarah Kebudayaan Islam Di Asia Tenggara*, 1st ed. (Yogyakarta: Pustaka Pelajar, 2010).

<sup>25</sup> Nurdian, "Pengaturan Hadhanah Di Indonesia Dan Malaysia," *Undergraduate Thesis* Universitas Islam Negeri Syarif Hidayatullah (2023): 45.

85, specifies that the age of *mumayyiz* for a boy is 7 years, and for a girl, it is 9 years. Sayyid Sabiq, in his book, explains that a child is considered *mumayyiz* when they are able to meet their basic needs, such as eating, dressing themselves, and maintaining personal hygiene. A child is regarded as *mumayyiz* when they no longer require the care of a guardian and can independently meet their primary needs, which also marks the end of their period of custody (*hadhanah*).<sup>26</sup>

Third, there is a difference in the requirements for a guardian. The Enactment of Islamic Family Law in Selangor clearly outlines the criteria for anyone seeking guardianship rights, whether from the mother, father, or other parties, in Section 83. In contrast, the Compilation of Islamic Law addresses this matter when discussing guardians who can replace parents in Article 107.

Fourth, regarding the guardianship of a child's property, the Compilation of Islamic Law states in Article 106 that the property of an underage child is the responsibility of the parents. On the other hand, the Enactment of Islamic Family Law in Selangor specifies in Section 89 that the father is primarily responsible for managing the property of his underage child.

The fifth difference concerns the transfer of guardianship rights. The Compilation of Islamic Law explains in Article 107 that guardianship can be applied to children who are under 21 years old or unmarried, covering both their personal and property matters. If a guardian neglects their duties, the Religious Court has the authority to appoint another guardian. Meanwhile, the Enactment of Islamic Family Law in Selangor, in Section 89, specifies who is entitled to guardianship rights if the father passes away. A more detailed comparison of these differences is outlined in the table below:

**Table 2.** The Differences in Custody Provisions between Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law and the Enforcement of Islamic Family Law No. 2 of 2003 in Selangor

No.	Aspect	Differences
1.	Legal Basis	Indonesia rules Hadhanah in Islamic Law Compilation that has no binding on society. Selangor rules it in Enactmen 2 2003 Selangor Islamic Family Law and it is binding to all the society of Selangor.
2.	Age of <i>Mumayyiz</i> Regulation	Indonesia said that <i>mumayyiz</i> 's age is 12 while Selangor said it is 7 for boys and 9 for girls.
3.	Requirements of Caregivers	Selangor specifies the requirements of caregivers in detail while Indonesia only implies it.
4.	Safeguarding of the Child's Property	Indonesia stipulates that both parents must maintain the child's property while Selangor stipulates that the father is most responsible for the child's property.

<sup>26</sup> Sabiq, 153.

5. Transfer of Guardianship over the Child	Indonesia stipulates that the Religious Court may appoint another person as the guardian of the child if the parents are incapacitated, whereas Selangor has determined the order of the persons entitled to receive custody.
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### **The Ideal Age of Discretion (*Mumayyiz*) according to Child Development Psychology**

According to developmental psychology, this age is considered the end of childhood or the transition from childhood to early adolescence.<sup>27</sup> At this stage, children tend to have unstable emotions and struggle with making decisions. Developmental psychology suggests that a person's chronological age cannot be equated with their psychological age. Two children of the same age may not necessarily share the same character, traits, personality, or attitude when faced with similar situations.

Jean Piaget's theory of cognitive development explains that between the ages of seven and eleven, children are in the concrete operational stage.<sup>28</sup> At this age, children are able to recognize events happening around them and respond according to their own desires. They can also classify things in their environment, although they are not yet able to solve problems that arise. If something makes the child uncomfortable, they will respond by displaying certain behaviors to attract the attention of those around them.

At the concrete operational stage, children learn the concept of conservation and use simple logic to solve various problems when dealing with real objects. The reasoning used at this stage is logical reasoning, which replaces the intuitive thinking they used earlier.<sup>29</sup> At this age, children are just beginning to think systematically about the concrete objects and events around them.

The next stage of cognitive development is the formal operational stage, which occurs from around eleven or twelve years old to eighteen years old. At this stage, children enter adolescence and are able to understand and solve various aspects of a problem simultaneously.<sup>30</sup> At this stage, inductive reasoning is needed in the decision-making process of adolescents. Decision-making using inductive reasoning is based on past experiences, with conclusions drawn from what is perceived as the best option among all available choices.<sup>31</sup> Children tend to have more stable emotions compared to earlier stages and provide more controlled responses to their surroundings. One of the implications of setting the age of discretion (*mumayyiz*) is that children have the right to choose with whom they will live if

<sup>27</sup> John Santrock, *Perkembangan Masa Hidup*, 13th ed., vol. 1 (Jakarta: Erlangga, 2018), 18.

<sup>28</sup> Leny Marinda, "Teori Perkembangan Kognitif Jean Piaget Dan Problematikanya Pada Anak Usia Sekolah Dasar," *An-Nisa' : Jurnal Kajian Perempuan dan Keislaman* 13, no. 1 (April 18, 2020): 124, <https://doi.org/10.35719/annisa.v13i1.26>.

<sup>29</sup> Rafiq Kurniawan and Yudi Rahman, "Teori Belajar Kognitif Membedah Psikologi Belajar Jean Piaget," *Taqofah: Jurnal Pendidikan Islam* 3 (June 2019): 8, <https://doi.org/10.58883/taqofah.v3i2.78>.

<sup>30</sup> Alon Mandimpu Nainggolan and Adventrianis Daeli, "Analisis Teori Perkembangan Kognitif Jean Piaget dan Implikasinya bagi Pembelajaran," *Journal of Psychology "Humanlight"* 2, no. 1 (August 24, 2021): 39, <https://doi.org/10.51667/jph.v2i1.554>.

<sup>31</sup> Robert Solso, Otto Maclin, and Kimberly Maclin, *Psikologi Kognitif*, 8th ed. (Sidoarjo: Gelora Aksara Pratama, 2007), 415.

their parents divorce. Given the stages of cognitive development, it would be more ideal for a child to make this decision during the formal operational stage, which typically occurs between the ages of eleven and eighteen.

Another important perspective from psychology regarding the setting of the age of discretion is the child's psychosocial development. Children between the ages of six and twelve are in the late childhood stage, transitioning into early adolescence, which is a critical period of human development.<sup>32</sup> According to the explanation by Erik Erikson, a renowned psychologist, a child's psychosocial development refers to the interaction between psychological and social aspects in a child's growth, and it is divided into eight stages of development.<sup>33</sup> Given this, it seems that children aged twelve and above have a better understanding of themselves and their environment compared to younger children, allowing them to think more rationally.

To consider the well-being of children and meet their spiritual and physical needs, the government of Indonesia and the State of Selangor have set a specific age for children to be considered capable or *mumayyiz*. In Indonesia, the *mumayyiz* age is set at twelve, which, according to developmental psychology, falls within the late childhood and early adolescence stage. Meanwhile, the State of Selangor sets the *mumayyiz* age at seven for boys and nine for girls, which, according to developmental psychology, is considered the middle to late childhood stage. Developmental psychology does not establish a specific age at which a child is considered fully capable but rather provides a general framework for understanding a child's development at different age ranges. Therefore, it is the adults around the child who can determine the child's developmental stage and how they should respond to the child accordingly. In the context of this study, the regulations in both countries that grant the court the authority to determine whether a child is considered *mumayyiz* in a particular case is appropriate. This is because, during the court process, the judge is the one who understands the child's condition and circumstances, enabling them to make decisions that consider the child's well-being.

## Conclusion

Several similarities between the Compilation of Islamic Law and the Enactment of Islamic Family Law in Selangor include provisions on custody after divorce, financial support obligations, caregiving after the mother, the right of a child who has reached the age of discretion (*mumayyiz*) to choose, and the social conditions of both countries that influence the formation of these regulations. Some differences between the two regulations include the legal authority of each, the determination of the age of discretion, requirements for caregivers, the guardianship of a child's property, and the transfer of custody after the father. Developmental psychology views the age of twelve as the starting point for a child's cognitive development, enabling them to make sound decisions. Therefore, the age of twelve, as stated in the Compilation of Islamic Law, is considered more appropriate than the ages of seven and nine in the Enactment of Islamic Family Law in Selangor for determining when a

<sup>32</sup> Santrock, *Perkembangan Masa Hidup*, 1:18.

<sup>33</sup> Ellen, "Perkembangan Psikososial Erikson," n.d., <https://psychology.binus.ac.id/2022/11/28/perkembangan-psikososial-erikson/>.

child is considered mumayyiz. Developmental psychology also suggests that each child develops differently, so when granting the right for a child to choose, their individual circumstances must be considered, with attention to what will be in the best interest of the child for their well-being.

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