

**CAUSES, IMPACTS AND SOLUTIONS OF ABUSE OF
THE RIGHT OF CUSTODY IN MALAYSIA: A JURISTIC
ANALYSIS**

BY

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**A dissertation submitted in fulfillment of the requirement for
the degree of Master of Islamic Revealed Knowledge and
Heritage in Fiqh and Usul al-Fiqh.**

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Knowledge and Human Sciences
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ABSTRACT

The instances of child abuse in Malaysia are deeply concerning, with 6,770 reported cases of children in need of care and protection in 2022, and a heart-breaking toll of 220 children losing their lives due to abuse over the past 5 years. This study delves into the intricate concept of *ḥaḍānah* (child custody) within Islamic jurisprudence, thoroughly examining its causes and impact on children. This study addresses the abuse of *ḥaḍānah's* rights: dissecting the concept itself, uncovering the causes and repercussions of child abuse, and proposing solutions from an Islamic standpoint. Furthermore, by specifically analysing child abuse cases in Malaysia, this research offers pragmatic insights into the complexities surrounding custody matters. It employs a descriptive approach by gathering definitions from classical and modern jurists and practitioners. The analytical methods cover a wide range of activities, such as literature reviews, statistical analyses, regulatory reviews, and social and ethical evaluations. Fieldwork involves interviewing policy-oriented lawyers and doctors to identify major issues, and suggest directions for improvement in child welfare that could arise in child custody cases. The goal is to uncover the underlying causes of child abuse and its profound effects on children. The primary causes identified for child abuse in Malaysia predominantly arise from family disputes, financial problem and alcoholism, thus exerting significant physical and psychological impacts on children. Moreover, the abuse extends its repercussions beyond the individual, contributing to broader societal challenges. Ultimately, this study strives to provide vital insights that can guide parents, children, policymakers, and authorities in effectively combating child custody abuses, ensuring the safety and well-being of children.

ملخص البحث

تعتبر حالات إساءة معاملة الأطفال في ماليزيا أمراً مقلماً للغاية، حيث تم تسجيل 6,770 حالة في عام 2022م، مع تأثير كبير يتمثل في فقدان 220 طفلاً لحياتهم بسبب الإساءة، وذلك خلال السنوات الخمس الماضية. وعليه فإن هذه الدراسة تتناول مفهوم الحضانة في الفقه الإسلامي، حيث تقوم بدراسة أسبابها، وبيان تأثير الإساءة على الأطفال. كما أنها تتعرض إلى موضوع إساءة حق الحضانة؛ من خلال تحليل هذا المفهوم، ثم الكشف عن الأسباب والآثار المترتبة على إساءة معاملة الأطفال، وأخيراً فإنها تقترح الحلول من منظور إسلامي. ومن خلال تحليل حالات إساءة معاملة الأطفال في ماليزيا على وجه التحديد، يقدم هذا البحث رؤى عملية حول التعقيدات المحيطة بقضايا الحضانة. وقد استخدمت الباحثة منهج الدراسات الوصفية؛ للوقوف على أبرز المصطلحات المتعلقة بموضوع البحث من قبل المتخصصين والفقهاء، المتقدمين والمعاصرين، استناداً إلى مجموعة من الدراسات والأبحاث المتخصصة. كما أنها استخدمت الأساليب التحليلية للإحصائيات، والتشريعات، والآثار الاجتماعية، والقيم الأخلاقية. ولحاجة هذا البحث للدراسات الميدانية فقد أجرت الباحثة مقابلات مع المحامين، والأطباء في مجال تطوير السياسات، وتحديد المشكلات، وكذلك تسليط الضوء على المجالات التي تحتاج إلى تحسينات لرفاهية الأطفال في التشريعات القانونية. وقد خلصت الدراسة إلى الكشف عن أسباب إساءة معاملة الأطفال، وتأثيراتها الكبيرة على الأطفال. حيث كانت النزاعات العائلية من الأسباب الرئيسة التي تؤدي إلى إساءة معاملة الأطفال في ماليزيا، والتي أثرت بشكل كبير على النواحي الجسدية والنفسية للأطفال، وقد امتدت تأثيراتها إلى المحيط الخارجي للفرد، مفضية إلى تحديات كبيرة للمجتمع. وعليه فإن هذه الدراسة تقدم رؤى قيمة يمكن أن توجه الآباء، وصانعي السياسات، والسلطات المختصة إلى مكافحة فعالة لإساءة حضانة الأطفال.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage in Fiqh and Usul al-Fiqh.

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Shukran Abd Rahman,
Dean
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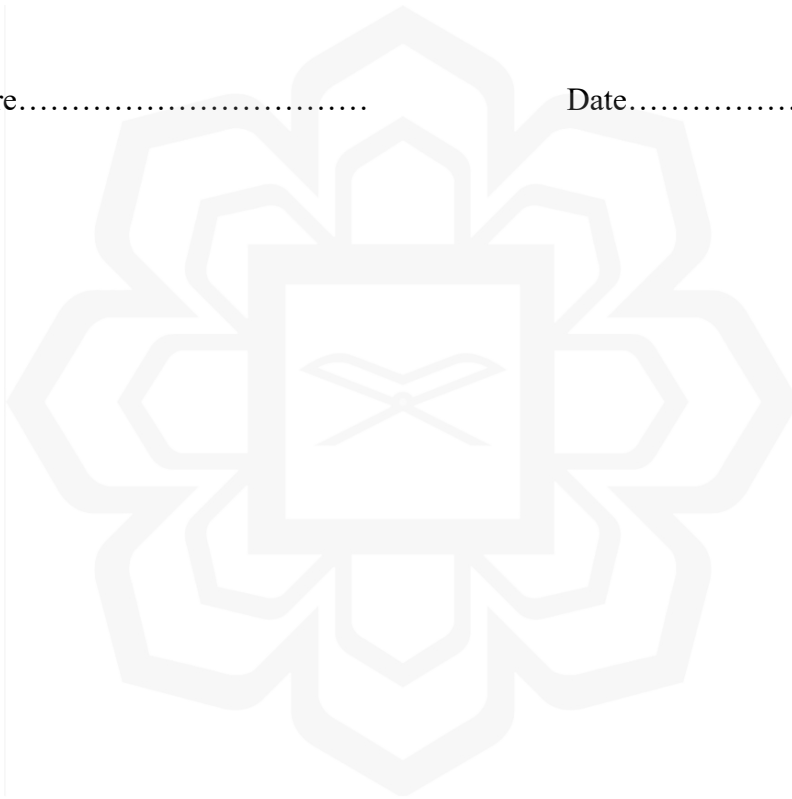
DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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This thesis is dedicated to my unwaveringly supportive husband, whose boundless love and encouragement have been my guiding light throughout this academic journey. To my precious daughter, Maryam, your sabr and resilience during late-night studies are a constant inspiration, reminding me of the importance of perseverance. Gratitude extends to my parents for instilling in me the values of hard work and dedication; this achievement is as much theirs as it is mine. Special appreciation to Dr. Sayyed Mohamed Muhsin, whose guidance has shaped this thesis, enriching my academic understanding and inspiring excellence. His belief in my abilities has fueled my determination to reach this milestone. This work is a tribute to cherished relationships, a culmination of academic efforts, and I extend my heartfelt thanks to all who have been my pillars of strength in this significant chapter of my life.

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Islamic Family Law (State of Selangor) Enactment 2003



CHAPTER ONE

INTRODUCTION

1.1 RESEARCH BACKGROUND

Custody, known as *Ḥaḍānah* in the context of *Sharī'ah*, encompasses the responsibility of maintaining children within the sanctity of their home. This duty involves not only meeting their essential needs but also includes actively caring for them, being present in their company, and attentively addressing their various interests.¹ This entails the provision of sustenance and clothing, ensuring cleanliness of both their person and immediate environment. Moreover, custody extends to the comprehensive upbringing of a child; a responsibility bestowed upon the individual who has been granted the right to custody.² Certain jurists elaborate that *ḥaḍānah* encompasses the protection of minors, individuals with mental health challenges, and those with cognitive disabilities. It involves shielding them from harm and ensuring their overall well-being. This duty extends to safeguarding their interests, which includes tasks like bathing the child, laundering their clothes, applying oils and kohl, swaddling them in a cradle, gently rocking them to sleep, and undertaking various actions that contribute to their holistic welfare.³

In the context of *ḥaḍānah*, various forms of abuse can occur, including physical, psychological, sexual, financial, spiritual, and emotional abuse. These types of abuse have detrimental effects on both children and adults, compromising their overall well-being and impeding their personality development. Denying children their custody rights directly contradicts the Islamic principle of *ḥaḍānah*. Islam underscores its steadfast commitment to upholding human rights, particularly for vulnerable groups such as children.

¹ Al-Dasūqī, Muhammad Ibn Ahmad, *Hāshiyah al-Dasūqī*, (Beirut: Dār al-Fikr, 2006), 526.

² Ibn 'Ābidīn, Muḥammad Amīn, *Radd al-Muḥtār 'ala al-Durr al-Mukhtār*, (Cairo: Muṣṭafā Ḥalabī, 1966), 555.

³ Al-Bahuti, Maṣṣūr bin Yūnus, *Kashāf al-Qinā'*, (Beirut: Dar Al-Fikr, 1980), 195-196.

Like other countries, Malaysia has also witnessed several cases of child abuse. One such tragic incident involves the neglect of a six-year-old boy named Zubaidi Amir Qusyairi Abdul Malek, who was found drowned in a water tank and murdered by his mother and stepfather.⁴ Another deeply unsettling incident that left a profound impact on the Malaysian community was the heart-wrenching case involving Bella, a teenage girl with Down syndrome who endured brutal abuse at Rumah Bonda, a welfare home, allegedly occurring between February and June of 2021. She suffered some physical and emotional abuse and was neglected.⁵ Besides, there are many other cases that are not reported on daily basis.

In Malaysia, Muslims are governed by the Islamic Family Law (Federal Territories) Act 1984 (Act 303) or the respective state's Islamic Family Law in family matters. According to Section 82 (1) of the Islamic Family Law (Selangor State) 2003,⁶ custody is generally granted to the biological mother, provided she remains qualified as a guardian, with custody rights given to qualified parents meeting the specified conditions.

Against this backdrop, a comprehensive study will be undertaken to delve into the fundamental principles of *ḥaḍānah* from an Islamic juristic perspective. Subsequently, an examination of the underlying factors contributing to the abuse of *ḥaḍānah* in Malaysia and its repercussions on individuals will be conducted. The research will then explore how the principles of fiqh can be effectively employed to ensure the protection of children in Malaysia.

1.2 STATEMENT OF THE PROBLEM

The issue of *ḥaḍānah*, or child custody, evokes distress within the community. Primarily stemming from parental divorce, it results in the allocation of custody to either the

⁴ Mohamed Noordin and Shanthi Supramaniam, "Mother, step-father charged with death of six-year-old Zubaidi Amir Qusyairi", *The Sun Daily*, 10 February, 2021, <<https://www.thesundaily.my/home/mother-step-father-charged-with-death-of-six-year-old-zubaidi-amir-qusyairi-YD6630203>>

⁵ Faris Fuad, "Rumah Bonda founder abused Bella after she dislodged curtain, says witness," *New Straights Times*, 15 April, 2022, <<https://www.nst.com.my/news/crime-courts/2022/04/789160/rumah-bonda-founder-abused-bella-after-she-dislodged-curtain-says>. Accessed on 1-9-2023.>

⁶ Abdul Basir Mohamad et al, "Children's protection in the issue of Hadhanah based on Islamic family law and the law of Thailand". *Asian Social Science*, vol 12 no.10 (2016): 18–26.

mother, father, both, or none. Regrettably, the rights vested in guardians are at times misappropriated and overlooked. Every year, the issue of child neglect in Malaysia, especially in Selangor, is alarming and worrying. According to a report by the Malaysian Welfare Department, a total of 1,055 cases of child abuse were recorded in the country from January to June 2022, comprising 578 cases of physical abuse, 417 cases of sexual abuse, and 60 cases of emotional abuse. Statistics from the Royal Malaysian Police (PDRM) show that a total of 1,348 cases of child sexual offenses were recorded in the same period, including incidents of gang rape, incest, unnatural sex, and obscenity. Even though there have been some studies related to the determinants and consequences of child abuse, these studies do not fit into the purpose of the current research that not only takes us into the root causes and results of child abuse but also provides solutions from the perspective of *Maqāṣid al-sharī'ah*. This study seeks to address the identified gap by conducting a field study to develop effective solutions for safeguarding children's rights. The researcher believes that understanding the causes, effects, and proposed solutions is crucial to empower victims in seeking prompt, fair, affordable, and accessible compensation. This applies whether through formal or informal channels, with the ultimate goal of halting such abuse and ensuring the secure nurturing of children.

1.3 RESEARCH QUESTIONS

This research aims to address the following questions:

1. What are the key principles of *ḥaḍānah* from an Islamic juristic perspective?
2. What are the underlying factors contributing to the abuse of the *ḥaḍānah* in Malaysia and its consequences on individuals?
3. How can the principles of *fiqh* be leveraged to ensure the protection for children in Malaysia?

1.4 RESEARCH OBJECTIVES

This research attempts to achieve the following objectives:

1. To explore the concept of *ḥaḍānah* from an Islamic juristic perspective.
2. To investigate the causes and impacts of abuse of the *ḥaḍānah* in Malaysia.
3. To suggest solutions that can be extracted from *fiqh* to curb the abuse of *ḥaḍānah* in Malaysia.

1.5 SIGNIFICANCE OF THE STUDY

The factors below discuss the significance of the study:

1. This study holds significance as it aspires to contribute to the prevention of child abuse cases. Moreover, the reported instances of child abuse in Malaysia are increasingly alarming, reaching 1,055 cases from January to June 2022 alone. The issue of abuse is a societal concern that warrants emphasis, given its correlation with criminal cases such as sexual abuse, murder, and others.
2. This study is essential for raising awareness within society about the protection of minors and the vulnerable. It aims to underscore the Islamic framework that guides guardians in fulfilling their duty to protect and respect the rights of children.
3. This research holds significance in enlightening society about the complexities of child custody and the ensuing consequences. The neglect of child custody can exert a profound impact, particularly influencing individual growth and contributing to societal development.
4. The physical, sexual, and mental abuse of children is a global issue that demands comprehensive attention from various stakeholders. Hence, this research is highly relevant as it strives to conscientiously address the issue of child custody, proposing comprehensive and effective solutions from an

Islamic perspective. Such an approach has the potential to influence approximately two billion people worldwide.

5. This research will be a huge help in promoting the *Maqāṣid al-sharī'ah* in the Islamic Law of Malaysia. Protection of life (*nafs*), protection of lineage (*nasl*), and protection of intellect (*'aql*) are among the *Maqāṣid al-sharī'ah* that aim to protect human health comprehensively, especially for small children. Neglecting their rights will result in dysfunction in a family and society.

1.6 SCOPE OF THE STUDY

Abuse in the *ḥadānah* is a universal issue. Each country's legal system is met with unique challenges that demand attention and resolution. Therefore, this study cannot be done in total. Hence, this study will only focus on the factors and effects of abuse against children in Malaysia, especially in Selangor, in order to provide a concrete solution to the increase of cases of abuse that occur in Malaysia.

1.7 METHODOLOGY OF THE RESEARCH

This research is qualitative which consists of library works and field study. Methods below are to be used in completing this research.

1. Descriptive: The researcher employs descriptive approach, extracting concepts, definitions, and information regarding *ḥadānah* from available classical and modern literature, such as books, theses, and articles, by utilizing academic databases and university libraries. This method also involves gathering diverse definitions and information on abuse and *ḥadānah* from professional perspectives, including those of a psychiatrist and a judge.
2. Critical: This study critically examines the factors contributing to custody abuse and investigates the impacts of abuse on children. The research aims

to identify effective solutions to address the issue of *ḥaḍānah* abuse in Malaysia. Additionally, data from the Jabatan Kebajikan Masyarakat (JKM), such as the JKM annual report, is used to comprehensively address the research objectives by observing the trends in the statistical data over the five-year period and analyzing the changes in the number and type of child abuse cases. This is done by looking for spikes or dips in reported cases, shifts in the patterns and other significant trends. The analysis is used to determine any associations between the data and the possible causes of child abuse, including the economic situation, family structures and legislative changes.

3. Field study: The researcher employs a field study approach, involving interviews with authorities handling abuse cases assessing the impact on children. This method offers a vivid portrayal of the challenges faced by children experiencing abuse, capturing perspectives from relevant stakeholders. Key participants in the research process include a Family Law judge at the Shari'ah Court of Shah Alam and a Psychologist at Jiwa Damai Clinic.

1.8 LITERATURE REVIEW

The topic of child custody is often discussed by the scholars in their studies. Various scopes in this particular subject are discussed as part of deliberation on children's right. However, since the cases of child abuse have increased, studies related to the effects and the factors of abuse are often highlighted. There are many articles, journals, and studies written discussing this issue, thus, producing good and thorough research and being able to provide solutions to the problems. Significant references and sources have been taken and used to make the current study more authentic and comprehensive. Some of the important works are introduced below:

The article titled "Kecuaian dan Pengabaian Kanak-Kanak oleh Ibu Bapa: Kedudukannya di bawah Akta Kanak-Kanak 2001 dan Prinsip Shari'ah" by

Muhammad Ramzi Zakari (2015)⁷ proposes a study on the neglect of parents towards their children, which is a common phenomenon everywhere. The author also discusses the factors that influence the behaviour of parents. He focuses on the Negligence Act and the text of the law in Malaysia. However, he does not mention in detail the opinions of scholars on child neglect and abuse from the point of view of *Sharī'ah*. The researcher will explain this in the chapter on defining abuse and the opinion of the scholars on this issue.

Another important reference is a study written by Marwa Khader Ayad (2015)⁸ entitled "*Al-Ta'asuf fī Haq al-Ḥaḍānah*" (Abuse of the right of Custody). This study offers a comprehensive Islamic perspective, highlighting the significance of Islamic law in matters of family and child custody. It sheds light on the issue of child custody abuse, illustrating different manifestations of such abuse to safeguard against unjust infringements. The aim is to implement remedial and preventive measures, ensuring the protection of custody rights. The author specifically delves into the perspectives of Muslim scholars on this matter. From the results of this study, the researcher comprehends the concept of abuse in the use of the right of custody. It is when a person used his right of custody with the intent of harming others. The forms of abuse in the use of custody rights vary, such as the child is arbitrarily abused by the foster person or another custodian, guardian, or relative. She does not include any case in the reality that is happening in Malaysia. The researcher will also be discussing this aspect in the current research.

Furthermore, the article by Zanariah Noor (2015),⁹ entitled "Penderaan Kanak-Kanak oleh Ibu Bapa atau Penjaga dan Implikasinya Mengikut Undang-Undang Sivill dan Undang-Undang Keluarga Islam di Malaysia" (Child Abuse by Parents or Guardians and Its Implications According to Civil Law and Islamic Family Law in Malaysia), from University Pendidikan Sultan Idris, explains the retribution and

⁷ Ramzi Zakaria, "Kecuaian dan Pengabaian Kanak-kanak oleh Ibu Bapa: Kedudukannya di bawah Akta Kanak-kanak 2001 dan Prinsip Sharī'ah." *Jurnal Undang-Undang Dan Masyarakat*, Vol 19, no 0 (2015): 37–49.

⁸ Marwa Khader and Mazen Ismail Misbah Haniyeh, (2015), *Al-Ta'assuf fī Haq al-Ḥaḍānah*, Gaza, Islamic University.

⁹ Zanariah Noor, "Penderaan Kanak-Kanak oleh Ibu Bapa atau Penjaga dan Implikasinya Mengikut Undang-Undang Sivill dan Undang-Undang Keluarga Islam di Malaysia Malaysia" *Jurnal Perspektif*, Vol 7, no 2 (2015): 66–80.

implications against perpetrators of crimes of abuse by civil courts and *Sharī'ah* courts in Malaysia and the approach taken by both sides. This study helps the researcher to identify the legal structure that is taken especially in Malaysia. The researcher found in this article that the protection provided by civil law and *Sharī'ah* courts have different jurisdictions. The scope of the civil court's authority is wider, covering criminal cases such as abuse, while the *Sharī'ah* court is limited to giving and terminating custody of children (*ḥaḍānah*). The current study will be linked to this article in order to identify the solution that can be taken to prevent and spread awareness about the implication of child abuse.

A book written by Ashraf Mahmoud Bin Kinana (2015),¹⁰ titled "*Al-Ta'asuf fī Ḥaqq al-Ḥaḍānah wa āthāruhu*" (Abuse of the rights of Custody and Its Impacts), aims to explain the law regarding *ḥaḍānah* from the point of view of Fiqh and the Islamic perspective collected from several scholars' views in their books. The author also includes the definition of *ḥaḍānah* for the reader's reference as well as current cases of abuse that occur in Saudi Arabia. This book is significant for the current research and facilitates the collection of facts and scholars' views. However, this book only focuses on the law and its effects on oneself, children, and guardians. The current study will comprehensively explain the problems of this topic and solutions from *Maqāsid* perspective.

A study by Ashraf Mahmoud Bin Kinana (2016), entitled "Abuse in the Use of the Right of Custody", identifies the provisions related to abuse in the use of the right of custody. The author sheds light on the different juristic rulings concerning custody issues. He mentions the conditions and explains in detail the Islamic family law as well as comparisons of laws between Arab countries such as Jordan, UAE, Egypt, Syria, Kuwait, and Tunisia. Neglecting rights that differ based on varying laws across countries remains consistent with the demands of jurisprudence. The study shows the method used by each country to address the problem. However, he does not mention in his book the custody situation in Malaysia. The researcher will explain it in this study.

¹⁰ Ashraf Mahmoud Kinane, "*Al-ta'asuf fī Ḥaqq al-Ḥaḍānah wa āthāruhu*", (Saudi Arabia: Umm Al-Qura University, Makkah, 2015).

Moreover, a writing titled “*Ta’assuf fī al-Isti’māl haq Ḥaḍānah, Haqīqatuhu, suratuhu, ‘ilājuhu fī Fiqh Islāmī*” (Abuse in the use of custody rights, its reality, forms, and treatment in Comparative Islamic Jurisprudence), by Ismail Ghazi Marhaba (2016),¹¹ includes the comparative juristic study in child custody. The researcher provides definitions of child neglect from various sources. The author also explains the flexibility of Islamic law and its relevancy to contemporary human issues. The author elucidates the rules of Islamic jurisprudence in protecting the Muslim family from mistreatment. This writing does not contain current state statistics and the reality of the custody abuse cases in Malaysia. Hence, the researcher will provide some new data and statistics contributing to this topic.

Noor Zulaika Bint Al-Zulfili-Merken (2015),¹² in her work “*Penilaian Terhadap Penderaan Kanak-Kanak Di Malaysia: Satu Kajian Kes Di Enam Buah Negeri*” (Assessment of Child Abuse in Malaysia: A Case Study in Six States), studies child abuse within the context of Malaysia, focusing on a case study encompassing six provinces across the country. The research delves into the prevalence, types, and factors contributing to child abuse, aiming to provide a comprehensive understanding of the issue. This develops communication tools in the education and awareness of the community, especially the parents. This work describes in detail the facts of the field study that was conducted in six states in Malaysia, i.e, Penang, Perak, Perlis, Kuala Lumpur, Selangor and Melaka. A total of 28 abused children and patients, ranging in age from 1 year to 15 years, were interviewed to exchange the experiences they were going through. This study outlines the factors of the occurrence of abuse and their effects on abused victims. The study is very beneficial for the current study because it contains a survey of many victims. However, the research does not mention any opinions of scholars regarding the solutions from the Islamic perspective.

¹¹ Ismail Merhaba, “Al-ta’assuf fī al-Isti’māl haq Ḥaḍānah, Haqīqatuhu, suwaruhu, ‘ilājuhu fī Fiqh Islāmī al-Muqārīn”, *Journal of Taibah University: Art and Humanities*, Vol 5, No 9 (2016): 295-361.

¹² Noor Zulaika et al, “Penilaian Terhadap Penderaan Kanak-Kanak Di Malaysia: Satu Kajian Kes Di Enam Buah Negeri” *Second International Conference on Media, Communication and Culture*, (2015): 1–11.

In addition, an article written by Hazwani binti Hamdzah and Raudlotul Firdaus binti Fatah Yasin (2016),¹³ entitled “Child Abuse in Malaysia: An Overview from Islamic Perspective”, provides statistics on cases of abuse that occurred in Malaysia based on the comprehensive breakdown of a child's gender and ethnicity spanning from 2009 to 2014. The researcher found that in this study, the author also provides some solutions enriched with Islamic guidelines. This study also explains the analysis of child abuse from the perspective of Fiqh and evidence from the Quran, Sunnah, *Ijma'*, and other resources. As a result, this study will be able to incorporate some data from previous studies.

In addition, an article by Norsaleha Mohd Salleh, Noor Hafizah Mohd Haridi, Zetty Nurzuliana Rashed, Kamal Azmi Abd Rahman, Norbahiah Misran and Nabilah Huda Zaim (2019),¹⁴ titled "*Faktor penderaan kanak-kanak di Malaysia: Satu Analisis*" (Factors of Child Abuse in Malaysia: An Analysis), published in the e-proceedings of the International Conference on Social Sciences and Humanities, analyses the factors of the occurrence of child abuse cases in Malaysia. This article has presented a statistical study of abuse cases that occurred in Malaysia over a period of five years, from 2013 to 2017. Results of the study show that the abuse of child custody cases in Malaysia is increasing every year. Especially in 2017, in which a total of 5,537 cases were reported. The study also found the main factor of child abuse is family conflict, financial problems, and others. This study helps the researcher identify the statistics, factors, and patterns of abuse that occur. The research methodology used in this article is collecting reports from authorities. The statistics show that the cases of child abuse found in the article are caused by 19 factors. Of all the factors, this study divides the 19 factors into three main categories, the category that originates from the abuser or parents, the category that originates from the victim or the child, and the category that originates from other and unknown reasons. Based on the reported statistics, the factors of child abuse in Malaysia were analysed to specifically identify the categories of cases that

¹³ Hamdzah, and Yassin, “Child abuse in Malaysia: an overview from Islamic perspective” In *3rd International Conference on Global & Social Entrepreneurship (Legoland, Johor) 2016 (3rd ICoGBSE)* (2016): 125–135).

¹⁴ Norsaleha Salleh et al, “Faktor Penderaan Kanak-Kanak Di Malaysia: Satu Analisis”, *E-Prosiding Persidangan Antarabangsa Sains Sosial Dan Kemanusiaan 2019*, (2019): 1–14.

experienced an increase as well as high records to be given attention. In conclusion, this study will help to identify the current statistics and factors that cause child abuse.

A study written by Nurul Izzah Izzati, Wafa' Yusuf, and Zuliza Mohd (2019),¹⁵ titled “The Concept of Child Neglect by Parents and Guardians in Malaysia”, focuses on the concept of child neglect. It shows that the concepts of neglect and abuse are different even though they are often used. The forms of neglect that often happen to children are physical, sexual, educational, and mental neglect. This study helps the current study to understand the concept and pattern of neglect and also identify the factors that occur, especially in Malaysia.

The study by Suhaizad Saifuddin (2020),¹⁶ titled “*Perlindungan kanak-kanak berdasarkan Maqāṣid Sharī'ah dan undang-undang Sharī'ah di Malaysia*” (Child Protection Based on *Maqāṣid Sharī'ah* and *Sharī'ah* Law in Malaysia), identifies theories based on child protection and analyses the purpose of *Sharī'ah* relating to child protection in this country. The study found that Islam provides guidelines to ensure the protection of children following the objectives of *Sharī'ah*. This study gives a clear view on the issue of abuse based on *Maqāṣid Sharī'ah*. This study will help the current study in understanding child abuse from the perspective of *Maqāṣid Sharī'ah*.

In addition, a new article published by Child and Adolescent Psychiatry and Mental Health (2020),¹⁷ titled “Family violence against children in the Wake of the COVID-19 Pandemic: a review of current perspectives and risk factors”, is helpful for the current research in shedding light on the impact of the Covid-19 pandemic on the increase in child abuse cases. This article explains that the pandemic affects the function of families. During the pandemic, most countries, including Malaysia, have implemented restrictions and isolation at home. This causes some mental problems and stress in vulnerable families. This resulted in cases of family member abuse and neglect at home. In short, this study helps to identify the main factors that may cause an increase

¹⁵ Nurul Izzah Izzati et al, “The Concept of Child Neglect By Parents And Guardians In Malaysia”, *Malaysian Journal of Sharī'ah and Law*, Vol 7, No 1, (2019): 57–70.

¹⁶ Suhaizad Saifuddin, *Perlindungan kanak-kanak berdasarkan Maqāṣid Sharī'ah dan undang-undang Sharī'ah di Malaysia*, (International Conference on Family Law 2020, Jabatan Kehakiman Sharī'ah Malaysia, 2020).

¹⁷ Noemí Pereda & Diego A. Díaz-Faes, “Family violence against children in the wake of COVID-19 pandemic: a review of current perspectives and risk factors” *Child and Adolescent Psychiatry and Mental Health*. BioMed Central Ltd. (2020)

in abuse cases in 2019-2021. The current study will benefit from this article on how Covid-19 affects the family, especially children.

Besides, a study written by Firdous Ahmad Reshi (2020),¹⁸ titled “Child Rights: An Islamic Perspective”, offers insight to the current study in terms of child rights. This study explains various types of children's rights from an Islamic perspective, starting from the rights of unborn children to the right to health care, nutrition, maintenance, and the right to life. This study helps to identify the types of neglect of rights that can be categorized as abuse. This study is also important because it provides information from an Islamic point of view. However, this study does not explain in detail how and what solutions can be taken to solve the issue of abuse and neglect of rights. In the current study, the researcher will explain the solution to this problem based on Islamic demands.

Moreover, the study by Mohammad Baharudin Hidir and Rahmawati Yusoff Mohd (2020),¹⁹ entitled “Protection Rights of Children in Term of Family Relationship from Islamic Law and Malaysian Laws: A Comparative Analysis”, examines from the perspective of the Quran and the Sunnah as the primary sources of Islamic law, followed by the examination of the statute of Malaysian law as well as the selected cases in Malaysia. In addition, this study also compares the rights of children in Islamic and Malaysian law. This study, however, is limited to explanations related to the rights and laws. In the current study, the researcher will present the effects and solutions related to the neglect of children's rights.

In addition, the study written by Abdullah Hizam Fahid Al-Ajmi and Ridina Ibrahim Al-Rifai, titled “*Al-ta'assuf fi al-Isti'māl haqq Ḥaḍānah wa atharuhu fi bab al-walimah*” (The abuse of the right and its impact on the banquet),²⁰ discusses the abuse of rights and its consequences on the guardians. The first chapter is on the definition of injustice and the right, and mentions the evidence of injustice from the Quran, the

¹⁸ Firdaus Ahmad Reshi, “Child Rights: An Islamic Perspective”. *Universe International Journal of Interdisciplinary Research*, Vol 1, No. 2 (2020).

¹⁹ Baharudin, M. H., & Mohd Yusoff. R., “Protection Rights of Children in Term of Family Relationship From Islamic Law and Malaysian Laws: a Comparative Analysis” *INSLA E-Proceedings*, Vol 3, no 1, (2020): 75–85. Retrieved from www.insla.usim.edu.my

²⁰ Abdullah & Ridina, “*Al-ta'assuf fi al-Isti'māl haqq Ḥaḍānah wa atharuhu fi bab al-walimah*”, *Journal of Social Sciences (COES&RJ-JSS)*, Vol.9, No.2 (2020).

Sunnah, the legislative principles, and the Islamic rules. The researcher includes the theoretical explanation about criteria of injustice in the use of the right, and the punishments resulting from injustice. As for the second chapter, the researcher touches on the definition of the abuse and mentions the legal status of guardians. However, this study focuses on the impact and effects of the guardian. The current study will discuss the outcome of child abuse in particular.

A study titled “Rights of Children in Islamic Perspective and Child Abuse in Pakistani Society: Causes and Remedies from Islamic Teachings”, written by Muhammad Umar Riaz Abbasi, Muhammad Saeed, Hafiz Musannif Shah, Iskandar Muda, Zaafour Abderrazak and Nazar Farid Ahmed (2022),²¹ explains children's rights from an Islamic point of view and child abuse in Pakistani society. This study also explains that Islamic laws and practices are implemented according to the perspective of the Quran. Most importantly, this study finally states the problems and challenges of an effective protective society. However, the problems mentioned in the article are based on the investigations made on the society in Pakistan. This current study only focuses on the cases that occur in Malaysia.

Furthermore, the article written by Akbar Kamarudin @ Abdul Shukor, entitled “Child Custody after Divorce Laws in Malaysia: Muslim Parents and Children Perspective”,²² is a key study in identifying the rights of child custody after parents’ divorce in Malaysia. This article also explains *ḥaḍānah* from a Malaysian law perspective and explains foundational rules for understanding the issue of custody. More importantly, the author also focuses on the law subject of Muslim families. This study explains the current situation by providing realistic solutions to deal with childcare issues. This article is a very significant study and helps in my current study, especially in identifying contemporary problems related to *ḥaḍānah*.

The article by Zaidi Yob and Mohd Shahidan Shaari, titled “The Impacts of Poverty, Unemployment, and Divorce on Child Abuse in Malaysia: ARDL

²¹ Saeed, M. et al., “Rights of Children in Islamic Perspective and Child Abuse in Pakistani Society Causes and Remedies from Islamic Teachings”, *Journal of Legal, Ethical and Regulatory*, Vol. 25, No.6, (2022): 1-7.

²² Akbar Kamarudin@ Abdul Shukor, “Child Custody after Divorce Laws in Malaysia: Muslim Parents and Children Perspective” *Journal of Contemporary Islamic Studies*, Vol 8, no 2, (2022): 11–35.

Approach”,²³ sheds light on an important and often overlooked aspect of child abuse. The study investigates the potential links between economic factors, such as unemployment, inflation, and economic growth, and the occurrence of reported child abuse cases. The authors present compelling findings that indicate a significant relationship between economic indicators and reported child abuse. The research highlights that during periods of high unemployment, increased inflation, or economic downturns, there is a notable rise in reported cases of child abuse. These results suggest that economic instability and stress may contribute to an increased risk of child abuse within a population. While the article offers valuable insights into this current research, it lacks certain essential elements, such as a comprehensive definition, scholarly opinions, and practical solutions from a *fiqh* and *Maqāṣid* perspectives. All of these will be discussed in this current study.

After analysing the available literature, the researcher has found that all the previous studies contribute to the current research as they provide the information on the impacts, factors, evidence, and arguments that can be useful as a reference to the recent research. However, the researcher has also noticed that no significant study delivers the factors and consequences of arising cases that occur in Malaysia, specifically, in Selangor. Importantly, no important study is located that analyses the solution of said problems from *Maqāṣid* perspective. These research gaps will be hopefully filled by the current research.

²³ Yob, Z., Shaari, M. S., Esquivias, M. A., Nangle, B., & Muhamad, W. Z. A. W. (2022). The Impacts of Poverty, Unemployment, and Divorce on Child Abuse in Malaysia: ARDL Approach. *Economies*, 10(11).

CHAPTER TWO

THE CONCEPT AND RULINGS OF *ḤADĀNAH* IN *FIQH*

2.1 INTRODUCTION

Islam provides guidance on all aspects of life, addressing concerns from minor issues like cleanliness to significant matters such as state governance. This encompasses the welfare of children. In Islam, *ḥadānah* denotes the care and responsibility of a child or children after the dissolution of a marriage, whether through divorce or the passing of a parent. The Islamic principles governing *ḥadānah* are derived from the Quran and Hadith, serving as the bedrock for determining the best interests of the child in these circumstances.

In classical texts, the definition of *ḥadānah* exhibits nuanced variations among diverse schools of thought. This chapter will expound the concept of *ḥadānah*, underlining its enduring relevance throughout various epochs and ages. An exploration of these historical and cross-cultural perspectives not only enriches the comprehension but also provides a profound and multifaceted insight into the intricate tapestry of ideas and practices surrounding the realm of child custody. In the modern context, on the other hand, the concept of custody maintains its significance, not only due to its far-reaching implications for family dynamics but also due to its profound effects on legal systems, the provision of social services, and the overall well-being of children. In an era characterized by shifting family structures, rising divorce rates, and the ongoing evolution of gender roles, custody arrangements have grown increasingly multifaceted and intricate.

This chapter seeks to shed lights on the rulings and principles of *ḥadānah* within both classical and contemporary contexts, along with an examination of the current landscape of custody law and practice. It will explore the legal frameworks that underpin custody decisions, the factors considered in determining the best interests of the child, and the practical implementation of custody arrangements within the jurisdiction of Malaysia, with a specific focus on Selangor.

Islam espouses comprehensive (*shumūliyyah*) and universal (*‘ālamīyyah*) values, such rules and practices signify that Islam permeates all aspects of life, ranging from religious practices, personal morality, social aspects, to the spiritual experience. Furthermore, the rules and practices are not restricted to any tribe or land. Consequently, the researcher asserts the principle of *ḥaḍānah* is significant in ensuring the protection of human rights regardless of age. This principle provides a robust resolution by upholding the five objectives and *Sharī‘ah* principles, encompassing religion, life, dignity, intellect, and property.

2.2 CHILDREN IN ISLAM

Children are an invaluable gift from Allah. They are a form of sustenance bestowed by Allah to humanity as a trust and responsibility in their upbringing. In Islam, the goodness and blessings for those who have children cannot be denied. It is a love of the soul, Allah said, "*Beautified for people is the love of that which they desire – of women and sons*" (Ali-Imran:14).¹ The Prophet Muhammad (ﷺ) said, "*Whoever is put to trial by having to raise daughters and he treats them generously (with benevolence), then these daughters will act as a shield for him from Hellfire.*" (Al-Bukhārī, *Jāmi‘ Ṣaḥīḥ*, ed. 1422). Children not only require protection and provisions but also deserve love and respect. An illustrative example is found in a hadith: Abu Huraira reported that al-Aqra’ bin Habis saw Allah’s Messenger kissing Al-Hassan (the Prophet’s grandson). Al-Aqra’ remarked, "*I have ten children, but I have never kissed any of them.*" In response, Allah’s Messenger stated, "*He who does not show mercy towards his children, no mercy would be shown to him.*" (Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, ed. 1955). The Prophet Muhammad (ﷺ) would hug and play with children. There are numerous hadiths that illustrate the Prophet Muhammad's (ﷺ) *akhlāq* towards children. His actions reflect the beauty of Islam and how Islam teaches parents' behaviour towards their children. For instance, when the Prophet (ﷺ) visited his daughter Fatimah, he would always display affection and kindness by actions such as kissing her hand, constantly smiling, and serving his daughter well. Aisha reported,

¹ Ibn Kathir's explanation highlighted that cherishing children is intended to evoke a sense of pride and serve as an embellishment, aligning with the essence of this particular verse.

I have not seen anyone who resembled the Prophet s.a.w in terms of conduct, way, and manners, more than Fatimah." Aisha continued, "When the Prophet saw her coming, he would stand up for her, take her hand, kiss her, and bring her to sit in his place. When the Prophet s.a.w visited her, she would stand up for him, take his hand, kiss him and bring him to sit in her place. (Al-Tirmidhī, Sunan Al-Tirmidhī, ed.1975:700)

This hadith clearly shows the kind behaviour of the Prophet (ﷺ) towards his children. Nowadays, many believe that being a father means being strict and feared by their children, leading them to be less communicative. However, this contradicts the mannerisms exhibited by the Prophet (ﷺ). Some fathers are also overly occupied with work, leaving them with minimal time for their children. They head out early for work and return late, exhausted, resting due to fatigue until the entire day passed. On weekends, they go out with friends, dedicating valuable time to their hobbies. They fail to pay attention to their children. Yet, the Prophet (ﷺ), as Allah's Messenger, the head of the state, and the teacher preaching day and night, still managed to spend time with his daughter, Fatimah, and grandchildren.

Islam regards highly the act of honouring and being kind to family, especially children. The Prophet Muhammad (ﷺ) said, "*Indeed among the believers with the most complete faith is the one who is the best in conduct and the most kind to his family.*" (Al-Tirmidhī, Sunan Al-Tirmidhī, ed.1975:9) This hadith emphasizes that goodness is reflected in how one treats his family, including children, spouse, parents, and siblings. Moreover, Islam doesn't solely advocate for treating children well; it also urges parents to educate them with wisdom. This is evident in Surah Luqman, which narrates the advice of Luqman to his son. Parents are advised to guide their children, especially in matters concerning worshipping Allah. In Surah Luqman, Allah says, "*And (mention, O Muhammad), when Luqman said to his son while he was instructing him, 'O my son, do not associate (anything) with Allah. Indeed, association (with him) is great injustice.'*" (Luqman: 13). This reflects the genuine love of a parent toward his child, teaching him about Allah and steering him away from the intensity of Hellfire.

In conclusion, it is evident that children are a divine blessing, bestowed upon humanity as beloved gifts from Allah. Islamic teachings emphasize the significance of cherishing, safeguarding, and offering suitable education to children. Nurturing children aligns with the noble *Sharī'ah* principle of *Hifẓ Nasl*, ensuring the preservation of

lineage and heritage. Those who responsibly raise and care for their children are promised immense rewards in the eyes of Allah.

2.3 RIGHTS OF CHILDREN IN ISLAM

Islam stands as a faith that not only champions the rights of every individual in its society but also ensures the rights of children. Beyond establishing justice and freedom for all, Islam prioritizes the special protection and rights of the younger generation, ensuring a balanced and comprehensive provision of education, protection, and holistic development that spans every facet of their lives from infancy until they are capable of self-care. Some scholars suggest that children's rights in Islam commence even before birth, by selecting a righteous wife to establish a noble lineage² and become a mother capable of nurturing and educating the child.³

2.3.1 Right to a Good Name

In Islam, during infancy, there are specific responsibilities and rights of the baby that parents are entrusted with, such as: bestowing a good name upon them. It's deemed a fundamental right and a significant obligation of parents. A Muslim child's name is not just a label but an embellishment in this life, an emblem of its faith, and a dignified title for the afterlife. The name should exude the beauty of a new life, echoing its positive connotations, establishing a profound connection between the child and his Creator. It is crucial to properly select a child's name since he will carry it throughout their entire existence and could impact their life positively or negatively. In contemporary times, numerous parents are choosing names for their children that lack meaningful essence, both in Arabic and other languages. Frequently, parents prioritize flashy, glamorous names over those carrying deeper significance. Bestowing a good name is fundamental to the rights of children, as the Prophet himself named children with profound meaning

² Al Zuhaili, *Wahbah Mustafa, Fiqh Islami Wa adilatuhu*, (Dar al-fikr, Damascus: Syria, 2017) Vol 9, 6485

³ Al Sulaiman, *Abdussalam, Tarbiyat al-Awlaad fi Daw'i al-Qur'an wa al-Sunnah*, (Dar al-Muhsin, Qahera: Egypt, 1989) 14

and goodness.⁴ In addition to bestowing a child with a meaningful name, it is both a Sunnah and a child's right to partake in the *'Aqīqah* ceremony.⁵ This practice entails slaughtering two sheep for a boy and one sheep for a girl, symbolizing gratitude to Allah for the gift of the child.⁶

2.3.2 Right to Daily needs

In addition, another right of a child in Islam is to have his daily needs met, including essential provisions, such as food, clothing, shelter, and healthcare. These fundamental necessities stem from the teachings of the Quran and the Sunnah, highlighting the paramount duty of parents to fulfil their obligations to their children. Specifically, the father carries the responsibility to provide for his children according to his capabilities. Failing to fulfil this duty is regarded as a great sin. Allah said,

And the mothers should breastfeed their children for two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is reasonable. No person is charged with more than his capacity. A mother should not be made difficult for her child, nor should the father. And to the [father's] heir is [due] a similar [obligation]. But if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is reasonable. And fear Allah and know that Allah is seeing of what you do (Al-Baqarah: 233).

This verse vividly portrays the crucial nature of a child's nourishment, highlighting the infant's reliance on the mother's milk as a vital source of sustenance. Access to sufficient and nutritious food is another fundamental aspect of fulfilling a child's rights, as proper nutrition is vital for their physical and cognitive development. Furthermore, it outlines the father's duty to provide for the family's essential needs, including housing, clothing, and other essentials.

⁴ Ulwan, `Abdullah Nasih, *Islam aur Tarbiyat al Aulad*, (Dar al-Tasnif, Jami`ah al-`Ulm al-Islamiyyah, Karachi, 1989) Vol 2, 138-44

⁵ Al-Jauzi, Muhamad Abi bakar, *Tuhfatul Maudud Bil ahkam al Maulud*, (Dar al-Bayan, Damascus, Syria, 1971) Vol 6, 36

⁶ Sahih (Vol. 5, Book 41, Hadith 2832)

2.3.3 Right to Education

Education stands as a fundamental right that parents must fulfil for their children. It serves as the cornerstone of an individual's character. Education is not solely a privilege; rather, it is an essential entitlement that fosters intellectual, social, and emotional growth in children, equipping them to lead enriching lives and make valuable contributions to society.⁷ Prioritizing education rooted in religious teachings⁸ and ethics is important in nurturing children into morally upright individuals. Foundational teachings like comprehending the unity of God (*Tawhid*) are imperative obligations to impart to children. Allah said in the Quran, "Read!" (Al-‘Alaq: 1) This verse conveys a powerful message and serves as an encouragement for all humanity to seek knowledge. Beyond religious knowledge, children require lessons in morals and positive conduct.⁹ While religious education builds a moral base, ethical learning enhances their daily character. Guidance on honesty, responsibility, patience, and empathy is crucial, alongside lessons on kindness, assisting others, and environmental care. These teachings foster mutual respect and tolerance. This holistic moral education aims to cultivate children into society-benefiting individuals, infusing goodness and honesty into their actions.

2.3.4 Right to Love and Affection

Ultimately, one of the essential duties that parents are obliged to fulfil towards their children is to envelop them in love and attention. Encouraging attention and affection toward children is a significant imperative. The Prophet Muhammad (ﷺ) said, "Whoever does not show compassion to our young ones and respect to our elders is not of us." (Al-Tirmidhī, Sunan Al-Tirmidhī, ed.1975) This Hadith emphasizes the role of parents in providing affection to their children, highlighting that it is not only a right of children to receive love and care but also a significant responsibility placed upon parents.

⁷ Mansir, F. "Parenting of Children Through an Islamic Education Approach" *EDUKASI: Jurnal Pendidikan Islam (e-Journal)*, Vol 10, No 2 (2022): 259–271.

⁸ Ida Latifatul, "Peran Orang Tua Dalam Mendidik Anak Sejak Dini Secara Islami Di Era Milenial 4.0. *Ta'lim: Jurnal Studi Pendidikan Islam*, Vol2, No 2, (2019): 208–225.

⁹ Aisyah et al, "Pola Asuh Anak Perspektif Surah Luqman". *UInScof*, Vol 1, No 1, (2023): 464–471.

To sum up, within Islam, children's entitlements are delineated into those predating and postdating their birth. It falls upon parents to fulfil these rights given their responsibility, as they will be answerable to Allah for their entrusted duties in the hereafter. Prophet (ﷺ) said in the hadith, *"Each of you is a shepherd and each of you is responsible for his flock."* (Sunan Abī Dāwūd, ed.2007) Additionally, the profound emphasis on creed, worship, morals, and knowledge profoundly molds children's characters, underscoring the essential rights that demand fulfillment for their proper nurturing.

2.4 THE ISLAMIC CONCEPT OF ḤAḌĀNAH

2.4.1 Ḥaḍānah in the Quran

The Quran's revelation, a mercy to the entire universe, encapsulates a spectrum of guidelines concerning laws, be it directly explicit or indirectly inferred. Delving into the sphere of *ḥaḍānah*, the classical Muslim jurists have relied on a verse concerning fosterage as a foundational reference for their interpretations and decisions in custody cases. Allah said, *"...And their mothers shall breastfeed them for two whole years for whoever wishes to complete the nursing"* (Al-Baqarah: 233). Ibnu Kathīr in his tafsīr¹⁰ mentions that the general ruling is that mothers should breastfeed their children for a duration of two years. However, he notes that this period can be completed earlier if both parents mutually agree to it. Here, it becomes evident that, typically, mothers assume significant roles in a baby's initial stages of life, primarily due to their involvement in breastfeeding. Although this sentence does not explicitly detail an automatic transfer of child custody to the mother upon birth, it clearly highlights the mother's primary responsibility for nurturing the infant while breastfeeding.

¹⁰ Ibnu Kathīr, Abi Fida' Ismail, Tafsīr Al Quran Al-‘Aẓīm, (Riyadh: Dār al-Tayyibah, 1999), 1: 532-533.

While the father's role is emphasized in subsequent Quranic verses. Allah said, “.... *And upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity*” (Al-Baqarah: 233). This verse addresses the issue of the financial responsibilities of fathers during the breastfeeding period.¹¹ Fathers are obligated to provide for the mother's needs, such as food and clothing, in a manner that is considered customary and acceptable within the community. This financial responsibility of fathers is to ensure the well-being of both the mother and the child during this critical period. Moreover, Ibnu Kathīr emphasizes that Allah does not burden anyone beyond his capacity.¹² He assures that both parents will not be harmed in fulfilling their respective responsibilities towards the child. The verse also mentions that the financial obligation of father extends to his heirs if the father passes away, implying that the responsibility continues even after his demise. This indicates that Islam allows flexibility in this matter as long as the decision is reached through mutual consultation, with consideration for the child's well-being as the primary concern. This verse outlines the duration of breastfeeding and the financial obligations of fathers during this period. It also emphasizes the importance of mutual consultation between parents when making decisions about the welfare of their children.

Allah said, “.... *And let those [executors and guardians] fear [injustice] as if they [themselves] had left weak offspring behind and feared for them. So let them fear Allah and speak words of appropriate justice*” (An-Nisa’: 9). In this verse, Allah admonishes those entrusted with the responsibility of managing the affairs and wealth of orphans.¹³ They are urged to exercise caution and consider the potential implications as if they were leaving behind their own defenseless children. The verse serves as a poignant reminder for them to act with utmost justice and fairness in their dealings with the orphans, always keeping in mind that they will have to ultimately answer to Allah for their actions. Abandoned young children resemble orphans, deprived of protection and a nurturing environment to experience affection. It is imperative for the faithful to be apprehensive about leaving behind vulnerable heirs who are deprived of resources, incapable of fulfilling their own necessities, and exposed to the risk of impoverishment.

¹¹ Ibnu Kathīr, Tafsīr Al Quran Al-‘Azīm, 1: 532-533.

¹² Ibnu Kathīr, Tafsīr Al Quran Al-‘Azīm, 1: 532-533.

¹³ Ibid, 2: 219.

Ahmad Mustafa al-Maghāri in his *Tafsīr* explains that in the age of *jahiliyah*, the rights of women and children concerning inheritance were overlooked, with only those deemed mature for warfare and acquiring spoils of war being eligible to inherit.¹⁴ Surah An-Nisa, verse 9, urges parents and guardians of orphans not to neglect these children and to anticipate their future vulnerabilities and prepare to meeting their needs. Many children, even those with parents, face similar challenges, underscoring every parent's responsibility in their upbringing and securing their future to prevent marginalization and inefficiency due to a lack of knowledge, skills, opportunities, or support for their growth and development, which are essential and favoured by Allah. Furthermore, through His decree, Allah commands kindness towards orphaned children due to their sensitivity to hurtful words. Allah states, "...and let them speak words of appropriate justice (truth)." (An-Nisa: 9) This sensitivity extends particularly to remarks about their deceased parents, as many orphans endure hurtful words that Allah deems unacceptable.

In a study, titled "*Tanggung Jawab Orang Tua Dalam Mendidik Anak Usia Dini Menurut Al-Qur'an*" (Parental Responsibility in Early Childhood Education According to the Quran), while explaining three aspects or guidance for parents regarding the responsibilities highlighted for parents in Surah An-Nisa verse 9, the author explains the first is to care for vulnerable children, ensuring not to leave them in a helpless state. The second aspect involves educating children in matters of creed, as mentioned in the verse "...So fear Allah" Lastly, the third aspect emphasizes the relevance of being concerned about children's weaknesses, preparing them physically and spiritually to become strong and quality individuals.¹⁵ In essence, Surah An-Nisa highlights the necessity of fulfilling children's needs, stressing the significance of education beyond just financial support and safeguarding them from vulnerability. It urges parents to nurture their children holistically, including imparting religious teachings, securing a more assured path for their future. In the contemporary world, especially in Malaysia, parents who are unable to meet their children's basic needs, such as food or drink, may risk losing their custody rights. The notion that young children inherently fare better under a mother's care isn't an absolute rule; rather, it is an idea open to questioning and discussion. The ultimate determination of custody rights lies within the court's

¹⁴ Al-Maghāri, *Tafsīr Al Maghāri*, (Cairo: Mustofa Halabi, 1946), 4: 190-193.

¹⁵ Sa'adah et al, "Tanggung Jawab Orang Tua Dalam Mendidik Anak Usia Dini Menurut Al-Qur'an. *Tarbiyat Al-Aulad*" *Jurnal Pendidikan Islam*, Vol 4, No1, (2020): 45–56.

discretion, where a thorough assessment of case details and the child's welfare takes precedence.¹⁶ This assessment weighs various factors, including the preferences of both parents and, if feasible, the child's own desires if they're capable of articulating their views.

The Quran offers valuable insights into family dynamics and the responsibilities of parents, encompassing various aspects, including *ḥaḍānah* and guardianship. The Quran lays down fundamental principles that serve as a guiding framework for understanding the concept of *ḥaḍānah* and one of them is parental responsibilities. In Islam, *ḥaḍānah* is viewed as a sacred responsibility, where parents are entrusted with the care and upbringing of their children. Its teachings emphasize the ethical and moral dimensions of parental duties, urging parents to fulfill their role with devotion and compassion. This can be manifested through:

1. Preservation of family ties: By nurturing these family ties, children develop a sense of belonging, support, and a network of care that positively impacts their emotional and psychological development.
2. Equality and justice: Islam emphasizes the equal rights and responsibilities of both parents towards their children. *Ḥaḍānah* arrangements should reflect a balanced and compassionate approach that allows the child to maintain a meaningful and loving relationship with both parents, especially in case of issues due to divorce.
3. Comprehensive development: Fostering their children involves meeting their needs comprehensively, including education, health, and shaping their personalities.

In essence, through these three principles: Upholding family unity, championing fairness and equity, and nurturing the holistic development of the child. Together, these pillars lay the groundwork for a supportive atmosphere where children flourish,

¹⁶ Islamic Family Law (State of Selangor) Enactment 2003 Part VII section 81-105

prioritizing the maintenance of robust familial connections, ensuring impartiality and parity, and cultivating well-rounded growth of children.

2.4.2 *Ḥaḍānah* in Prophetic Tradition

Hadith is an explanation of al-Quran. Islamic tradition contains numerous hadiths that touch upon the subject of *ḥaḍānah*, offering valuable guidance on nurturing and safeguarding children's welfare during challenging times, such as divorce or other circumstances. Within these Hadiths, there are profound insights into the significance of prioritizing the well-being of children and fulfilling the responsibilities of guardianship with utmost care. One aspect of guidance provided by hadith pertains to the matter of custody entitlement. In Islam, the mother is given precedence in terms of custody rights. Abdullah Ibn ‘Amr (may Allah be pleased with him) narrated that a woman said:

O Messenger of Allah, this is my son. My womb was a vessel for him, my breasts were a source of drink for him, my lap was a place for him to curl up. Now, his father has divorced me, and he wishes to take him from me." So Allah's Messenger (peace be upon him) said: "You have a greater right to him, so long as you do not re-marry. (Abu Daud, *Sunan Abu Daud*, ed. 2017)

The Hadith demonstrates the mother's elevated status and her rightful claim to care for and nurture her children. After divorce, the mother is given priority in custody, as her role and responsibilities in raising the children are highly regarded, provided she remains unmarried. This Hadith also conveys an important indication that the mother holds a high position in the right of custody because a child is born from the mother's womb and breastfed from her. Moreover, logically, a mother who has carried in her womb and breastfed her child has a stronger connection with the child,¹⁷ and it leaves a lasting emotional affection if they are separated from the beloved child they have nurtured for nine months. Allah, in His mercy, has established the right balance in His decrees. It is also demonstrated that Islam is fair in providing solutions to custody issues. From the previous hadith, mothers have more rights in custody, especially when

¹⁷ Sweet, L., "Expressed breast milk as "connection" and its influence on the construction of "motherhood" for mothers of preterm infants: A qualitative study." *International Breastfeeding Journal*, Vol 3 (2008).

it comes to taking care of, nurturing, and looking after their children's interests. Moreover, Women usually show more affection to children compared to men. This encompasses the essence of custody.

Abu Hurairah reported: The Messenger of Allah (peace be upon him) said, "*The maternal aunt is of the same status as the mother*" (Al-Tirmidhī, *Tuhfatu Al-ahwazi*, ed. 2011). This hadith addresses that the aunt plays an important role in custody after the demise of the mother or after the divorce, as highlighted through Hadith, recognizing her responsibility and right in caring for the children.

Now, let's explore the roles of providing and determine who bears the primary responsibility. Children's rights are categorized into three main areas;

1. The *Ḥaḍānah* right, predominantly entrusted to women, especially mothers, encircling the nurturing authority over the child.
2. The responsibility of guardianship over the child's well-being, typically falling upon men, notably fathers.
3. The guardianship right concerning the child's assets, wherein the responsibility for safeguarding these assets predominantly rests with men, particularly fathers.¹⁸

Firstly, it is essential to discern the distinctions between *wilāyah* and *ḥaḍānah*. *Wilāyah* can be defined as the ability of an individual to make decisions regarding another person, whether or not that person agrees.¹⁹ Across all schools of Islamic jurisprudence, the concept of *wilāyah* also known as guardianship, designates the father or another male guardian with primary responsibility for a child's well-being until they attain the age of majority. In contrast, *ḥaḍānah* represents a shared duty and right of both parents during their marriage. In the context of divorce, it is commonly the mother or, if she is unavailable, another female relative, who assumes custody of very young children. As the child matures, custody may transition to the father, although the specific age of transfer varies among different Islamic traditions. This implies that father

¹⁸ Zakariyya al-Barri, *Ahkam al-Awlad fi al-Islam* (al-Qahirah: al-Maktabah al-‘Arabiyyah, 1964), 75.

¹⁹ Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu* (Dimashq: Dar al-Fikr, Vol7, No4. (1997).

holds the responsibility for financing education, healthcare, shelter, food and general maintenance, including any other day-to-day expenses that needed for the up-bringing of the children. An example from the time of the Prophet supports this notion, where Hind bint `Utba said,

O Allah's Messenger (ﷺ)! Abu Sufyan is a miser, and he does not give me and my children what is sufficient for us. Can I take from his property without his knowledge?" The Prophet (ﷺ) said, "Take what is sufficient for you and your children with fairness and in accordance with what is reasonable. (Al-Bukhārī, *Jāmi` Ṣaḥīḥ*, ed. 1466: 65).

In this narration, Hind bint `Utba, facing financial difficulties, seeks advice from the Prophet Muhammad (ﷺ) regarding her husband's lack of adequate support for her and their children. The Prophet's compassionate response permits her to take what is necessary to meet their basic needs, ensuring the welfare of the family. Nevertheless, the hadith emphasizes the importance of handling such situations with fairness, moderation, and consideration for the husband's rights, fostering a balanced approach to addressing financial issues within the context of Islamic principles. It can also be understood that the responsibility for providing the necessities and requirements in raising children lies with the father.

2.5 ḤAḌĀNAH IN ISLAMIC JURISPRUDENCE

Islam provides essential guidelines for custodial responsibilities, reinforcing the idea that protecting the rights and emotional welfare of children should be at the forefront of any custody decision. From these hadiths, we glean insight into several cases that occurred during the era of the Prophet Muhammad (peace be upon him). These instances serve as valuable historical examples of *ḥaḍānah* cases in Islam, providing us with a historical overview of how this concept was applied and understood in the early days of the faith.

Islamic Jurisprudence is a comprehensive ethico-legal framework based on the Quran and the teachings of Prophet Muhammad (*Sunnah*). It guides Muslims in matters of worship, ethics, family, economy, crime, and societal conduct, providing a moral and legal compass for their daily lives. The researcher will discuss the definitions, custody

rights, and challenges as per the perspectives of the four major schools of thought (*Madhāhib*).

2.5.1 Definition of *Ḥaḍānah*

These are the definitions of *ḥaḍānah* provided by four renowned scholars.

1. Ḥanafī School: Entrusting the upbringing of the child to those who hold the right to custody.²⁰
2. Mālikī School: Custody involves the safeguarding of the child within their home, overseeing their daily activities, and attending to their needs, including food, clothing, personal hygiene, and other affairs.²¹
3. Shāfi'ī School: It encompasses providing nurturing support to individuals who are unable to fully manage their own upbringing, involving various aspects of growth and development, culminating when the child reaches the age of discernment.²²
4. Ḥanbalī School: Caring for a young, mentally challenged, or mentally impaired person who is incapable of self-protection, nurturing them by addressing their needs. This includes washing the child's head, hands, and clothes, applying ointments, adorning them with kohl, swaddling them in the cradle, rocking them to sleep, and undertaking similar actions for their well-being.²³

Derived from the word '*al-Ḥaḍn*' (الْحَضْن), which means 'the side,'²⁴ because custody has the effect of returning the person under its care to its side. *Ḥaḍānah*,

²⁰ Ibn 'Ābidīn, Muḥammad Amīn, *Radd al-Muḥtār 'ala al-Durr al-Mukhtār*, (Cairo: Muṣṭafā Ḥalabī, 1966), 555.

²¹ Al-Dasūqī, Muḥammad Ibn Ahmad, *Ḥāshiyah al-Dasūqī*, (Beirut: Dār al-Fikr, 2006), 526.

²² Al-Shirbīnī, Shamsuddīn Muḥammad, *Mughnī al-Mūhtāj*, (Beirut: Dar Al-kutb Al- 'Ilmiyyah, 1994), 191.

²³ Al-Bahutī, Manṣūr bin Yūnus, *Kashāf al-Qinā'*, (Beirut: Dar Al-Fikr, 1980), 195-196.

²⁴ Al-Shirbīnī, Shamsuddīn Muḥammad, *Mughnī al-Mūhtāj*, (Beirut: Dar Al-kutb Al- 'Ilmiyyah, 1994), 191.

according to Shāfi'ī school of thought, involves providing nurturing support to individuals who are unable to fully manage their own upbringing. It encompasses diverse aspects of growth and improvement, culminating when the child reaches the age of discernment. While Custody, as defined by Mālikī School, is the preservation of the child in his home, his coming and going, and looking after his interests. This includes providing for his food, clothing, cleaning his body, and taking care of his affairs.

Shāfi'ī school of thought places great emphasis on nurturing and providing support for those unable to fully manage their upbringing until the child reaches the age of discernment. Conversely, Mālikī School defines custody as the fulfilment of a child's needs, commencing with the provision of sustenance and shelter. Although these definitions may seem somewhat dissimilar, they share a common focus on the welfare of children and ensuring that their requirements are met, considering their incapacity to do so on their own.

According to Ḥanafī school, *ḥaḍānah* involves the act of raising a child by those who have the right to custody. He simplifies *ḥaḍānah* as the act of raising a child by those who deserves. He employs the term "*tarbiyah*" to describe this process. In the Arabic language, "تربية" (*Tarbiyah*) as found in *Lisan Al-Arab*, denotes the concept of education or upbringing. It signifies the comprehensive process of nurturing and raising individuals, especially children, in a manner that instils knowledge, values, and skills.

Ḥanbalī School's definition of *ḥaḍānah* includes taking care of a young, insane, or mentally impaired person who is incapable of protecting himself. It includes nurturing them by attending to their interests, which involves washing the child's head, washing their hands, washing their clothes, applying ointments, adorning them with kohl, swaddling them in the cradle, rocking them, ensuring they sleep, and other actions related to their well-being.²⁵ While some scholars do not mention or include mentally impaired individuals in the context of *ḥaḍānah*. Ḥanbalī school, in its detailed definition, explicitly incorporates the care of the mentally impaired under the scope of *ḥaḍānah*. In comparison, only Ḥanafī School introduces the term 'تربية' (*Tarbiyah*) in its

²⁵ Al-Bahuti, Manṣūr bin Yūnus, *Kashāf al-Qinā'*, (Beirut: Dar Al-Fikr, 1980), 195-196.

concise definition. Others fundamentally define *ḥaḍānah* as the provision of physical necessities like housing, food, and other basic needs.

The Ḥanafī and Mālikī Schools provide a concise definition of custody, focusing on young children, excluding the elderly or mentally impaired.²⁶ *Ḥaḍānah* agreed upon by fiqh scholars states that in principle the law of caring for and educating (تربية) children is an obligation for both parents. The term "*Tarbiyah*" is also employed by Ali al-Jurjānī in *al-Ta'rifāt*²⁷ and Nawawi in *Tahrir Alfāḍ al-Tanbīh*.²⁸ According to Ali al-Jurjānī, *Tarbiyah* is a process that entails gaining knowledge and fostering personal development in alignment with Islamic principles.²⁹ It embraces a comprehensive approach, nurturing growth and maturation across physical, emotional, and spiritual dimensions. Given the child's tender age and lack of discernment (*mumāyyiz*), they are more susceptible to influences that might not align with their best interests. So, there is a need for guidance, education, and a good care by their guardians.

In conclusion, the researcher proposes a novel definition for custody, providing care for a child by a suitable guardian. According to the researcher, this definition is both straightforward and comprehensive, encompassing the fulfillment of the child's needs, including love, affection, nutritious food, shelter, healthcare, and proper education. The term "child" applies to individuals from infancy to the age when they can independently care for themselves. "Suitable" denotes individuals who meet the conditions for guardianship, with a caregiver falling within the scope of custodianship entitlements as defined by *fiqh*.

2.6 THE ENTITLEMENT FOR CUSTODY

According to the *Shāfi'ī* School, in cases of separation between a husband and a wife who have a child, whether a boy or a girl, and when the child is below the age of

²⁶ Al-Jiziri, Abdul Rahman, *Kitab Fiqh a'la Mazhab Al-Arba'ah*, (Beirut: Dar Al-kutb Al- 'Ilmiyyah, 1994), 4:522.

²⁷ Al-Jurjani, *al-Ta'rifat*, (Beirut: Maktabah Lubnan- Sahah Riyadhu al-Soleh, 1985), 195-196.

²⁸ Al-Nawawi, *Tahrir Alfāḍ al-Tanbīh*, (Damascus: Dar Al-Qalam, 1408), 291.

²⁹ Sista, T. et al, "Student Moral Guidance Trough Islamic Education System on Pesantren Institution."

discernment, the mother is granted a higher priority in custody over the father.³⁰ In the absence of the child's mother or if she declines custody, the custody entitlement extends to the maternal kin, with priority granted to the maternal grandmother if she is available, being the nearest female relative. Following the maternal grandmother, the paternal grandmother assumes the next position in the order of preference, followed by maternal aunts, with priority given to the closest maternal relative. Subsequently, the custody right is passed on to the full sister, followed by the paternal half-sister, and then the maternal half-sister.³¹

In Mālikī jurisprudence, custody is considered a shared responsibility and is typically granted to women for the upbringing of male children.³² It is recommended for both parents to participate in the child's upbringing, and the mother's role in custody is akin to providing for the child's needs, even if she remains unmarried for an extended period, such as forty years.

In Ḥanbalī school, the custody priority is as follows: the mother has the greatest right, followed by her mother,³³ then her grandmother, and so on. Next in line is the father, followed by his mothers, even if they are elderly. Then come the paternal grandparents, followed by the maternal grandmothers, and then a paternal aunt and maternal aunt. After them, the paternal uncles and maternal uncles are considered. Then come the aunts on the mother's side, and paternal aunts similarly. Siblings have precedence over all of these, followed by those on the mother's side and those on the father's side. There is no custody right for a prohibited relative, such as the son of an aunt or the cousin of the father, nor is there custody right due to nursing.

As for Ḥanafī school, custody is granted to close relatives, both male and female, in the following order: the mother has the greatest right, whether she is married to the child's father or divorced.³⁴ After her, the child's maternal grandmother and then her maternal great-grandmother, and so on. It is important that the maternal grandmother

³⁰ Mustafā al-Khin et al., *Fiqh Manhajī 'Alā Madhhab Al-Shāfi'ī*, (Damascus: Dar Al-Qalam, 1996), 4:192

³¹ Ibid, 192.

³² Bahrām 'Abd Allah, *Kitāb Al-Shāmil fī Fiqh Imām Malik*, (Maghribi: Markaz Najibawaih, 2008), 1:506.

³³ Al-Jiziri, Abdul Rahman, *Fiqh a'la Mazhab Al-Arba'ah*, (Beirut: Dar Al-kutb Al- 'Ilmiyyah, 1994), 4:522.

³⁴ Ibid, 20.

be eligible for custody, and the maternal grandmother's husband has the right to take the child if she remarries, as he becomes the child's adversary. If the child's maternal grandmother passes away or marries someone who is not a prohibited relative, custody then goes to the paternal grandmother, even if she is elderly. The following is a schedule in order for those entitled to custody according to the four schools of thought.

Table 2.1 The entitlement of Custody

Shāfi'ī	Mālikī	Ḥanafī	Ḥanbalī
The mother	The Mother	The mother	The mother
The Grandmother	Maternal Grandmother	Maternal Grandmother.	Maternal Grandmother and great grandmother
Sister from both Parents	Maternal Great Grandmother	The paternal grandmother	The Father
Paternal Grandmother	Priority is given to those who are from the mother's side over those who are from the father's side.	Sister from both Parents	Partenal Grandmother and great grandmother
Her mothers who give specific legacies to female heirs.	Paternal aunt of the same lineage	The sister of the mother.	The grandfather
The grandmother from the father's side.	The aunt from the maternal side	The sister of the father.	The grandfather's mother
Her mothers who give specific legacies to female heirs.	The aunt from the paternal side	The daughter of the paternal aunt of both parents.	The sister of both parents.
Paternal great-grandmother.	The maternal aunt, the biological sister	The daughter of the maternal aunt.	The sister of the mother.
Her mothers who give specific legacies to female heirs.	Maternal one.	The daughter of the paternal aunt.	The sister of the father.
The biological sister.	Paternal one.	Aunts from both parents' sides.	"The paternal aunt (father's sister) of both parents."

To sum up, Islamic custody practices place the child's welfare as the paramount concern. Initially, mothers often receive custody, particularly for young children, guided by the teachings of Prophet Muhammad (ﷺ). Fathers, on the other hand, bear significant responsibilities for financial support and overall upbringing. Extended family members, such as grandparents, may also be considered as custodians if they can provide a stable environment. As children mature and reach an age of discernment, typically around puberty, their custodial preferences are considered, yet the ultimate decision hinges on the child's best interests. This fundamental principle of prioritizing the child's well-being remains central in Islamic custody matters.

2.7 CONDITIONS OF CUSTODIANSHIP

Custodianship is the responsibility of looking after and managing something, which often includes safeguarding assets, property, or people's interests. It involves overseeing and ensuring the proper care or management of something according to certain rules or laws. For example, a custodian might handle a minor's finances until they become adults or manage a property for its owner. The Shāfi'ī school establishes seven conditions for child custody.³⁵ These include the requirement of mental soundness, the freedom of the parent seeking custody as no custody is granted to slaves, both parties involved being Muslim with exceptions for custody between non-Muslims or a Muslim and a non-Muslim, the importance of chastity with no custody for flagrant sinners, trustworthiness as a must, denying custody to those who have been dishonest, residing in the same location as the child (if distinct), and the mother's marital status with prohibited relatives affecting her custody rights. These conditions guide custody determinations within the Shāfi'ī school of thought, emphasizing the need for careful consideration and adherence to specific criteria.

According to the Mālikī school,³⁶ custody conditions encompass several key points. Firstly, the custodian must be mentally sound, as insanity disqualifies them.

³⁵ Al-Jiziri, Abdul Rahman, *Fiqh a'la Mazhab Al-Arba'ah*, (Beirut: Dar Al-kutb Al- 'Ilmiyyah, 1994), 4:522-523.

³⁶ Malik bin Anas, *Al-Muwatta'*, (Diwan Press, 1989)

They should also be physically capable, or have a responsible family member to oversee if they are physically incapable. Ensuring a safe environment for the child is paramount; otherwise, custody rights are forfeited if the location is unsafe. Custody is not granted to those who openly violate religious principles, such as engaging in habitual drinking or adultery. Contagious diseases that endanger the child's well-being are also disqualifying factors. The custodian must be mature and responsible, especially concerning the child's property, if applicable. Furthermore, the custodian cannot marry someone unrelated to the custody rights without losing those rights after a year of silence, except when marrying a close relative like an uncle. These conditions are essential guidelines in custody matters within the Mālikī school, emphasizing the importance of a safe and suitable environment for the child's well-being. No specific requirements for being Muslim or a specific gender; safety concerns can lead to Muslim supervision regardless. If male, females should be available for female children unless safety permits otherwise.

While, according to Ḥanbalī school rules,³⁷ custody requires the custodian to be mentally sound and not a slave. They must also not have physical disabilities like blindness, leprosy, or deafness. The mother can have custody unless she's married to a stranger, except for close relatives like a grandfather. These rules prioritize the custodian's health and family connections.

In accordance with Ḥanafī jurisprudence,³⁸ several conditions govern custody arrangements. Firstly, the mother must remain a Muslim, as converting to another faith results in the loss of custody rights. Additionally, she should not engage in major sinful behaviour or dishonorable work. Marrying someone other than the child's father may lead to custody forfeiture unless the new spouse is a close relative. Ensuring the child's supervision, especially for females, is vital. The father should be financially capable, and the mother should not deny custody without compensation. Custody rights are not granted to slaves or birth-giving mothers, and if the mother is non-Muslim, her conversion is not necessary if the child's faith is secure; otherwise, the father can claim custody. In the event of the mother's death or failure to meet these conditions, custody

³⁷ Al-Jiziri, Abdul Rahman, *Fiqh a'la Mazhab Al-Arba'ah*, (Beirut: Dar Al-kutb Al- 'Ilmiyyah, 1994), 4:522.

³⁸ *Ibid.*

passes to the next suitable guardian. A sound mind is a universal requirement for all custodians.

In General, classic Islamic custody arrangements are governed by several key conditions to ensure the well-being and safety of the child:

1. **Sound Mind:** The custodian must be mentally sound, with no custody granted to the insane or mentally unstable.
2. **Religion:** The guardians must be Muslim in order to obtain custody.
3. **Capability:** The custodian should possess the physical and mental capacity to care for the child, or there must be a responsible overseer available if necessary.
4. **Safe Environment:** Providing a safe environment for the child is paramount, particularly when there's a risk of corrupting influences.
5. **Religious Integrity:** Custody is denied to those openly violating religious principles.
6. **Absence of Contagious Diseases:** The custodian should not have contagious diseases that may harm the child.
7. **Maturity and Responsibility:** The custodian should exhibit maturity and responsibility, especially concerning the child's property if applicable.
8. **Absence of Prohibited Spouse:** The custodian should not be married to a prohibited spouse, with some exceptions for close relatives like uncles.

From these conditions, it becomes evident that Islamic custody arrangements place a strong emphasis on safeguarding the welfare and security of the child. Collectively, these conditions serve as a protective framework that ensures that child's well-being remains paramount in any custodial arrangement. Whether it is the requirement for a mentally sound custodian, the need for a safe and nurturing environment, or the preservation of religious integrity, each condition plays a crucial role in maintaining the child's best interests at the heart of Islamic custody matters. By

adhering to these conditions, Islamic jurisprudence seeks to provide a supportive and secure environment for children under its custodial care.

In short, the concept of *Ḥaḍānah* in classical text is about taking care of a child, typically within the context of Islamic law, while adhering to specific conditions and guidelines aimed at prioritizing the child's overall well-being. *Ḥaḍānah* encompasses the responsibility of ensuring that the child receives proper care, education, and guidance. The primary objective is to create a nurturing and supportive environment that promotes the child's physical, emotional, and spiritual development. It is a concept deeply rooted in Islamic jurisprudence, emphasizing the importance of safeguarding the best interests of the child and ensuring their growth and welfare in accordance with Islamic principles and values.

2.8 CONTEMPORARY PRACTICE OF ḤADĀNAH

In modern context, the fundamental principles established by Islam continue to serve as guiding beacons for today's courts. These principles, deeply rooted in Islamic jurisprudence, provide invaluable direction in contemporary legal contexts. They help ensure that the best interests and welfare of children are upheld in custody cases, even as legal systems evolve and adapt to the complex realities of the modern world. The legal system may vary from one country to another, but several Muslim-dominated countries both within the Arab and Non-Arab world share commonalities. For example, countries such as Egypt, Iran, Jordan, Kuwait, Libya, Bangladesh, Pakistan, Yemen, Tunisia, United Arab Emirates, Brunei, Maldives, Palestine, and Qatar, to name some, along with Malaysia adhere to *sharī'ah* law based legal systems.³⁹

These countries have their own legal system built on a mix of Islamic, civil, and customary laws. Islamic law is a main element of the family and personal lives in the countries such as Egypt, Jordan, Kuwait, Libya, Tunisia, Pakistan, Yemen and UAE. On the other hand, a stricter interpretation of the Islamic law is implemented in the countries like Iran, Bangladesh and Brunei. Legal systems of Palestine, Qatar,

³⁹ Asyesha Rafiq, "Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World (An analysis)", *International Journal of Humanities and Social Science*, Vol 4, No.5 (2014):267

Maldives, and some other countries are different which are based on Islamic law, civil law, and local customs. This enduring connection to Islamic principles highlights the timeless relevance of these foundational guidelines in shaping child custody decisions today. Custody falls into the realm of *muamalat*, rather than *ibadat*, within Islamic jurisprudence. It is considered a matter of civil transactions and not strictly a religious ritual or worship.⁴⁰ Consequently, custody arrangements can be influenced by changes in societal norms and practices over time.

Islamic jurisprudence plays a central role in shaping family and custody laws in many Muslim-majority nations, providing a solid foundation for these legal structures. These frameworks frequently draw from nuanced interpretations of Quranic principles and Hadith, shaping their regulations within this sphere. Nevertheless, the extensive range of interpretations and applications of Islamic law creates a rich tapestry of custody regulations that can diverge significantly from one country to another. Some jurisdictions may espouse more traditionalist viewpoints, while others have adopted more forward-looking family laws. In the context of divorce or separation, custody determinations consistently prioritize the child's paramount welfare, aligning with Islamic law's profound concern for the child's well-being. The age at which a child can express their custodial preferences varies, with specific nations permitting children as young as seven years old to participate in the custodial decision-making process. Across many Muslim-majority countries, mothers are routinely granted automatic custody of young children up to a certain age, contingent upon their suitability as caregivers, a practice rooted in the belief that mothers are inherently best positioned to care for young children.

The financial responsibility for the child often rests with the father, even if custody is awarded to the mother. Some countries have instituted specific guardianship laws that meticulously outline the rights and responsibilities of both parents, in addition to potential custodial roles for other family members. In certain nations, a distinct separation exists between civil and religious courts, with religious courts typically entrusted with handling custody matters, sometimes guided by the interpretations of religious scholars. In response to contemporary ideals of gender equality and child

⁴⁰ Ibid

welfare, several countries have introduced progressive legal reforms within their family laws, endeavoring to strike a harmonious balance between Islamic principles and modern legal standards. Additionally, the implementation and adherence to custody laws in Muslim-majority countries are profoundly influenced by local cultural norms, traditions, and prevailing schools of thought.

2.9 MAQĀṢID AL-SHARĪ‘AH OF ḤADĀNAH

When addressing child custody matters, *Maqāṣid al-Sharī‘ah* directs judges and policymakers to prioritize the child's best interests, taking into account these fundamental principles. According to al-Ghazali, *Maqāṣid al-Sharī‘ah* is considered a *Maṣlaḥah*.⁴¹ While *Maṣlaḥah*⁴² is defined as,

"Preserving the purposes or objectives of Islamic law. There are five objectives in Islamic law for creatures, which are preserving religion, life, intellect, lineage, and property. Anything that aims to preserve these five fundamentals is considered a *Maṣlaḥah*, and anything that can harm them is a *mafsadah*. Avoiding the occurrence of a *mafsadah* is also considered a *Maṣlaḥah*."

While Hamzah Hussain⁴³ says contemporary scholar Ahmed al-Raysuni has put forth a comprehensive definition. He describes *Maqāṣid al-Sharī‘ah* as "*The consideration of the higher objectives of Sharī‘ah within the framework of jurisprudential reasoning and legal judgments, with the ultimate goal of attaining justice*". This definition by Ahmed al-Raysuni highlights the importance of incorporating the broader objectives of Islamic law into the process of legal reasoning and decision-making. It promotes the pursuit of justice and balance as the ultimate aims of *Maqāṣid al-Sharī‘ah*, guiding scholars and jurists in ensuring that the principles of *Sharī‘ah* serve these fundamental objectives.

⁴¹ Baharuddin et al., "An Appraisal of Maqāṣid Al-Sharī‘ah Classic and Recent Literature: Systematic Analysis." Universiti Sains Islam Malaysia, (2019).

⁴² Khairil Anwar, et al., "Maqāṣid Sharī‘ah According To Imam Al-Ghazali And Its Application In The Compilation Of Islamic Law In Indonesia", *Malaysian Journal of Sharī‘ah and Law*, Vol 9, No.2 (2016):75-87

⁴³ Hamzah Hussain, *Ahkam Ḥadānah fī Dawā’ al-Maqāṣid Sharī‘ahh*, (Saudi: University Umm Qura’, 2015), 17.

Ḥaḍānah is closely related to *Maqāṣid al-Sharī'ah*, where the *Sharī'ah* prescribes custody as a means to protect significant objectives in a child's life, ranging from the preservation of *ad-din* to the safeguarding of property. Among these objectives, the preservation of life takes central stage, highlighting its utmost importance. Children are invaluable gifts from Allah, and Islamic law has established regulations to ensure these objectives are met. However, there are instances where some parents neglect these custody rights, tragically resulting in fatalities. In Malaysia, the heartbreaking reality is that 220 children were reported to have lost their lives due to abuse from 2018 to 2022.⁴⁴ Allah said, “*And do not kill your children for fear of want: We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin*” (Al-Isra':31). In Islam, taking a life, especially that of a child entrusted as a gift from Allah, is considered a major sin and is strongly condemned. Allah grants children as a trust, and it is a betrayal when a child is unjustly taken or killed, regardless of the reasons behind such an act. A hadith says;

“Which is the biggest sin in the Sight of Allah?” He said, “That you set up a rival (in worship) to Allah though He alone created you.” I asked, “What is next?” He said, “Then, that you kill your son, being afraid that he may share your meals with you.” I asked, “What is next?” He said, “That you commit illegal sexual intercourse with the wife of your neighbour” (Al-Bukhārī, *Jāmi' Ṣaḥīḥ*, ed.2003: 4761)

This Hadith refers to the era of *Jahiliyah* when people would kill their children out of fear of poverty and it demonstrates that taking the life of one's own children is a major sin that is strongly disapproved of by Allah. This issue is deeply distressing and calls for immediate attention. Under contemporary laws, a person may lose custody rights over their child if they are found capable of causing harm to the child, all in pursuit of safeguarding the objective of preserving life.⁴⁵

One of the key objectives of *Ḥaḍānah*, among its multifaceted aims, is to ensure the preservation of the child's religious faith. Esteemed scholars from diverse schools

⁴⁴ Royal Malaysia Police, “220 Kanak-Kanak Didera Mati, Ibu Pelaku Tertinggi”, The official Portal of Royal Malaysia Police, 2023, <https://www.rmp.gov.my/news-detail/2023/05/01/keratan-akhbar-pilihan-220-kanak-kanak-didera-mati-ibu-pelaku-tertinggi>

⁴⁵ Hunter, R., *Contemporary issues in family law in England and Wales. In The Cambridge Companion to Comparative Family Law*, (London: Cambridge University Press, 2019), 19-47.

of thought are in agreement that adherence to Islam is a fundamental requirement for securing custody rights. This condition serves the greater purpose of safeguarding the child's religious upbringing. Consequently, custody will be awarded to either the mother or father who is a Muslim. Notably, in Malaysia, an individual's religious affiliation under the age of 18 is ascribed based on their parents' religious beliefs.⁴⁶ Consequently, in cases of divorce involving parents of differing faiths, the determination of the child's custodian becomes a matter of great importance. This decision significantly shapes the child's faith and spiritual development, highlighting the critical role that *Ḥaḍānah* plays in nurturing the child's religious foundation.

Another crucial aspect within *Ḥaḍānah* is its objective of preserving lineage, a matter of utmost significance. In some countries, there are practices of attributing illegitimate child to the biological father, which contradicts religious rulings. However, *Ḥaḍānah* offers a comprehensive solution by outlining clear principles for determining deserving custodians, ensuring the preservation of lineage through the upbringing of children. This approach is instrumental in preserving the heritage and lineage of children. It highlights the importance of maintaining the continuity of family lines and heritage. Furthermore, *Ḥaḍānah* plays an important role in addressing contemporary challenges related to custody and ensuring that the well-being and future of the children are properly safeguarded.

In conclusion, *Ḥaḍānah* in Islamic family law is related to the *Maqāṣid al-Sharī'ah*, which includes a wider aim of Islamic law. *Ḥaḍānah*, primarily aimed at safeguarding the well-being and rights of children, aligns with the fundamental objectives of preserving life, lineage, and religion. The preservation of life, one of the five essential objectives of *Maqāṣid al-Sharī'ah*,⁴⁷ is paramount in *Ḥaḍānah* decisions. It ensures the child's physical and emotional welfare, reflecting the sanctity of life in Islam. The lineage, another objective, is maintained through *Ḥaḍānah* by regulating the child's parentage and protecting their rights to maintain their lineage. Furthermore, *Ḥaḍānah* plays a crucial role in upholding the child's religious upbringing, aligning with the objective of preserving religion. As such, *Ḥaḍānah* decisions are not only a matter of legal responsibility but also a reflection of the *Maqāṣid al-Sharī'ah's* core values. By

⁴⁶ Article 12 (4) of the Federal Constitution.

⁴⁷ Al-Dasūqī, Muhammad Ibn Ahmad, *Ḥāshiyah al-Dasūqī*, (Beirut: Dār al-Fikr, 2006), 526.

prioritizing the preservation of life, lineage, and religion in custody determinations, Islamic family law ensures the holistic well-being of children and adheres to the higher objectives of the Shari'ah.

2.10 CONCLUSION

Ultimately, we have learned that the concept of *Ḥaḍānah* revolves around the well-being and care of children. It is crucial to emphasize that it encompasses not only the child's physical needs but also their mental and personal development. Spiritual education should be provided adequately, and children should be nurtured with love and affection. It is essential to understand that custody in Islam goes beyond determining who takes care of the child; it prioritizes the child's welfare. Islam seeks to prevent divorce whenever possible to ensure that children receive love and the roles of both mother and father, as both play undeniable roles in a child's healthy upbringing and development. However, Islam, with its wisdom, provides solutions in case of divorce so that the child can continue to enjoy a good quality of life with their well-being intact. This chapter further underlines, within Islamic jurisprudence, *Ḥaḍānah*'s relationship with the concept of *Maqāṣid shari'ah*, with the primary goal of safeguarding vital objectives, notably religion and life. Finally, it is evident from this study that *Ḥaḍānah* has a substantial impact on the legal framework in Malaysia, especially in Selangor. The legal system is closely connected with the principles of Islamic law, particularly concerning the custody and well-being of children, reflecting the comprehensive nature of *Ḥaḍānah* in ensuring the best interests of the child.

CHAPTER THREE

MAJOR CAUSES AND IMPACTS OF ABUSE OF *HADĀNAHIN*

MALAYSIA

3.1 INTRODUCTION

Upon understanding the concept of custody and considering viewpoints from historical and contemporary scholars, it is evident that Islam places significant emphasis on prioritizing children's well-being. Despite this, there are ongoing and varied violations of this fundamental right, including instances of abuse and neglect. Alarming, research highlights a concerning uptick in cases contributing to child mistreatment and parental neglect, prompting substantial concerns. This chapter seeks to delve into the factors behind child abuse and its implications for both children and society. Ultimately, the aim is to identify the root causes and establish measures to prevent such abuses within the Malaysian community.

A total of 6,770 cases of child neglect were reported under the Department of Social Welfare Malaysia's Child in Need of Care and Protection cases for the year 2022.¹ This significant figure is not to be underestimated; it is a testament to our society's need for more awareness and intervention in safeguarding the rights and well-being of our children. Child abuse cases, falling within the scope of Child in Need of Care and Protection, as defined in the Child Act 2001, Part V, Chapter 1, Section 17, includes a wide array of circumstances.² The Department of Social Welfare classifies these cases into four distinct categories: physical abuse, emotional abuse, sexual abuse, and neglect.

¹ Bernama, "Squad Waja Insaniah bantu Tangani kes dera kanak kanak", *Bernama*, 2 November 2023, <<https://www.bernama.com/bm/am/news.php?id=2240849>>

² Elizabeth A. Gunderson et al., "Parent Praise to 1- to 3-Year-Olds Predicts Children's Motivational Frameworks 5 Years Later", *Child Development*, Vol 34, No5 (2013). 1526-1541

According to Bassam Al-Shatti, abuse (التعسف) is the utilization of a legitimate right in an illegitimate manner.³ Child Abuse is not just a violation of a child's rights but also a major offense against their basic needs and dignity, as articulated in the Child Protection Policy of Malaysia.⁴ It disrupts their right to develop in a safe and honorable environment while risking their overall survival. Physical abuse is intentional bodily injury.⁵ It involves intentional bodily harm, such as slapping, pinching, choking, kicking, shoving, or the improper use of drugs or physical restraints. Sexual abuse, on the other hand, is the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.⁶ This category includes sexual slavery, pornography, sodomy, rape and sexual assault. Emotional abuse, on the other hand, involves intentionally inflicting mental or emotional distress.⁷ This form of abuse may manifest in various ways, including intimidation, coercion, ridicule, harassment, treating an adult like a child, isolating an adult from family, friends, or regular activities, using silence to control behaviour, and engaging in yelling or swearing that leads to mental distress. Neglect, on the other hand, refers to the ongoing and serious failure to provide for the basic physical, emotional, and developmental needs concerning a child's health, education, emotional development, nutrition, protection, and a safe living environment.⁸

While in Islam, according to Hazwani Hamdzah (2016), Child abuse is violation of children's basic physical and emotional needs as well as development in terms of health, education, religion, moral conduct, spirituality, emotions, nutrition, shelter, and security. It is also considered a violation of Allah's trust (*Amānah*) where punishment

³ Basam Shatti, "Al-ta'assuf fī al-Isti'māl Al haqq", *Al Anba*, 1 November 2017, <<https://www.alanba.com.kw/kottab/bassam-alshaty/786985/01-11-2017-%D8%A7%D9%84%D8%AA%D8%B9%D8%B3%D9%81-%D8%A7%D8%B3%D8%AA%D8%B9%D9%85%D8%A7%D9%84-%D8%A7%D9%84%D8%AD%D9%82/#>>

⁴ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, "Laporan Statistik 2019", *Jabatan Kebajikan Masyarakat*, (2019)

⁵ David J. Hansen et al., "Child Physical Abuse", *Psychology, Department of Faculty Publications, Department of Psychology, University of Nebraska – Lincoln* (1999). 127-150

⁶ "What is sexual exploitation, abuse and harassment?", *UNHCR*, <<https://www.unhcr.org/my/what-we-do/how-we-work/tackling-sexual-exploitation-abuse-and-harassment/what-sexual-exploitation> >

⁷ W. Kosmowski, "Mental health and sexual health - two modern definitions and their impact on holistic care" *European Psychiatry*, Vol64, no1, (2021): S448–S448.

⁸ Turney, D., & Tanner, K. (2005). "Research and Practice Briefing: Understanding and Working with Neglect" *Research in Practice*.

will be due on the Day of Judgment.⁹ Allah said, “Indeed, we offered the Trust (*Amānah*) to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it. Indeed, he was unjust and ignorant.” The verse highlights that human willingly accepted the entrusted responsibility from Allah, including free will and moral judgment, despite their limitations and inclinations toward injustice and ignorance. This chapter delves into the multifaceted issue of child abuse, elucidating the factors that contribute to the infringement of children's rights and well-being. By examining these factors, our goal is to gain insight into the root causes of these distressing cases, thereby paving the way for effective prevention and protection measures. Additionally, this chapter will expound upon the implications of neglecting these rights on both children and society.

3.2 ḤADĀNAH IN MALAYSIAN SHARĪ‘AH LAW

3.2.1 The legal structure of Malaysia

The foundation of Malaysia's legal system is rooted in the English legal tradition, combining the elements of a parliamentary democracy and Constitutional Monarchy.¹⁰ The Federal Constitution of Malaysia stands out for its distinct separation of authority into legislative, judicial, and executive branches, a principle that is upheld at both the federal and state levels. The parliament of Malaysia, the federal assembly, carries the responsibility of enacting federal laws that apply uniformly across the nation. Furthermore, individual state legislative assemblies are entrusted with the task of formulating state laws, governing local administrations and possibly including specific Islamic laws tailored to the unique context of each state.¹¹ This denotes, Malaysia's legal framework follows a distinctive dual-track system. Firstly, civil courts are responsible for handling legal issues affecting the entire population. Concurrently, the nation

⁹ Hazwani Hamdzah and Raudhotul Firdaus, “Child Abuse In Malaysia: An Overview From Islamic Perspective”, *Journal of Global Business and Social Entrepreneurship (GBSE)*, Vol2, No3 (2016) 36-47.

¹⁰ Mohamed Noordin and Shanthi Supramaniam, “An Overview of Malaysian Legal System and Research”, *Hauser Global Law School Program*, 2016, <<https://www.nyulawglobal.org/globalex/Malaysia1.html#OriginsofModernMalaysianLaw>>

¹¹ Mohamed Noordin and Shanthi Supramaniam, “An Overview of Malaysian Legal System and Research”, *Hauser Global Law School Program*, 2016, <<https://www.nyulawglobal.org/globalex/Malaysia1.html#OriginsofModernMalaysianLaw>>

maintains Islamic *Sharī'ah* courts that exclusively preside over cases involving religious and moral concerns, but with jurisdiction limited to Muslim Malays.¹² *Sharī'ah* law, which centers on ethical and family matters, is applicable solely to the Muslim community.

In contrast, non-Muslims in Malaysia are governed by secular laws in addressing similar matters. This parallel legal system ensures that Muslims can face trial under Islamic *Sharī'ah* law for violations of religious and moral standards, while non-Muslims are bound by the nation's secular legal structure to address comparable issues. This well-defined separation of powers ensures a robust legal framework in Malaysia, guided by democratic and constitutional principles.¹³

Each of Malaysia's states has introduced its own Islamic Family Law Administration Enactment, albeit under different titles, and at varying points in time. For instance, Selangor adopted this enactment in 1952, Sarawak in 1954, Pahang in 1956, Melaka in 1959, Pulau Pinang in 1959, Negeri Sembilan in 1960, Kedah in 1962, Perlis in 1964, Perak in 1965, Kelantan in 1966, the Federal Territories in 1974, Sabah in 1977, and Johor in 1978.¹⁴ The primary purpose of these legislative acts is to unify and reform Islamic administrative laws concerning the establishment, structure, and management of Islamic and *Sharī'ah* courts in their respective jurisdictions. In Selangor, the framework governing custody in cases involving Muslims falls under the purview of ACT 303, specifically the Islamic Family Law of Selangor under Part VII, section 81-105, which addresses the critical aspects of guardianship and *Ḥaḍānah*, or the custody of children.¹⁵ In Arabic terminology, guardianship is denoted as '*Wilayat*,' and custody is referred to as '*ḥaḍānah*.' Custody, in essence, involves the physical and material care and possession of children, with the Arabic equivalent '*ḥaḍānah*' emphasizing the notions of 'training' and 'nurturing the child.' Conversely, guardianship relates to the possession of the child, entailing the responsibility for their personal

¹² Kali Robinson, "Understanding Sharia: The Intersection of Islam and the Law." *Council on Foreign Relations*, (2021): 1–10.

¹³ Farid Sufian, "Administration of Islamic law and human rights: The basis and its trajectory in Malaysia." *Al-Jami'ah*, Vol 56, No 2 (2018): 281–304.

¹⁴ Abdul Monir Yaacob, "Perlaksanaan Perundangan Islam di Malaysia: Satu Penilaian", *Journal of Fiqh*, No. 6 (2009), 1-20.

¹⁵ "Islamic Family Law (State of Selangor) Enactment 2003", *Government of Selangor Gazette*, (2003), 56:52-60.

welfare and property. The Arabic term '*Wilayat*' embodies the principles of 'protection' and 'defense' in this context.¹⁶

3.2.2 The Entitlement of Custody in Malaysian Law

Across all schools of Islamic jurisprudence, the concept of *wilāyah* designates the father or another male guardian with primary responsibility for a child's well-being until they attain the age of majority. In contrast, *ḥaḍānah* represents a shared duty and right of both parents during their marriage.¹⁷ According to *Sharī'ah* law in the Selangor state of Malaysia, an individual holding the right to educate a child is entitled to exercise the *ḥaḍānah* rights, provided they meet specific criteria. These criteria include being a Muslim, possessing sound mental faculties, meeting age requirements necessary to provide the child with care and affection, demonstrating good conduct aligned with Islamic ethics, and residing in an environment where the child is shielded from adverse moral or physical consequences. In compliance with these conditions, the person is granted the authority to undertake the responsibilities of *ḥaḍānah*, ensuring the child's well-being and upbringing in accordance with the tenets of *Sharī'ah* law.¹⁸

In essence, the fundamental principle regarding child custody designates the mother as the primary caregiver. However, Selangor's Islamic laws introduce specific circumstances in which this custody right may be revoked. If the mother marries someone who doesn't have a legally recognized connection to the child, it is considered a prohibited union that can negatively impact the child's well-being. Nonetheless, the right to custody can be reinstated if the marriage is dissolved.¹⁹ Additionally, custody may be forfeited if the mother conducts herself openly and egregiously immorally or if she changes her residence to obstruct the child's father from providing necessary supervision, with exceptions for divorced wives. Apostasy or the mistreatment and neglect of the child can also result in the loss of custody. These conditions, established

¹⁶ Asyesha Rafiq, "Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World (An analysis)", *International Journal of Humanities and Social Science*, Vol 4, No.5 (2014):267

¹⁷ Ibid

¹⁸ "Islamic Family Law (State of Selangor) Enactment 2003", *Government of Selangor Gazette*, (2003), 56:57

¹⁹ "Islamic Family Law (State of Selangor) Enactment 2003", *Government of Selangor Gazette*, (2003), 56:57

in accordance with Selangor's Islamic laws, are intended to ensure the child's best interests and well-being remain paramount in determining custody arrangements.

In brief, the fundamental laws in the state of Selangor concerning child custody closely align with Islamic laws, as they fall under the jurisdiction of the *Sharī'ah* Court. Part 82 to 88 of the Selangor Islamic Family Law concerns with the problem of custody. Country law clearly defines entitlement, qualification, and situation that requires custody in Children. Article 82 defines how custody of a child is determined while article 83 examines conditions that permit one to get custody. The reasons how and for which custody is suspended or restricted are found in Section 84, and the duration of those restrictions in Section 85. An Act regulating possession of children born from illegal relationships is part of the section 86 while the court is endowed with the power to make custody orders through the section 87. In addition, Section 88 provides that they may include conditions. Further in the section titled "Guardianship of Person and Property," Sections 89 to 105 expand on details on matters of guardianship. Section 89 identifies those individuals eligible for guardianship, and Section 90 specifies their powers over immovable and movable property. The appointment of guardians by the Court is considered in Section 91, and Section 92 provides for a mother to be appointed as a testamentary guardian. Section 93 covers shared guardianship arrangements with the mother, while Section 94 addresses the alteration of powers of the guardian of property. Issues such as removal of guardians, security requirements, and limitations on powers given by the Court are specified in Sections 95, 96, and 97. The sub sections 98 and 99 are concerning the finance side of guardians, such as the inability of guardians to discharge capital property and their power to support minors out of income. Details for special orders for small estates are contained in Section 100, while applications for opinions are in Section 101. The court's right to issue prohibition orders as stated in Sections 102 to 104 are also addressed. Lastly, Section 105 permits the Court to bar children from being deported from Malaysia.²⁰ Together, they provide the legal framework for custody and guardianship in Selangor.

However, it is important to note that Section 83 grants the court the discretion to place a child in the custody of one of the individuals specified in the section or, under

²⁰ Islamic Family Law (State of Selangor) Enactment 2003, Part VII, section 81-105.

exceptional circumstances, with any other person or organization whose objectives include the welfare of the child.²¹ This provision allows the court to make decisions that prioritize the child's best interests and well-being, even if it deviates from the standard custody arrangements outlined in the law. In the process of determining custody arrangements, the *Sharī'ah* Court considers several pivotal factors, including the expressed wishes and preferences of the child's parents regarding custody,²² as well as the desires and preferences of the child, particularly if they have reached an age where they can express their own opinions and preferences.²³ These considerations are integral to the court's decision-making process, aiming to prioritize the child's best interests and welfare while ensuring that their voices and the consensus of both parents are taken into account in the final custody determination.

In conclusion, it is evident that the concept of *ḥaḍānah*, whether examined in a classical or modern context, fundamentally revolves around ensuring the well-being of children. Whether within classical Islamic jurisprudence or within today's legal frameworks, the notion of custody, often referred to as *ḥaḍānah*, remains centered on the paramount concern for the child's welfare. This encompasses the provision of their physical, emotional, and ethical needs, the creation of a secure and nurturing environment, and the making of decisions that serve the child's best interests. Classical and contemporary texts alike emphasize the critical role of custody in ensuring the rights and well-being of children. While the details of laws and practices have evolved, the enduring principle of prioritizing the child's best interests remains a central theme in classical and modern interpretations of custody. This enduring consensus underscores the continuous importance of protecting and nurturing the next generation in Islamic and legal contexts.

Similarly, akin to many predominantly Muslim nations, Malaysia has established legal frameworks to protect children's rights. Nevertheless, concerns persist

²¹ "Islamic Family Law (State of Selangor) Enactment 2003", *Government of Selangor Gazette*, (2003), 56:58

²² "Islamic Family Law (State of Selangor) Enactment 2003", *Government of Selangor Gazette*, (2003), 56:58

²³ "Islamic Family Law (State of Selangor) Enactment 2003", *Government of Selangor Gazette*, (2003), 56:58

regarding the occasional disregard and abuse for these rights. The researcher will delve into this issue in the forthcoming sections.

3.3 RELEVANCE OF *HADĀNAH* IN TODAY'S MALAYSIA

Hadānah, a fundamental concept in Islamic jurisprudence, places paramount importance on the care, nurturing, and overall well-being of children. In the context of the modern world, this principle assumes an important role in safeguarding the physical, emotional, and psychological welfare of children, particularly in the midst of divorce or family disputes. The contemporary relevance of this concept becomes evident when examining the disconcerting statistics in Malaysia. Between 2020 and 2022, the Social Welfare Department (JKM) reported a staggering 18,750 cases of child abuse,²⁴ encompassing various forms of maltreatment, from physical and sexual abuse to emotional neglect, abandonment, and parental absence, among others. The sheer magnitude of these cases in just a span of two years is deeply concerning, highlighting the pressing need for a robust custodial framework that ensures the welfare and safety of children.

Alarming trends are further underscored by the National Health and Morbidity Survey (NHMS), which reveals that a shocking two out of every three children in Malaysia have been exposed to violent forms of punishment.²⁵ Such experiences can undoubtedly leave long-lasting scars on their psychological and emotional well-being, reinforcing the significance of revisiting and enhancing the principles of custody in contemporary Islamic jurisprudence. This topic delves into the multifaceted significance of custody in safeguarding the rights and welfare of children in today's world and the urgent need for comprehensive reforms to address the alarming challenges faced by children in Malaysia and beyond.

It also offers a critical legal framework for the establishment of custody and guardianship rights. This framework assumes vital importance when addressing a

²⁴ Ova, "18,750 Cases Of Child Abuse, 13,529 Cases Of Domestic Violence In Malaysia From 2020 To 2022", *Galen Centre* 3 July, 2023, <https://ova.galencentre.org/18750-cases-of-child-abuse-13529-cases-of-domestic-violence-in-malaysia-from-2020-to-2022/>

²⁵ *Ibid* 84

multitude of family and child-related legal matters, encompassing divorce, inheritance, and child protection. As delineated earlier, Islamic jurisprudence wields a substantial influence in shaping the legislative landscape that pertains to Muslims in Malaysia, forming the very bedrock of statutes established for this purpose. An example of this dynamic can be witnessed in ACT 303, a legislation that intricately delves into the domain of Islamic family law. This statute, also known as the '*Undang-Undang Keluarga Islam*,' encompasses comprehensive provisions governing diverse facets of family law, with a dedicated section specifically addressing matters of custody.²⁶ Through the provisions outlined in this act, Malaysia has effectively put into practice fundamental Islamic jurisprudential principles, particularly those pertaining to the well-being and nurturing of children within the familial framework. The sustained significance of custody principles within the modern legal framework serves as a testament to their enduring relevance and their pivotal role in safeguarding the rights and welfare of children.

Moreover, the concept of *ḥaḍānah* holds considerable significance in discussions concerning gender roles and the respective responsibilities of fathers and mothers in the upbringing and care of their children. It plays a crucial role in ongoing dialogues about gender equality and the principles of shared parenting, emphasizing the distinct responsibilities borne by each parent. This concept serves as a foundation for examining and redefining traditional gender norms and reinforcing the idea that both mothers and fathers share the vital duty of nurturing and providing for their children. By emphasizing these responsibilities, *ḥaḍānah* encourages a more balanced distribution of parenting roles and fosters a deeper understanding of the essential contributions made by both parents in the holistic development of their children.

Lastly and most importantly, stressing the best interests of the child holds a universal significance and is particularly pertinent within the context of Malaysia, especially Selangor. It serves as a fundamental framework for making decisions that prioritize the well-being of children, aligning with modern principles of child rights and ensuring their welfare. For instance, consider a scenario in which the mother has remarried and is unable to adequately care for her child. In such cases, custody may be

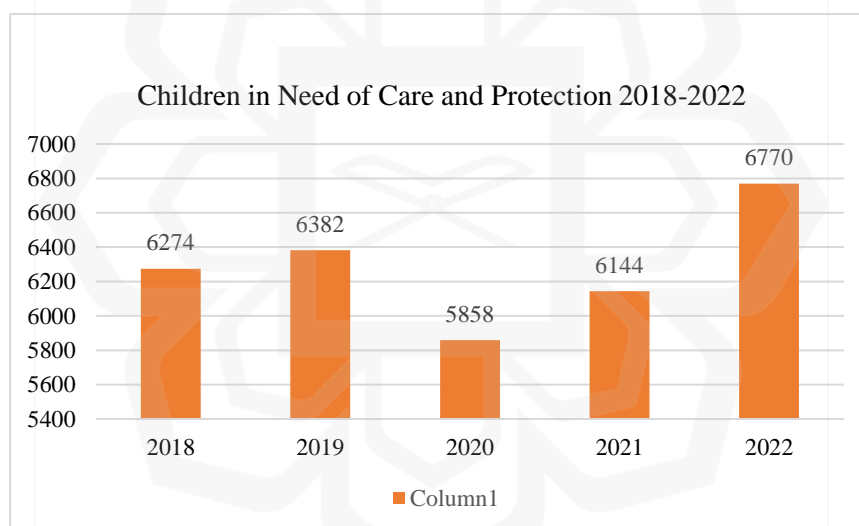
²⁶ "Islamic Family Law (State of Selangor) Enactment 2003", Government of Selangor Gazette, (2003), 56:58

granted to the father to ensure the child's welfare. Another example arises when one or both parents lack a stable source of income. This can lead to a potential loss of custody rights, all in the pursuit of safeguarding the child's best interests. Furthermore, in cases of abuse or mistreatment, these circumstances become important factors that can alter custody arrangements in Malaysia, as the paramount objective remains the protection and well-being of the child. By adhering to these principles, Malaysia's legal framework demonstrates a commitment to upholding the rights and welfare of its children, making them a central focus in matters of custody and guardianship.

In conclusion, Islamic jurisprudence wields a profound influence in custody matters and holds significant relevance in custody cases within Malaysia, particularly in the state of Selangor. Its impact is multifaceted, with far-reaching implications across various dimensions of child welfare, the legal framework, and parental roles. Islamic jurisprudence, in the context of custody, serves as a guiding compass, helping determine the well-being and rights of children in Selangor and the broader Malaysian context. It provides a set of principles that not only safeguard the interests of children but also ensure that custody decisions align with the fundamental values of justice and compassion. Within the legal framework, the principles derived from Islamic jurisprudence contribute to the formulation of laws and regulations that govern custody cases. These legal provisions are essential in establishing the rights and responsibilities of parents, thereby ensuring a fair and balanced resolution of custody matters. In Selangor, specifically, the impact of Islamic jurisprudence on custody cases is particularly noteworthy, as it plays an integral role in shaping legal decisions and policies that address the welfare and rights of children. The principles of justice and compassion inherent in Islamic jurisprudence underpin custody decisions, providing a framework that prioritizes the best interests of the child. In summary, the significance of Islamic jurisprudence in custody matters extends far beyond the legal realm, touching upon the welfare of children, the construction of legal frameworks, and the redefinition of parental roles. Its influence, particularly within the unique context of Selangor and Malaysia, underscores its enduring importance in shaping the landscape of custody cases and the lives of children.

3.4 STATISTICS OF THE ABUSE OF CUSTODIAL RIGHTS IN MALAYSIA

There are numerous factors contributing to the neglect of custody. The following are statistics from the past five years, specifically between 2018-2022, as reported by the Department of Social Welfare Malaysia. As previously mentioned, the group of children categorized as requiring care and protection covers those who have unfortunately been subjected to various forms of abuse, including but not limited to physical, emotional, sexual abuse or neglect as delineated in Section 17. Additionally, it includes cases demanding safeguarding measures for children who have faced adverse circumstances. In the context of this specific research study, the primary investigative focus will be directed towards cases involving the mistreatment and neglect perpetrated by parents and caregivers.



Bar Chart 3.1 (Children in Need of Care and Protection 2018-2022)²⁷

Bar chart 3.1 illustrates the inconsistency in the number of children in need of protection. While the differences in the numbers are not significantly large, they are a cause of concern. In 2018, a total of 6,274 children were classified as children in need of protection, and this number increased by an additional 108 children in 2019. Then, in 2020, there was a slight decrease in the count, but it still remained at a worrisome

²⁷ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, “Laporan Statistik 2019”, *Jabatan Kebajikan Masyarakat*, (2018-2021)

level. Moving to 2021, the count saw another increase, with 6,144 children requiring protection from abuse and neglect.

Lastly, In the most recent year, the number of children in need of protection surged to 6,770.²⁸ The Malaysian Government, under the Department of Social Welfare, has established the Rumah Tunas Harapan (RTH) as a means of caring for neglected children by their guardians or biological parents. Foster mothers appointed by the Department of Social Welfare take care of 8-10 children in a Rumah Tunas Harapan. The role of these foster mothers is to provide care and nurturing to the children in a family-like environment, focusing on their mental, physical, and spiritual development. These homes offer children the opportunity to experience family life and receive affectionate care to ensure their physical, mental, social, emotional, and psychological stability. Assistance provided includes shelter, meals, and beneficial activities for their well-being.

Table 3.1 (Statistics on child abuse and neglect in general)

Case	Physical Abuse Sec. 17(1)(a)-(b)	Emotional Abuse Sec. 17(1)(a)-(b)	Sexual Abuse Sec. 17(1)(a)-(b)	Neglect Sec. 17(1)(d)-(e)II
2018	1703	124	1705	1096
2019	2196	120	1856	2182
2020	1646	185	1915	1667
2021	1614	184	1962	1665
2022	1632	92	1705	2340

Table 3.1, on the other hand, depicts the distribution of cases related to physical, emotional, sexual, and neglectful abuse over the years. The diagram illustrates cases of abuse in general, whether perpetrated by parents or caregivers, as well as crimes committed by strangers against children. Observing the data for the year 2018, the instances of physical abuse amounted to 1703 cases, while in 2019, the chart indicates

²⁸ Bernama, "Squad Waja Insaniah bantu Tangani kes dera kanak kanak", *Bernama*, 2 November 2023, <<https://www.bernama.com/bm/am/news.php?id=2240849>>

a sudden spike with 2196 cases of physical abuse reported. Subsequently, in 2020 and 2021, the numbers decreased to 1646 and 1614, respectively. Yet, in the most recent year, namely 2022, there was another spike in cases, rising from 1614 to 1632. In contrast, cases of emotional abuse from 2018 to 2022 consistently remained lower in number than physical abuse. In 2018, there were 124 cases, slightly decreasing to 120 in the following year. The count then rose to 185 in 2020, remaining consistent at 184 in 2021. Lastly, the lowest cases reported were in 2022, with a total of 94 cases. Among them is a chart depicting cases of protection related to sexual abuse. In 2018, there were 1705 children in need of protection due to sexual abuse, while in 2019, the number increased to 1856. It further rose to 1915 in 2020, 1962 in 2021 and a slight decrease in 2022, amounting to 1705 cases. Unfortunately, in cases of sexual abuse, there is an upward trend every year. The final category is cases of neglect of children's fundamental needs and child abandonment. In 2018, there were a total of 1096 reported cases, but there was a significant surge in 2019, reaching 2182 cases. Subsequently, the chart reveals a decline and stabilization, with 1667 cases in 2020 and 1665 in 2021, which spiked to 2340 cases in 2022.

Table 3.2 (Statistics of Children in need of Care and Protection by offenders)²⁹

Case	2018	2019	2020	2021	2022
Biological Mother	1711	1519	1668	1943	1801
Biological Father	1715	1035	870	1160	908
Biological Siblings	94	99	80	49	61
Stepmother	119	187	56	61	41
Stepfather	137	201	175	217	197
Foster parents	137	109	33	67	42
Baby sitter	428	435	283	274	310

²⁹ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, "Laporan Statistik 2018,2019,2020, 2021", *Jabatan Kebajikan Masyarakat*, (2018-2021)

Table 3.2 offers a thorough insight into the statistics concerning children in need of care and protection, categorized by the type of offender, spanning the period from 2018 to 2022. The data highlights the frequency of cases involving various perpetrators, including Biological Mother, Biological Father, Biological Siblings, Stepmother, Stepfather, Foster Parents, and Babysitter. The figures showcase fluctuations in reported cases over the five-year duration, providing valuable perspectives on the intricate landscape of child welfare and protection within diverse relationships and caregiving roles.

Noteworthy findings from the table reveal that Biological Mother consistently emerges as the primary offender each year since 2015, with Biological Father consistently securing the second-highest position in the list of offenders. Babysitters significantly contribute to cases of children in need of care as the third-highest offender. Stepparents closely follow, while biological siblings are the least frequent offenders in this context. This observed pattern contrasts with conventional expectations, as individuals entrusted with the *amānah* by Allah to care for the child are typically anticipated to prioritize the child's well-being. The statistical analysis sheds light on an unexpected trend in the data.

Bar chart 3.1 and Table 3.1 and 3.2 offer a comprehensive and insightful portrayal of the total count of children necessitating protection, along with a detailed breakdown of cases involving various forms of abuse and neglect occurring throughout Malaysia. This is a subject of profound concern, particularly when we consider that these vulnerable individuals are very young children who are facing these distressing situations. The data reveals that, in general, cases of sexual abuse consistently report higher numbers compared to incidents of emotional and physical abuse. It is noteworthy that, while the exact figures may exhibit fluctuations from year to year, they persist at disconcerting levels, focusing on the urgency of addressing this issue. These numbers play an important role in the identification of contributing factors and understanding its implications on both children and society at large.

An observation made is the consistent predominance of Selangor among the states, where the highest number of children requiring protection has been reported for five consecutive years. In 2018, Selangor recorded 1,910 cases out of the total 6,274

reported cases. This trend continued into 2019, with 1,831 cases out of 6,382. Even in 2020, Selangor reported 1,831 cases out of 5,858, and in 2021, the count was 1,830 cases out of 6,144.³⁰ This persistent trend in Selangor brings out the need for focused efforts and intervention in protection of children in the region. Selangor has maintained its leading position, closely followed by the Federal Territory of Kuala Lumpur. In 2018, Kedah secured the third spot in the statistics of cases involving children in need of protection. Shifting the focus to 2019, Sabah emerged as the third-ranked state with a total of 537 cases, trailing behind the Federal Territory with 1,358 cases. This trend continued in 2020, with Sabah consistently holding the third position with 485 cases. In 2021, Sabah's case count further increased to 692 cases, maintaining its place in the third position.³¹ These findings highlight the urgency of understanding and addressing the issues affecting child safety in Selangor, and it is imperative that we delve into the factors that underlie these unfortunate trends.

3.5 ROOT CAUSES OF CHILD ABUSE AND NEGLECT IN MALAYSIA

Children are invaluable assets of the nation. Therefore, it is crucial to ensure their protection and well-being. Studies have also confirmed that children raised in a loving and nurturing environment tend to grow into strong and high-quality individuals in society in the future.³² It is important to highlight that statistical records are based on the reports and complaints received, and this number is not a matter to be taken lightly. Beyond the reported cases, it is crucial to acknowledge that there are numerous instances of abuse that go unreported. Many individuals choose to remain silent due to fear, shame, or threats, refraining from bringing these distressing incidents to light. However, it is of importance to address this issue based on factual information. This study will place its primary focus on the statistics provided, clarifying on the magnitude of the problem as reflected in the data. The abuse of children's custodial rights can be categorized into four types: physical abuse, emotional abuse, sexual abuse, and neglect.

³⁰ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, "Laporan Statistik 2018,2019, 2020, 2021", *Jabatan Kebajikan Masyarakat*, (2018-2021)

³¹ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, "Laporan Statistik 2018,2019, 2020, 2021", *Jabatan Kebajikan Masyarakat*, (2018-2021)

³² Britto PR, et al., "Nurturing Care: Promoting Early Childhood Development", *The Lancet*, Vol 389, No10064, (2017). 91-102.

These actions are deemed sinful and morally reprehensible within the context of Islamic law. Allah said,

"Verily, the blame is only upon those who commit wrongdoing among the people and act tyrannically on earth without justification. They are the ones who will face a punishment that causes them no suffering." (al-Syura: 42).

In this verse, Allah asserts that those who oppress will face severe consequences. It signifies that oppression is a sinful act, one that is inhumane, unjust, and cruel³³. Hence, inflicting harm or causing suffering is also considered a form of oppression. Wahbah Zuhaili in His Tafseer Al-Wajiz interprets,

Scorn and punishment await those who oppress people, cause harm, spread corruption on the earth unjustly, act arrogantly, and unjustly inflict harm upon others, taking what is not rightfully theirs. For them, there will be a painful punishment in the Hereafter.³⁴

Through this verse, it can be understood that acts of oppression, whether they involve physical abuse, mental abuse, neglect, or any other form, are considered great sins with severe consequences. It is not merely an Islamic transgression but also an ethical and moral wrongdoing. It is Important to recognize and address these forms of abuse, as they not only violate the rights and well-being of individuals but also contravene the ethical principles and values upheld by Islamic jurisprudence. As in Hadith, Prophet (ﷺ) said "*There should be neither harming nor reciprocating harm.*"³⁵ This hadith conveys the message that no one should cause harm to another person be it physical abuse, emotional abuse or sexual abuse because it will have a profound impact, particularly on children. This will also be discussed in this chapter later.

In four separate reports from 2018 to 2021, the Department of Social Welfare (JKM) has outlined 19 factors of child abuse that fall under the jurisdiction of the Department of Social Welfare.³⁶

³³ Dewan Bahasa dan Pustaka

³⁴ Wahbah Zuhaili, Tafsir Al -Wajiz, (Syria: Dār al-Fikr, 1996).

³⁵ Sunan Ibn Majah No.2341

³⁶ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, "Laporan Statistik 2018,2019, 2020, 2021", *Jabatan Kebajikan Masyarakat*, (2018-2021)

Table 3.3 (Reported factors of Child abuse in Malaysia)

Year	2018	2019	2020	2021	2022
1. Family dispute	958	839	742	732	558
2. Financial Problem	870	714	530	516	331
3. Negligence of Parent	815	768	576	688	2452
4. Traditional belief	26	48	26	11	24
5. Alcoholism	59	88	47	90	51
6. Gambling	24	39	18	15	1
7. Drug addiction	518	648	447	444	319
8. Involved in crimes	146	169	114	114	107
9. Sexual maniac	113	146	149	137	234
10. Abuser with mental health issues	116	93	40	85	82
11. Abuser as a victim of abuse	18	61	13	24	11
12. Influenced by boyfriend	742	1032	857	987	580
13. Hyperactivity	58	16	25	20	43
14. Raised by others during childhood	120	258	161	110	84
15. Stepchild/adopted child	111	221	149	122	77
16. Illegitimate child	181	290	234	291	183
17. Disabled child	10	34	18	22	47
18. Unknown cause	477	621	1050	1075	726
19. Others	912	297	662	661	1343

Table 3.3, provided by the Department of Social Welfare, illustrates 19 factors that influence cases of child abuse. Upon closer examination of this table, several key factors warrant our attention. Among these factors, the one with the highest count is parental neglect, accounting for a total of 5,299 cases over the five-year period. Being influenced by boyfriend come in second place, with 4,198 cases reported during the same period. Family dispute follows closely behind in third place, with 3,829 cases. Financial problems rank fourth, with 2,961 cases, and drug addiction is the fifth factor with 2,376 reported cases. These are the top five factors that have the highest occurrences over the five-year period.

In the research titled "Child Abuse Factors In Malaysia: An Analysis," Norsaleha Salleh et al. categorize 19 factors, distinguishing between those originating from parents (the perpetrators), those stemming from the victimized children, and those arising from

various other causes.³⁷ The factors stemming from parents for the years 2018-2022 include 12 out of the 19 child abuse factors. These include parental negligence, following boyfriends, family conflicts, financial factors, substance abuse, sexual promiscuity, parents' involvement in crimes, parents facing mental issues, parents being abuse victims, gambling, alcohol addiction, and cultural beliefs. As mentioned, the five factors with the highest statistical figures are, parental neglect with 5,299 cases, mothers following boyfriends, totaling 4,198 cases over the five years, family conflicts with 3,829 cases, and financial problems with 2,961 cases over five years. These are the top four factors stemming from parents. Following closely are drug addiction with 2,376 cases over five years, sexual promiscuity with 779 cases, parents' involvement in crime with 543 cases, the perpetrator having mental issues with 459 cases. Alcohol addiction ranks ninth with 335 cases. Meanwhile, cultural beliefs rank tenth with 135 cases, perpetrator having been abused with 116 cases, and gambling is the last on the list with 97 cases.

Meanwhile, the factors arising from the children themselves include five out of the 19 overall factors: hyperactivity, being raised by others during childhood, adopted and stepchildren, illegitimate children, and children with disabilities. However, factors arising from the children contribute less to cases of child abuse. In the first place among the factors is illegitimate children, totaling 1179 cases, followed by children raised by others during childhood with 773 cases in second place. Adopted and stepchildren rank third with 680 cases, children with disabilities come fourth with 131 cases, and lastly, hyperactive children with 119 cases.

The last category includes other factors contributing to child abuse. There are 3,949 cases categorized as unknown, and 3,875 cases fall under miscellaneous reasons. Among those included in the miscellaneous category are uncomfortable living conditions, mothers being married to someone else, and unruly and irritable children. Welfare department's report highlights these factors as contributors to the ongoing abuse cases. It is evident that there are significant elements requiring attention and urgent intervention to curb the occurrence of abuse. Nevertheless, in addressing this issue, a comprehensive exploration and unravelling of the foundational factors at the

³⁷ Norsaleha Mohd Salleh et al., "Faktor Penderaan Kanak-Kanak Di Malaysia: Satu Analisis", *E-Prosiding Persidangan Antarabangsa Sains Sosial dan Kemanusiaan*, (2019). 7-19.

heart of the problem are essential for effective solutions. The researcher will categorize the mentioned factors into three divisions:

- Individual factors
- Familial factors
- Social factors

3.4.1 Individual Factors of Child Abuse in Malaysia

Individual factors encapsulate the distinct qualities, experiences, and traits that make each person one-of-a-kind. They encompass elements like personality, beliefs, attitudes, values, emotions, motivations, and past encounters. These aspects collectively shape an individual's identity and influence how they perceive and interact with the world. Including aspects within a person or system that affect how they behave or make decisions, typically under their direct control. Upon closer examination, these are factors that can be controlled. An individual has the power to manage things within his control. As the Prophet said, *“The Pen has been lifted from three: from the sleeper until he wakes up, from the child until he reaches adolescence, and from the insane person until he recovers, or comes to his senses.”* (Musnad Ahmad, 1183).

The hadith highlights the exemption of certain individuals from accountability during periods of incapacity: sleepers, children, and those mentally incapacitated. It underscores that these individuals are not held accountable due to their inability to fully comprehend or control their actions. This stresses the weighty responsibilities (*Mas'uliyat*) and rights (*Huquq*) given to parents by Allah. They're entrusted with the guidance, education, and protection of their children during their crucial developmental stages, ensuring their holistic welfare. Parents bear the authority to shape and supervise their children's upbringing, as well as acknowledging the immense trust placed upon them to fulfil these sacred duties in the sight of Allah.

Firstly, factors falling into this category include parents engaging in alcoholism, gambling, drug addiction, criminal activities, sexual addiction, the abuser once being a

victim of abuse, and adherence to traditional beliefs. These factors reflect the lifestyle choices made by the parents themselves and are closely tied to addiction. These substance abuse cases, such as addiction of drugs and alcohol, that can impair judgement and contribute to abusive behaviour require therapy to learn healthier coping mechanisms. Although overcoming addiction is challenging, it is a matter that parents need to pay attention to. Negative addiction can have detrimental effects not only on individuals but also on families and communities. Additionally, Islam strongly emphasizes not putting oneself in situations that pose harm or danger. Allah said, "...And do not throw yourselves into destruction. And do good; indeed, Allah loves the doers of good" (Al-Baqarah: 155). The *sharī'ah* principles highlight the paramount importance of steering clear from actions that could bring harm or detriment to oneself. The legal maxim of "*Dharar yuzal*"³⁸ accentuates the necessity of evading any potential self-harm, covering not only physical safety and health but also the well-being of individuals in social and moral contexts. Even though these factors may not be a prominent contributor to the overall cases of abuse, if effectively managed, they have the potential to significantly reduce child abuse cases.

Furthermore, Parents who have a history of abuse and neglect contribute to what is commonly termed as the cycle of intergenerational violence.³⁹ Victims of abuse are prone to exhibiting violent behaviour towards their children, and if left uncontrolled, this cycle of violence will persist from one generation to the next. Lastly, among the factors categorized as individual factors is the mental health issue faced by them. Mental health represents a state of well-being that empowers individuals to navigate life's challenges, recognize their capabilities, learn and work effectively, and contribute to their community. It is a fundamental aspect of health, influencing our collective and individual abilities to make decisions, form relationships, and shape our environment.⁴⁰

³⁸ Sayyed Muhsin et al., "Framework for harm elimination in light of the Islamic legal maxims", *Islamic Quarterly*, Vol 63, No 2, (2019): 233–272.

³⁹ Sunny Lim "Breaking the Generational Curse", *BTSADV National Voice of Domestic Violence*, 3 March 2019, <https://breakthesilencedv.org/breaking-the-generational-curse/#:~:text=Abuse%20tends%20to%20be%20a,they've%20suffered%20and%20observed.>

⁴⁰ "Mental health", *World Health Organizations*, 17 June 2022, https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response/?gclid=Cj0KCCQiAjMKqBhCgARIsAPDgWlw4ecPB64FYiaJALTSycfEclF0ifkqpp_p_NPl4dGPPuIXw0PPrFxsAajphEALw_wcB

Mental health is not only a basic human right but also essential for personal, community, and socio-economic development.

Nevertheless, mental illness, including various mental health conditions, can severely impact mood, cognition, and behaviour.⁴¹ Examples include depression, anxiety disorders, schizophrenia, eating disorders, and addictive behaviours. In some instances, the severity of mental health conditions can reach a point where they become uncontrollable, leading individuals to act impulsively and engage in abusive behaviour. In the time of the Prophet Muhammad, a woman approached him suffering from a mental illness, epilepsy. She requested the Prophet's healing. He gave her the choice: to remain patient and attain paradise or to seek a cure. The woman chose patience but asked the Prophet to pray for her that she might not reveal her *aurah* during her seizures.⁴² This act of the Prophet acknowledges that mental illness is a genuine ailment, as significant as physical illness. It is beyond human control but can be addressed and requires treatment.

3.4.2 Familial Factors of Child Abuse in Malaysia

Familial factors refer to elements within a family environment that can influence an individual's development, behaviour, and well-being. These factors include family structure, dynamics, relationships, parenting styles, communication patterns, support systems, cultural practices within the family, and the overall atmosphere at home. Family dispute is conflict between individuals with familial ties or those who were part of a family in the past.⁴³ Conflict within a family is inevitable, but the inability to address it through effective communication is a characteristic of dysfunctional

⁴¹ Nakayama M. et al., "Possible Long-Term Effects of Childhood Maltreatment on Cognitive Function in Adult Women With Posttraumatic Stress Disorder." *Front Psychiatry*. Vol 24, No 11 (2020). 344. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7212372/>>

⁴² Ṣaḥīḥ al-Bukhārī, no.5652

⁴³ Jayesh K.G is a seasoned Psychologist of high repute, operating out of Thrissur and Kochi. Presently, he serves as a Consultant Psychologist & Child Specialist at POSITIVE Psychotherapeutic Clinic in Thrissur. Previously, Jayesh contributed his expertise as a Consultant Psychologist at the Department of Child and Adolescent Guidance Clinic, Healing Minds in Kochi. Moreover, he holds a pivotal role in leading the Child and Adolescent Guidance Clinic at CHILD Development & Psychotherapy Clinic in Kodungallur and Olive Health Care in Vatanapalli.

families.⁴⁴ However, parents play a crucial role in maintaining family harmony. For divorced couples, maintaining a healthy relationship is important to raise children harmoniously. Allah commands husbands who divorce their wives to treat them kindly and uphold positive relationships.

Lodge them where you dwell, according to your means, and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth. And if they breastfeed for you, then give them their payment and confer among yourselves in the acceptable way; but if you are in discord, then there may breastfeed for him another woman. (Talaq: 6)

This quranic verse explains that a husband who divorce his wife should still treat her kindly even after the divorce. This shows that Islam promotes harmony and imparts great wisdom concerning the upbringing of children growing up in an environment where parents have divorced. According to psychotherapy expert Tina Gilbertson,⁴⁵ a major cause of hostility is severely damaged self-esteem due to divorce. Therefore, ex-spouses may act defensively, attacking each other to regain their self-worth. If the conflict involves partners or former partners of the mother or father, it is essential for the mother and father not to unleash all their anger and pressure onto the innocent child. Similarly, when conflicts arise between a parent and their child, it is crucial for parents to resolve them maturely rather than resorting to violence or neglecting the child.

Moreover, another factor falling into this category is a hyperactive child. Although Norsaleha⁴⁶ attributes it to children, it is crucial to recognize that unrealistic expectations about a child's behaviour or development are ultimately the responsibility of the parents. These expectations, if not managed appropriately, can lead to frustration and, in some cases, prompt abusive actions. It is essential for parents to understand and set realistic expectations for their children, considering individual differences and developmental stages, to foster a healthy and supportive environment. Recognizing that

⁴⁴ Mohd Imran and Ansa Muzaffar, "Effect of dysfunctional family on Self-esteem and social anxiety of young adults" *Journal of Emerging Technologies and Inovative Research (JETIR)*, Vol 10, No 6 (2023)

⁴⁵ Tina Gilbertson, a licensed psychotherapist situated in Denver, Colorado, specializes in providing therapy for parents experiencing estrangement from their adult children.

⁴⁶ Norsaleha Mohd Salleh et al., "Faktor Penderaan Kanak-Kanak Di Malaysia: Satu Analisis", *E-Prosiding Persidangan Antarabangsa Sains Sosial dan Kemanusiaan*, (2019). 7-19.

hyperactivity may be a natural aspect of a child's temperament helps parents approach it with patience and constructive strategies rather than resorting to abusive behaviours.

Additional factors within this category include parental neglect, which is particularly evident when the affected individual is a stepchild or an adopted child. Despite the challenges of caring for a child not biologically related, the entrusted duty demands utmost commitment. Such circumstances should never justify neglect, let alone abuse. The exemplary conduct of Prophet Muhammad (ﷺ) shines in his profound care for children, exemplified by his attentive nurturing of Zaid bin Harithah, his adopted son who willingly chose to reside with him despite having his biological family. Zaid was once a slave and later adopted by Prophet Muhammad (ﷺ).⁴⁷ Extending compassion and nurturing a child who is not biologically related exemplifies a relationship founded on love and benevolence. This serves as an example of their connection and the affection between them.⁴⁸

3.4.3 Societal Factors of Child Abuse in Malaysia

Societal factors consist of a multitude of elements that mold how individuals behave, what they believe, and the opportunities available to them within a society. These factors emerge from the wider societal setting, including cultural traditions, the values upheld by the community, the way society is structured, economic frameworks, technological progress, political climates, educational possibilities, and the impact of media. They carry substantial weight in determining collective attitudes, shaping communal conduct, establishing social conventions, and steering the overall direction of a society. These factors can have an impact on the entity but are beyond its direct control.

In the context of child abuse and the report issued by Welfare department, factors in this category involve financial issues and the abuser being influenced by boyfriend. Financial problems are a significant contributor to cases of child abuse,

⁴⁷ Irfan et al., "The Existence of a Mandatory Will for Adopted Children in Fiqh and Islamic Compilation Law.", *Syah Kuala Law Journal*, Vol 5, No 3 (2021): 293–304.

⁴⁸ Fithrotin, et al., "Adopsi Anak Dalam Perspektif Al-Qur'an Surah Al-Ahzab Ayat 5", *Al Furqan: Jurnal Ilmu Al Quran Dan Tafsir*, Vol 6, No 1, (2023):105–120.

ranking second in the list of highest contributing factors in abuse cases in Malaysia. Economic conditions, currency values, job opportunities, unemployment, and salaries are external factors beyond an individual's direct control. These factors create pressure on parents and not only contribute to child abuse⁴⁹ but also play a role in the increased divorce rate. Financial difficulties can also induce stress, and high levels of stress with inadequate coping mechanisms may result in frustration and aggression, elevating the risk of abusive behaviour. Parents facing economic difficulties, such as poverty and unemployment, will also struggle to meet their children's basic needs, ultimately leading to child neglect. This is also highly contradictory with Islamic teachings as Allah said,

“Say, 'Come, I will recite what your Lord has prohibited to you. He commands that you not associate anything with Him, and to parents, good treatment, and do not kill your children out of poverty; We will provide for you and them. And do not approach immoralities - what is apparent of them and what is concealed. And do not kill the soul which Allah has forbidden except by right. This has He instructed you that you may use reason.” (Al-An'am: 151)

This verse explains the prohibition of killing children due to fear of poverty or scarcity of sustenance. It strongly condemns taking lives, especially based on fears related to provisions, as sustenance is within the knowledge of Allah. Allah states in Surah Al-Isra: “We shall provide for them, and for you as well.” (Al-Isra':31).

Other factors, such as a child being raised by someone else from an early age, are circumstances beyond the control of parents. However, it is crucial to highlight that the care and affection provided by parents to their children are choices they make. Discussion in this section is to explore and distinguish between individual and familial factors and societal factors contributing to child abuse. The primary goal is to discern elements that fall within the sphere of parental control and those that extend beyond their influence in order to develop intelligent courses of action. These solutions, intricately linked to the identified factors, will be thoroughly discussed in the final segment of this study.

In summary, the issue of child abuse in Malaysia is linked to various factors, totaling 19 influences. These factors cover from common family conflicts and substance

⁴⁹Zaidi Yob et al., “The Impacts of Poverty, Unemployment, and Divorce on Child Abuse in Malaysia: ARDL Approach” *Economies* Vol 10, No11 (2022): 291.

abuse to how cultural beliefs and disabilities affect abuse dynamics. However, the researcher has categorized these 19 factors into three main groups: individual, familial and societal. Understanding this distinction allows us to thoroughly identify solutions to address these abuse cases. Individual factors, like traditional belief, drug addiction, alcoholism, gambling, sexual addiction, and criminal activities fall within parental control. Addressing these requires raising awareness about *amānah* and parental responsibility. Educating and supporting children within such conflicts is crucial in preventing abuse in these areas.

However, familial and societal factors, like economic challenges and influences by others need collaboration among various groups, including government bodies, social organizations, and mental health professionals. Addressing economic disparities and improving mental health support require joint efforts. Further elaboration on possible strategies to address this will be explored in next chapters, discussing possible solutions to curb rising abuse rates effectively.

3.4.4 Causes of Child Abuse: An Islamic Perspective

Upon examining the factors contributing to child abuse in Malaysia, it becomes evident that various moral transgressions serve as the underlying causes of this abuse. Acts such as following boyfriend, involvement in drugs and illicit substances, alcohol consumption, sexual addiction, and gambling are among the sins that contribute to the abuse of children. Moreover, the act of abuse itself is a transgression against the trust and commandments of Allah. Therefore, the researcher feels the need to address this issue to identify the fundamental factors behind these moral failings, ultimately leading to the abuse of children.

Firstly, it is undeniable that Satan is the foremost enemy of Muslims. Indeed, Iblis has vowed to misguide the Muslim community on Earth. According to the Quran, Iblis said, *“Since You have led me astray, I shall surely sit in ambush for them on Your Straight Path”* (Al-A‘raf :16) This verse shows Satan’s intention to misguide the humankind. He has influenced human to commit sins and cause havoc on Earth. Similarly, he enticed desires in paradise, leading Prophet Adam and his wife, Hawwa

to be punished by descending to live as inhabitants on Earth.⁵⁰ In the Quran, Allah describes how Iblis is a clear enemy, one to be avoided, and urges seeking protection from his deceptions and schemes. Allah said, "*And tell My servants to say that which is best. Indeed, Satan induces among them. Indeed, Satan is ever, to mankind, a clear enemy*"(Al-Isra':53) Satan will do everything in his power to deceive and mislead humans with false promises and deceitful schemes, trapping them into wrongdoing. However, on the Day of Judgment and in Hell, he will abandon humans to face the consequences of their actions.

And Satan will say when the matter has been concluded, 'Indeed, Allah had promised you the promise of truth. And I promised you, but I betrayed you. But I had no authority over you except that I invited you, and you responded to me. So do not blame me; but blame yourselves.'
(Ibrahim: 22)

This verse explains that Satan will disassociate himself from all his temptations towards humanity, asserting that humans will bear the responsibility for their actions in the world. The verse also indicates that Satan tempted and made promises, ultimately leading humans astray into sin.

Among the core factors leading someone to commit sins and mistakes is the individual himself. In Surah Yusuf, Allah says, "*And I do not acquit myself. Indeed, the soul is a persistent enjoiner of evil, except those upon which my Lord has mercy. Indeed, my Lord is Forgiving and Merciful*" (Yusuf: 53) Within humans resides a soul that inclines towards wrongful desires. Those who heed this inclination can fall into falsehood. Additionally, a neglectful self, forgetful of Allah, tends to commit sins. "*And do not be like those who forgot Allah, so He made them forget themselves. Those are the defiantly disobedient*" (Al-Hashr: 19) Defiantly disobedient refers to those persisting in sin. A self lacking God-consciousness neglects remembrance of Allah's punishment, leading one to commit sins without fear. In cases of child neglect, the perpetrators forget they will be held accountable for their actions. In this category, the wrongdoers might also lack knowledge. The knowledgeable and learned individuals fear Allah because they comprehend the immense power of Allah and the severity of His punishment for those who commit sins. "*Those truly fear Allah, among His*

⁵⁰ Al-Basri, Tafsīr Al-Thobari, (Syria: Dār al-Fikr, 1996). 16:563

Servants, who have knowledge." (Al-Fatir: 28) The meaning of the verse is that it is not just anyone who fears Allah, but it is those who possess knowledge and understanding. Allah has revealed that indeed, those who truly fear Him are the knowledgeable ones.⁵¹ In summary, one's own inclination towards personal desires and lack of knowledge are driving factors behind someone committing sins.

Lastly, among the factors driving someone to make mistakes is external influence. It could be driven by peer pressure, family influence, or even by predecessors, such as parents, grandparents, or others before them. Allah says, "*...And if you obey most of those upon the earth, they will mislead you from the way of Allah. They follow not except assumption, and they are not but falsifying.*" (Al-An'am: 116) This verse explains that following anyone blindly will lead to deviation. Their existence in that deviation isn't based on belief but on assumption and falsehood. Therefore, It is crucial for someone to act with beneficial knowledge to differentiate between what's right and what's wrong. Thus, pray to be among those who are guided, as "*Indeed, your Lord is most knowing of who strays from His way, and He is most knowing of the guided.*" (Al-Qalam: 7).

To sum up, three factors that might influence someone's actions in committing sins are the temptation of Satan, one's own inclination either due to following personal desires or lack of knowledge, and influence from others, be it friends, parents, or predecessors.

For an effective solution, there is a need to have a strong moral foundation that is taught through education and religious teachings. By coaching critical thinking and self-awareness, we give people the opportunity to understand and resist Satan's temptations and personal inclinations. Allah said, "*Do they not reflect within themselves? Allah created the heavens and the earth, and everything between them, in truth and for an appointed term. Yet many people deny they will meet their Lord.*" (Al-Rum: 8) Aside from that, positive peer interactions and advice from reliable mentors or faith leaders are powerful tools that can change bad ideas from others. As per Allah's command in the Quran, "*And We did not send before you except men to whom We*

⁵¹ Ibn Taimiyyah, Majmu Al Fatawa, (Saudi: Mujma' Malik Fahad, 2004). 17:21

revealed [Our message]. So ask the people of the message if you do not know.” (Al-Nahl: 43) Today, however, we have no messengers, but the scholars are their inheritors.

3.5 3.5 CONSEQUENCES OF VIOLATIONS OF CUSTODIAL RIGHTS ON CHILDREN

Children need a loving, healthy home, and a happy family to grow well. A good home gives them the care and support they need for their feelings, bodies and their minds. When a family is loving and stable, it helps the children become strong and healthy. In a secure and caring home, children can learn, grow and become a confident and well-adjusted people. According to M Rutter, A strong and secure attachment bond with a primary caregiver is the core of developing resilience and a healthy personality.⁵² Prophet said, "*The strong believer is better and more beloved to Allah than the weak believer, while there is good in both.*"⁵³ Abuse and Neglect of children can have profound and lasting effects on their well-being. There are many negative effects on children who go through neglect. These effects extend to their psychological well-being, behavioral patterns, academic performance, long-term emotional trauma, their ability to cope with the challenges they encounter, and many other aspects.

In explaining this section, the researcher divides the consequences into two main categories:

1. *Maṣlaḥah Khāṣah*
2. *Maṣlaḥah ‘Āmmah*

3.5.1 Violations of Custodial Rights and Its Impact on *Maṣlaḥah Khāṣah*

Maṣlaḥah Khāṣah means "specific/public interest". In Islamic jurisprudence, it refers to the consideration of specific or particular interests that may not be explicitly addressed

⁵² Michael Rutter, "Clinical Implications of Attachment Concepts: Retrospect and Prospect" *Australasian Journal of Early Childhood*, Vol 36, No 4 (1995). 549-571.

⁵³ Muslim, *Ṣaḥīḥ Muslim*, vol.4, ed. 1955: 2052

in classical legal sources but are deemed beneficial or necessary for the well-being of individuals or the community. Scholars use the concept of *Maṣlahah Khāṣah* to make legal decisions that align with the broader objectives of Islamic law, known as *Maqāṣid al-Sharī'ah*, to achieve public welfare and prevent harm.

3.5.2 Consequences of Child Abuse on Preserving Religion (Ḥifẓ al-Dīn)

One dimension of child abuse significantly impacting *sharī'ah* objectives is the persistent parental neglect. This inadvertent indifference, devoid of physical violence, sadly prevails among many parents. As occupied working parents unconsciously overlook their children, it results in unintentional neglect of the child's self-care, education, and daily needs. This issue transcends economic barriers; it permeates through every societal layer. Parents, regardless of their social status, who prioritize social standing, personal pursuits, and a frenzied lifestyle, directly contribute to this neglect of children.

Neglecting a child's education in Islamic teachings directly impacts *Sharī'ah's* objectives of preserving religion. Without comprehensive education on Islamic values and practices, children may lack the essential knowledge to comprehend and embrace their faith. This educational gap could lead to a generation grappling with understanding and following the principles of Islam. Consequently, the absence of proper Islamic education might weaken their religious affiliation, potentially obstructing the transmission of vital religious values and customs within society. Such oversight in education risks undermining the *Sharī'ah's* objective of ensuring the continuity and vitality of religious life for the forthcoming generations. Education holds immense importance in Islam, as the pursuit of knowledge is deemed obligatory within the faith. Allah said, "*Read in the name of your Lord who created. Created man from a clinging substance. Read, and your Lord is the most Generous. Who taught by the pen. Taught man that which he knew not*" (*Al-Alaq:1-5*) This verse highlights the significance of pursuing knowledge. Furthermore, prophet Muhammad states, "*Seeking knowledge is obligatory upon every Muslim.*"⁵⁴ Essentially, neglecting children's rights opposes the

⁵⁴ Ibn Mājah, Sunan Ibn Mājah, vol. 1, ed. 2009: 151

core objectives of *Maqāṣid* in preserving religion. Prioritizing Islamic education is vital for cultivating a generation steeped in knowledge and devoutness. Allah said,

This day those who disbelieve have despaired of [defeating] your religion; so fear them not, but fear Me. This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion. But whoever is forced by severe hunger with no inclination to sin - then indeed, Allah is Forgiving and Merciful. (Al-Ma'idah :3)

In this verse, Allah conveys that Islam is the only religion accepted by Him. Therefore, the objective of preserving this religion is highly esteemed and greatly emphasized.

3.5.3 Consequences of Child Abuse on Preserving Life (Ḥifz al-Nafs)

There are various impacts of abuse on children, whether it is physical, sexual, or emotional abuse. Every type of abuse has its own set of consequences. One of the primary outcomes experienced by children who have been physically abused is the physical pain they endure. They often get hurt on their bodies. This abuse can leave marks like bruises, bleeding, wounds from sharp things, or burns from chemicals. These injuries can be either temporary or permanent. If the abuse keeps happening, it might even lead to losing body parts, organ damage or, in some tragic cases, death. A total of 258 children have lost their lives due to abuse over the course of five years, from 2018 to 2022.⁵⁵ One of the cases was that of Muhamad Amir.⁵⁶ Allah said,

And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers. (Al-Ma'idah:45)

⁵⁵ Adila Sharinni Wahid, "Kes kanak-kanak mati didera meningkat dalam tempoh 5 tahun", *Sinar Harian*, 16 Mac 2023, <https://www.sinarharian.com.my/article/250035/berita/semasa/kes-kanak-kanak-mati-didera-meningkat-dalam-tempoh-5-tahun>

⁵⁶ Shuhaniza Said, "“Kalau tak mampu jaga, tak payahlah ambil” - Selepas 3 bulan diserahkan kepada ibu kandung, Amir pergi jua... luluh hati ibu angkat dapat tahu didera punca kematian", *MStar*, 16 January 2021, <https://www.mstar.com.my/lokal/viral/2021/01/30/kalau-tak-mampu-jaga-tak-payahlah-ambil---selepas-3-bulan-diserah-kepada-ibu-kandung-amir-pergi-jua-luluh-hati-ibu-angkat-dapat-tahu-didera-punca-kematian>

This verse not only highlights Islam's commitment to fairness and justice but also underscores the gravity of taking a life. As per Islamic jurisprudence, intentional killing is subject to *qiṣāṣ*⁵⁷- the principle of equal retribution. Should one purposefully take another person's life, a comparable punishment may be imposed, except if the victim's family pardons the perpetrator, in this scenario, the perpetrator could be subject to paying *diyat*.⁵⁸ Moreover, Allah said, “.....*And when the girl [who was] buried alive is asked for what sin she was killed for*” (Al-Takwir: 8-9). Accountability is demanded for any act of killing, and there are no exemptions for child abuse resulting in death.

Child abuse can also have an impact on a child's behaviour. According to a study on the mental health of children in Malaysia, it was found that changes in behaviour are influenced by parenting styles, parent-child interpersonal relationships, and conflicts between parents. All of these factors contribute to shaping the experiences that ultimately impact the child's life.⁵⁹ Child abuse often leads to noticeable changes in children's behaviour. Abused children frequently exhibit alterations such as heightened aggression. This is primarily because children are remarkably impressionable, often mirroring what they witness and experience.

The absence of a secure environment for emotional expression and sharing can cause them to suppress their feelings, ultimately resulting in their release through violent methods. Research indicates that a significant number of students who face discipline and behavioural issues in school often stem from problems they experience at home. Children who are frequently subjected to physical abuse, also tend to become a victim of bullying⁶⁰ or exhibit bullying tendencies, aggressive behaviour, and a propensity to vent their anger through violence, this includes actions such as vandalism, harming animals, and so on. This may be attributed to the fact that they do not receive adequate attention and care and experience abuse at home.

⁵⁷ Nilam Sari, “Implementasi Hukuman Qiṣāṣ Sebagai Tujuan Hukum Dalam Al-Qur’an” *Muslim Heritage*, Vol 5, No 2 (2020): 286.

⁵⁸ M. Tahmid, “Justice in Islamic Criminal Law: Study of the Concept and Meaning of Justice in The Law of Qiṣāṣ” *Asy-Syir’ah: Jurnal Ilmu Syari’ah Dan Hukum*, Vol 55, No 2, (2021): 335.

⁵⁹ Fordham, L., & Kennedy, A. “Engaging Vulnerable Children and Families: Learning from a New Model of Education and Care.” *Australasian Journal of Early Childhood*, Vol 42, No 4 (2017) 30-37.

⁶⁰ Lee, K., & Kim, Y., “Life Satisfaction and Self-Esteem: How are They Related to the Subtypes of School Violence among Adolescents?”, *The Journal of Educational Studies*, Vol 46, No 2 (2015): 57.

Secondly, children require encouragement and support from their homes to develop a strong character and enduring self-confidence. In some cases, ironically, abused children often tend to suffer from low self-esteem.⁶¹ This is because they are treated harshly at home, subjected to physical punishment and abuse, which makes them feel worthless. While some children feel a strong support system from their parents and develop confidence, abused children not only lack support but also feel like their self-belief has been eroded. They may also withdraw from social interactions. They may isolate themselves from peers and struggle to form meaningful relationships. Parents shoulder the responsibility of shaping their children's personalities. They play a crucial role in nurturing their offspring's moral, ethical, and personal development. Prophet Muhammad said, "*Every child is born in a state of fitrah. It is their parents who make them Jewish, Christian, or Zoroastrian.*"⁶² (Al-Bukhārī, *Jāmi' Ṣaḥīḥ*, ed. 1422). Study shows the greater the bond between parents and children, the less likely the children are to engage in delinquent activities,⁶³ and the neglect imposed by parents indirectly impacts the personalities of their children.

Children who face neglect are more likely to become involved in criminal activities. This is due to the absence of parental monitoring over their behaviour. For example, children who lack sufficient access to food may resort to begging and theft. This is an unfortunate reality. In conclusion, child abuse, regardless of its form, can have profound effects on a child's personality. The resulting changes may vary from one individual to another, but it is evident that it leaves a negative impact on their well-being, confidence, and behavior, directly influencing behaviour and demeanor. This clearly contradicts the objectives of *Sharī'ah* in preserving life.

3.5.4 Consequences of Child Abuse on Preserving Lineage (Ḥifẓ al-Nasl)

The undeniable reality of child abuse can significantly impact the objective of preserving lineage. In the case of children subjected to sexual abuse, there is a risk of

⁶¹ Arifah Yusri, & Mohd Nasir Selamat, "Pengalaman trauma semasa zaman kanak-kanak dan pengaruhnya terhadap keyakinan diri remaja di Kuala Lumpur" *Jurnal Wacana Sarjana*, Vol 6, No 2 (2020): 1-13.

⁶² Ṣaḥīḥ al-Bukhārī, no.1385

⁶³ Siti Noor Fazariah et al., "The Relationship Between Parental Attachment Toward Delinquent Behaviour among Young Offenders", *Psychology*, Vol. 3, (2016): 15-2.

them contracting sexually transmitted infections (STIs) if the perpetrator engages in unprotected sexual activities. This could lead to the innocent child becoming infected with STIs. Moreover, the child may endure physical injuries if they attempt to resist the abuser's actions. In the worst-case scenario, if the victim is a female, she might become pregnant out of wedlock, resulting in negative consequences for the child, and this has violated the *Maqāṣid sharī'ah* of preserving lineage. A recent case in Malaysia serves as a stark example, where a father was sentenced to 654 years in prison for sexually assaulting his three biological children. This horrifying abuse came to light when the second child of the three siblings became pregnant.⁶⁴ These behaviours not only breach ethical standards but are also explicitly forbidden in Islam, particularly when they exploit and harm children, perpetuating oppression. Allah said, “...*And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way*” (*Al-Isra*: 32) The act of adultery, which involves the consent of both parties is already strictly prohibited. Not to mention, coercion or forcing someone into such acts is even more forbidden. Their impact wreaks havoc on the lives of these young ones. Allah said:

Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful. (*Al-Nisa'*: 22)

The verse unequivocally highlights the prohibition of marrying close relatives (*muhrim*), serving as a fundamental basis for preserving lineage. Engaging in matrimony with one's own offspring stands explicitly prohibited and condemned, more so in cases involving sexual abuse.

⁶⁴ Alias Abd Rani, “Penjara 654 tahun menanti bapa rogol, cabul 3 anak kandung”, *Berita Harian*, 8 November 2023, <https://www.bharian.com.my/berita/kes/2023/11/1174708/penjara-654-tahun-menanti-bapa-rogol-cabul-3-anak-kandung>

3.5.4 Consequences of Child Abuse on Preserving Intellect (Hifz al-'Aql)

Abuse can result in emotional and cognitive disruptions, directly opposing the *Sharī'ah's* objectives as it also results in trauma, as victims constantly live in fear. When someone experiences physical or sexual assault, the pain is not only immediate but also leaves a lasting impact, triggering feelings of fear, anxiety, and emotional distress whenever the incident is recollected. Even though children may go through abuse in their early years, it can result in long-lasting trauma. In the case of children who have faced sexual abuse, it can create an ongoing fear of starting relationships with the opposite gender (spouse), and these are lasting challenges they have to cope with. These traumatic experiences can significantly impact their future relationships, potentially leading to the development of conditions such as post-traumatic stress disorder (PTSD).⁶⁵

Sexual Abuse, regardless of when or to whom it occurs, causes lasting emotional, mental, and physical harm to the victim, heightening the chances of developing psychiatric issues like depression.⁶⁶ In the year 2002, the Child and Adolescent Psychiatry Unit (HUKM) attended to 1,550 patients dealing with diverse emotional and behavioural challenges.⁶⁷ Study shows 80% of young adults who had been abused met the diagnostic criteria for at least 1 psychiatric disorder by the age of 21.⁶⁸

Moreover, among the other effects that children experiencing abuse and neglect may encounter are delayed brain development and academic challenges. According to Spratt et al., children who suffer from neglect often have underdeveloped parts of their brains that deal with thinking and feelings. When neglect is combined with other forms of mistreatment, it can lead to an excessive growth of brain areas responsible for survival instincts, resulting in anxiety, impulsivity, difficulty controlling emotions, and

⁶⁵ Robert D. Sege et al., "Clinical Considerations Related to the Behavioural Manifestations of Child Maltreatment", *Pediatrics*, Vol 139, No 4 (2017).

⁶⁶ McFarlane A., et al., "The impact of early life stress on psychophysiological, personality and behavioural measures in 740 non-clinical subjects." *Journal of Integrative Neuroscience*, Vol 4, No 1 (2005):27–40.

⁶⁷ Arifah Yusri and Mohd Nasir Selamat "Childhood Trauma and The Relationship towards Self-Confidence Among Teenagers in Kuala Lumpur", *Jurnal Wacana Sarjana*, Vol 6, No 2 (2022): 1-13.

⁶⁸ Leslie LK et al., "Health-risk behaviours in young adolescents in the child welfare system". *J Adolesc Health*. Vol 47, No1 (2010): 26–34.

hyperactivity. In contrast, the areas of the brain responsible for understanding others and clear thinking, like the limbic and cortical regions, don't develop as well.

Neglect during early childhood, even before birth, can have a big impact on brain development, including its size and capacity. Consequently, children who experience neglect in their early years may face challenges in thinking, language, and behaviour.⁶⁹ In Addition, in case of sexual abuse, it may impact a child's ability to learn and succeed in school. Sexually abused children often struggle in school with lower grades and memory scores. According to Daignault and Hebert (2009),⁷⁰ one of their studies involving targeted girls aged 7-14 revealed that sexually abused children often have lower cognitive abilities, memory scores, and academic achievement compared to their peers, highlighting the significant risk of child sexual abuse in today's society. “..39% displayed academic difficulties, 24% repeated a grade, 15% were enrolled in a remedial class, 48% reported below average grades, and over 37% displayed cognitive ability below 25%.”. Moreover, for children contending with academic difficulties in school, it not only impacts their classroom performance but also hinders their involvement in extracurricular activities, including sports and participation in uniformed organizations.

Furthermore, it is particularly distressing when these children are compelled to endure loneliness. Parents ideally represent the most reassuring figures in a child's world, and children should enjoy the freedom to openly express and confide their emotions. Unfortunately, in cases of parental neglect, children lack the necessary outlets for emotional expression, ultimately leading to their withdrawal and heightened stress levels. Abuse, regardless of when or to whom it occurs, causes lasting emotional, mental, and physical harm to the victim, heightening the chances of developing psychiatric issues like depression. This also constitutes a violation of the objectives of *Sharī'ah* in preserving intellect.

In conclusion, it is clear that child abuse can profoundly impact children, leading to negative consequences that not only affect them but also violate the objectives of *Sharī'ah* in preserving life, religion, property, lineage, and honor. The mistreatment of

⁶⁹Spratt EG,et al., “The Effects of Early Neglect on Cognitive, Language, and Behavioural Functioning in Childhood.” *Psychology (Irvine)*, Vol 3, No 2 (2012) 175-182.

⁷⁰ Daignault & Hebert, “Profiles of school adaptation: Social, behavioural and academic functioning in sexually abused girls”, *Child Abuse & Neglect*, Vol 33, No 2 (2009) 102-115

children directly contradicts the objectives of *Sharī'ah*, compromising their physical and mental well-being, disrupting their spiritual growth, endangering their safety, and infringing upon their rights, thus undermining the core principles aimed at preserving the sanctity of life, the integrity of faith, the security of possessions, the stability of lineage, and the dignity of individuals within Islamic teachings.

3.5.5 Violations of Custodial Rights and Its Impact on *Maṣlahah 'Āmmah*

Maṣlahah 'āmmah refers to public or general interest. It primarily envelopes the collective well-being of the broader community, rather than solely catering to individual interests. It may prioritize the majority or the greater populace.⁷¹ For instance, scholars justify actions such as sanctioning the elimination of individuals propagating heresy that threatens the community's beliefs, all in the interest of the greater good. *Sharī'ah*'s overarching objective in formulating its laws is to serve the welfare of humanity as a whole, including both temporal well-being in this world and eternal welfare in the hereafter.⁷²

Child abuse undoubtedly has a significant impact on the child involved. However, it cannot be denied that child abuse ripples throughout life, bringing significant burdens to individuals, families, and society. Childhood trauma deeply influences human development, serving as a primary contributor to child health challenges, especially in terms of physical well-being, emotional health, and overall child wellness. Moreover, the enduring consequences extend beyond the affected child, impacting both the family and the community. This leads to increased rates of juvenile delinquency, substance misuse, and criminal conduct.⁷³

⁷¹ Al-Muthahhiri et al., “Maslahah 'Āmmah: (A Comparative Study of The Concept Maslahah 'Āmmah According To Nahdlatul Ulama And Ulama Mazdhab Al-Arba'ah)”, *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)*, Vol 5, No 1 (2023):65–88.

⁷² Abbas, “Maslahat Dalam Perspektif Al-Qur'an Dan Sunnah”, *Jurnal Hukum Diktum*, Vol 13, No 1 (2015) 5.

⁷³ Arifah Yusri & Mohd Nasir Selamat “Childhood Trauma and The Relationship towards Self-Confidence Among Teenagers in Kuala Lumpur”, *Jurnal Wacana Sarjana*, Vol 6, No2 (2022) 1-13.

Correlation Between Child Abuse and Crime Rates

The impacts of child abuse and neglect extend far beyond the individual child, it includes the community, society, and even the nation. One notable societal consequence of abuse manifests in the escalation of juvenile crime rates, a trend that tends to persist into adulthood. Child abuse becomes one of the contributing factors to the upsurge in juvenile criminal activities.⁷⁴ As per data provided by the Department of Social Welfare, close to 20,000 children under the age of 18 find themselves entangled in legal proceedings⁷⁵. Notably, crimes committed by students often revolve around theft, drugs, causing harm to others, burglary, sexual assault, and robbery, marking a troubling intersection between abuse and criminality.⁷⁶ Despite other contributing factors to juvenile delinquency, such as peer influence, a high inclination for experimentation, and the impact of mass media, adolescent emotional instability,⁷⁷ child abuse, and Lack of parental care and affection also play a role in the increased crime rates.⁷⁸

According to Cathy S. Widom and Michael G. Maxfield, the arrest histories of those who had been abused or neglected were worse than those with no reported abuse.⁷⁹ A study on the factors of juvenile delinquency, drawing insights from the perspectives and live encounters of 49 juvenile participants, uncovered nine noteworthy factors. Foremost among them is the family, with a particular emphasis on parental separation and the subsequent neglect arising from such divorces. A notable instance from the research centers on a respondent who is an illegitimate child, born to a drug-addicted biological mother. The respondent, being the eldest child, has a younger sibling. Shockingly, the respondent revealed that both they and their sibling were 'traded' by their biological mother for RM800 to adopting family.⁸⁰ Violence in the home is one of the significant contributors, as noted by Tulsa juvenile criminal defence attorneys, who

⁷⁴ A. Mark Nicewicz, "7 Factors Leading to Juvenile Delinquency," *Nicewicz Attorney At Law*, 2023, <<https://www.nicewicz.com/blog/7-factors-leading-to-juvenile-delinquency/>>

⁷⁵ Ahmad Fadhlullah Adnan, "20,000 Kanak-Kanak Terjebak Jenayah", *Utusan Malaysia*, 31 July 2023, <https://www.utusan.com.my/nasional/2023/07/20000-kanak-kanak-terjebak-jenayah/#google_vignette>

⁷⁶ Anna Bocar et al., "Common Factors of Juvenile Delinquent Acts", *SSRN Electronic Journal*, (2001)

⁷⁷ K. M. Banham Bridges, "Factors Contributing to Juvenile Delinquency." *Journal of Criminal Law and Criminology*, Vol 14, No4 (1927). 532-576.

⁷⁸ Ibid

⁷⁹ Cathy S. Widom and Michael G. Maxfield, "An Update for Cycle of Violence", *National Institute of Justice*, (2001)

⁸⁰ Nik Hasnaa et al., "Jenayah Dan Juvana: Pengalaman Sebenar." *International Journal of Social Policy and Society*, Vol 13 (2017): 1-11.

assert that when a child is exposed to violence, they are more likely to exhibit violent behaviour.⁸¹ This aligns with the concept of the cycle of violence.⁸²

Teens who have experienced or witnessed violence may be more prone to expressing their fears and frustrations through violent actions and tend to perpetuate violence outside the home. This may manifest in incidents like physical altercations, bullying, involvement with gang activities, and other related behaviours. While the type of abuse and neglect influences a child's involvement in delinquency and crime, in cases of physical abuse and violence, there is a high propensity for committing criminal offenses.⁸³

However, other forms of abuse also contribute to juvenile delinquency. For instance, in the case of a 12-year-old sixth-grade male student from Batu Gajah, Perak, who was remanded for allegedly raping a girl cared for by his mother, and the incident in Taiping involving a teenage girl and her male friend accused of killing her own brother⁸⁴, Hannah Yeoh responded to reporters' questions about these crimes involving children by stating, "These situations typically arise when there is a breakdown in communication within the family, where family members do not interact effectively, lack supervision, and there is insufficient education for the children." She also noted another trend, saying, "... another trend I observe is that the family is either without a father, or it is a single mother scenario where the mother has to find employment, leaving the children unattended."⁸⁵

To sum up, among the factors influencing the frequency of juvenile offenders, the impact of abuse and neglect on children cannot be overlooked. The consequences go beyond the immediate individuals affected; the effects reach into the whole society and impact *Maşlahah 'Āmmah*. As juveniles become entangled in criminal activities,

⁸¹ Tulsa juvenile criminal defense attorney, "Factors Contributing to Juvenile Delinquency", *Baysinger Henson Reimer and Creswell PLLC Attorney*, 2018, <https://baysingerlaw.com/2018/03/factors-contributing-juvenile-delinquency/>

⁸² Wright EM et al., "The Cycle of Violence In Context: Exploring The Moderating Roles Of Neighborhood Disadvantage And Cultural Norms" *Criminology*, Vol 51, No 2 (2013): 217-249.

⁸³ Cathy S. Widom and Michael G. Maxfield, "An Update for Cycle of Violence", *National Institute of Justice*, (2001)

⁸⁴ Mohd Hafizee Mohd Arop, "Budak 12 tahun merogol anak asuhan", *Harian Metro*, 2 July 2019, <<https://www.hmetro.com.my/utama/2019/07/471316/budak-12-tahun-merogol-anak-asuhan>>

⁸⁵ Yasmin Ramlan, "Kerajaan Kaji Punca Jenayah Kanak-Kanak Bawah Umur", *Malaysia Kini*, 2019, <<https://www.malaysiakini.com/news/482898>>

the impacts are not confined to their personal lives; rather, they permeate the overall crime rates, prompting apprehensions about safety and security among the general populace.

3.5.6 Child Abuse and its Correlation with Economic Implications

Child abuse and neglect not only influence Malaysia's crime rate but it has substantial economic implications for the country. The estimated economic cost of child abuse and neglect to countries in East Asia and the Pacific amounts to approximately \$209 billion annually.⁸⁶ The financial evaluation model for the impact of violence according to the Day model includes the scrutiny of expenditures across six core sectors: Legal, Social Services, Education, Healthcare, Employment, and Personal outlays.⁸⁷ These instances often lead to increased healthcare expenses, as children who suffer abuse demand continuous physical and mental health support. Injuries resulting from physical abuse, such as from assaults or chemical exposure, mandate immediate medical intervention, adding to the healthcare costs. Moreover, the rehabilitation of traumatized children due to abuse calls for extensive treatment and therapies, further escalating the overall healthcare spending of the country. Such victims, be it from physical, sexual, emotional abuse, or neglect, often require counselling services to address and recover from their traumatic experiences.

The government, in its efforts to provide the best services for children, has established various initiatives to ensure their well-being. This includes allocating funds for child development. According to the official portal of the Selangor State Assembly,⁸⁸ among the government's efforts to curb and address abuse cases is the establishment of protection centers for children, counselling services, campaigns, awareness and prevention programs, the implementation of the National Child Policy (DKKN), the Child Protection Policy (DPKK), along with Action Plans, among others.

⁸⁶ Alan Whiting, "The Economic Impact of Child Abuse", *World Economic Forum*, 2015, <<https://www.weforum.org/agenda/2015/06/the-economic-impact-of-child-abuse/>>

⁸⁷ Audra Bowlus, et al., "The Economic Costs and Consequences of Child Abuse in Canada", Report to the Law Commission of Canada, 2003.

⁸⁸ Dewan Negeri Selangor, "Mesyuarat Kedua Penggal Ketiga Dewan Negeri Selangor Tahun 2015", Portal Rasmi Dewan Negeri Selangor, 2015, Retrieved April 13, 2024, from <<https://dewan.selangor.gov.my/question/penderaan-kanak-kanak-2/>>

Initiatives aimed at addressing the problem of child abuse necessitate significant financial resources for the rehabilitation and protection of the affected children.

Child abuse also contributes to the increase in social costs. Issues like drug abuse, crime, and violence stemming from child abuse can impose significant social burdens on the justice system, social care systems, and the entire community. In Malaysia, the government has established specialized facilities for children or adolescents involved in crimes. There are dedicated rehabilitation centers aimed at moral recovery for those engaged in criminal cases. Additionally, for adolescents who are pregnant or have children due to sexual abuse, the government also provides specific placements. According to the report from the Department of Social Welfare (JKM), seven shelter and rehabilitation homes have been established for individuals involved in cases related to drug abuse and similar issues. These facilities are designed to provide support, guidance, and necessary treatment to aid these individuals in recovering from the effects associated with drug abuse. Additionally, they are assisted by trained teams to help them address their problems and reintegrate into society with the confidence and skills required. These shelter homes serve as places where they can receive appropriate assistance and support while undergoing their recovery process.

The costs also include educational costs for affected children. As discussed earlier, abuse may have adverse effects on the learning process of the victims, which could make it challenging for them. Victims of abuse might face difficulties in focusing and cognitive functions⁸⁹, which can affect their educational achievements. This could result in lower long-term educational attainment and affect their skills in the job market. In brief, child abuse has a substantial impact on the national economy. It contributes to increased costs within the healthcare sector, specifically in the realms of medical treatments for physical injuries and mental health recovery. Additionally, there are significant expenses associated with supporting the rehabilitation process and providing educational initiatives for abuse victims.

⁸⁹ Spratt EG, Friedenber SL, Swenson CC, Larosa A, De Bellis MD, Macias MM, Summer AP, Hulsey TC, Runyan DK, Brady KT. "The Effects of Early Neglect on Cognitive, Language, and Behavioural Functioning in Childhood." *Psychology (Irvine)*, Vol 3, No 2 (2012) 175-182.

3.5.7 The Toll of Child Abuse on National Well-being and Happiness

Despite its frequent disregard, the researcher considers this aspect important for discussion. As crucial as the economic and social aspects are, the emotional well-being and sense of security are equally important for the future of children in Malaysia. The magnitude of child abuse's impact on a nation's overall happiness is considerable. Child abuse doesn't solely influence the emotional welfare of victims; it extends its reach into society. Such distressing experiences often result in long-lasting emotional and psychological effects,⁹⁰ limiting a child's ability to embrace joy and satisfaction.

Psychological abuse is closely linked to an aversion to happiness,⁹¹ and this is also considered one of the symptoms of depression.⁹² Those with a heightened aversion to happiness may form anticipations that circumstances won't align favorably for them, subsequently adopting a pessimistic outlook on life, perceiving it as beyond their influence. As a result, individuals who have experienced more psychological maltreatment are prone to exhibiting higher levels of aversion to happiness, leading to reduced optimism and hindered psychological adjustment.⁹³ Ironically, individuals with lower levels of aversion to happiness tend to possess an optimistic perspective and undergo enhanced psychological adjustment.⁹⁴ For instance, the subjective happiness index of Korean children stood at 79.5 points in 2020, ranking at the lower end among the 22 member countries of the Organization for Economic Cooperation and Development (OECD). Leading the pack were children from the Netherlands, scoring 115.21 points.⁹⁵ A common gauge for the happiness index concerning the well-being of

⁹⁰ Nakayama M. et al., "Possible Long-Term Effects of Childhood Maltreatment on Cognitive Function in Adult Women With Posttraumatic Stress Disorder." *Front Psychiatry*. Vol 24, No 11 (2020). 344. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7212372/>>

⁹¹ Abajobir, A, et al., "Substantiated childhood maltreatment and intimate partner violence victimization in young adulthood: A birth cohort study.", *Journal of Youth and Adolescence*, Vol 46, No 1 (2017): 165–179.

⁹² Jordan, D. G, et al, "Negative affect interference and fear of happiness are independently associated with depressive symptoms" *Journal of Clinical Psychology*, Vol 77, No 3 (2021): 646-660.

⁹³ Arslan, G. Childhood, "Psychological Maltreatment, Optimism, Aversion To Happiness, And Psychological Adjustment Among College Students." *Current Psychology*, No 42 (2023) 25142–25150

⁹⁴ Lambert, L. et al, "Conceptions of happiness matter: Relationships between fear and fragility of happiness and mental and physical wellbeing" *Journal of Happiness Studies*, Vol 23, No 2 (2022): 535–560.

⁹⁵ Nam Hyun-woo, "Korea Remains Unhappy Country For Children", *The Korea Times*, 2023, https://www.koreatimes.co.kr/www/nation/2023/11/113_328560.html

the population includes aspects of health, welfare, mental, and physical well-being.⁹⁶ Various factors influencing this happiness index include academic pressures, lack of social awareness, and the abuse itself. According to the Ministry of Welfare of Korea, the number of child abuse cases in the country reached 30,905 in 2020, nearly doubling from 18,700 in 2016.⁹⁷ In conclusion, Child abuse can significantly impact the happiness index of children in a country. Abused children often experience sadness and endure prolonged trauma, resulting in a negative impact on the nation. Not only children, adults who experienced abuse and neglect during their childhood also feel the same way.⁹⁸ Islam places a strong emphasis on family stability, as outlined in family jurisprudence (*fiqh usrah*). The fundamental goal of forming a family is to cultivate *mawaddah* and *rahmah*, including the nurturing of security, happiness, and the reciprocal sharing of joy. This envisioned family model resonates with Islamic principles, rendering the earlier statement appear to be in direct conflict with the teachings of Islam. Allah said,

"And among His signs is that He created for you mates from among yourselves, that you may dwell in tranquility with them; and He has placed love (*mawaddah*) and mercy (*rahmah*) between you. Surely, there are signs in this for those who reflect." (Al-Rum: 30)

The celestial intent behind forming spousal unions is to emphasize the ideals of love and compassion, fostering a harmonious family environment.

3.6 CONCLUSION

In conclusion, this chapter highlights the impact that abuse and neglect can have on *Maşlahah Khasah* as well as *Maşlahah 'Āmmah*. The effects of child abuse are not only physical but also mental, potentially resulting in lasting injuries, disabilities, and, in some cases, fatalities. Sexual abuse, in particular, leaves serious consequences including sexually transmitted diseases and the risk of pregnancy. It also poses the

⁹⁶ Nur Syahirah Zainoor Hisham, "Malaysia Muncul Negara Kedua Paling Bahagia Di Asia Tenggara", *Siakap Keli*, 2023, <https://siakapkelimyl.com/2023/03/24/malaysia-muncul-negara-kedua-paling-bahagia-di-asia-tenggara/>

⁹⁷ Nam Hyun-woo, "Korea Remains Unhappy Country For Children", *The Korea Times*, 2023, https://www.koreatimes.co.kr/www/nation/2023/11/113_328560.html

⁹⁸ Bellis MA, et al., "Childhood happiness and violence: a retrospective study of their impacts on adult well-being.", *BMJ Open*, Vol 3, No.9 (2013)

potential for psychological issues such as depression and lifelong trauma. Furthermore, it can significantly affect academic achievements. All these effects are highly detrimental to children, considering they should be protected and nurtured. They deserve a safe and happy life.

Moreover, child abuse has a significant impact on society and the nation. Children who suffer abuse tend to exhibit higher rates of criminal behaviour, ranging from theft, fraud, truancy, to involvement in gangs, robbery, and sexual violence. Juvenile behaviours stemming from childhood abuse can contribute to higher crime rates in adulthood if these patterns persist. Additionally, abuse has economic implications through medical care, education, rehabilitation, and protective services costs. Government efforts to prevent child abuse and provide protection can mitigate these negative impacts on both society and the economy. Finally, a progressive and competitive nation is not just measured by economic achievements but also by the happiness of its people. Child abuse not only leaves emotional scars and depression during childhood but also has the potential to lead to trauma and depression in adulthood, predisposing individuals to a pessimistic outlook. Therefore, addressing the consequences and causes of abuse requires urgent attention. This is essential to ensure a healthy and prosperous life for the Malaysian population. By actively tackling the issue of abuse, we can shape a safer society, support the well-being of all individuals, and secure a better future.

CHAPTER FOUR

HOLISTIC *MAQĀŞID* FRAMEWORK FOR COMBATING ABUSE OF *ḤAḌĀNAH* IN MALAYSIA

4.1 INTRODUCTION

The mistreatment of children in Malaysia represents a clear infringement of their fundamental right to receive proper care, running counter to the core principles of *ḥaḍānah* in Islam, which underscore the imperative to protect and nurture children. A thorough examination in the second chapter reveals that *ḥaḍānah* encompasses providing shelter, food, attention, and substantial care to ensure the well-being of vulnerable children. The third chapter delved into the origins of child abuse and its far-reaching implications for both *Maşlahah khāṣṣah* and *Maşlahah ‘Āmmah*. While the Malaysian Government has taken proactive measures to shield children from abuse and neglect, the alarming surge in abuse cases demands immediate attention and more effective strategies. The undeniable severity of this prevalent issue calls for collective efforts from parents, authorities, and the community.

This chapter seeks to present effective solutions for addressing the pressing issue of child abuse. The researcher explores proactive approaches and practical solutions within the *Maqāşid* framework to combat this prevalent problem. Building on the established understanding of the causes and impact of child abuse from previous chapters, the focus now shifts to actionable measures. The imperative to protect children's welfare, aligned with societal values and Islamic teachings, necessitates a collaborative effort to implement impactful remedies. Drawing from *Maqāşid sharī‘ah* and modern insights, this chapter provides a comprehensive blueprint to combat child abuse and create a nurturing environment for at-risk children.

4.2 ḌARŪRIYYĀT AND CHILD CUSTODY

Maqāṣid sharī'ah according to Al-Shatibi in *Al-Muwāfaqat* is the guardianship of human welfare, spanning across both worldly affairs and the hereafter.¹ *Maqāṣid sharī'ah* is further explained as the underlying objectives and concealed wisdom woven by the legislative framework (*Shari'a*) into each of its laws.² The essence of *Maqāṣid al-Shari'ah* is encapsulated in the promotion of benefits (*Maṣlahah*) and the prevention of harm (*al-mafsadah*)³ and categorized into the three classifications of *ḍarūriyyāt*, *Ḥājiyyāt*, and *Taḥsīniyyāt*. Achieving *Maṣlahah* necessitates the fulfilment of the five universals of *Maqāṣid*, namely the preservation of religion, life, intellect, lineage, and property, collectively known as *ḍarūriyyāt*.⁴ In the battle against child abuse, the *Maqāṣid* framework of *Sharī'ah* can serve as a robust structure to address and mitigate such issues.

4.2.1 Preservation of Religion (*Ḥifẓ al-Dīn*)

The essence of *Ḥifẓ al-Dīn* lies in the preservation and protection of one's faith. Halting child abuse becomes imperative in the pursuit of the preservation of religion, as the well-being and protection of children are integral to upholding the ethical principles and values embedded in Islamic teachings. One of the efforts that can be undertaken to preserve the religion is by providing adequate religious education. Initiatives like lectures, workshops, and similar activities are crafted with the specific purpose of enhancing family comprehension of Islamic principles, moral conduct, and fundamental family ethics. This approach should underscore the significance of family values in Islam, possibly through a course like "*Tarbiyatul Awwalīn*," providing guidance on effective child upbringing and acknowledging their rights for love and care in Islam. One aspect includes highlighting the responsibility of the family leader in protecting the family from the fires of hell. Allah said, "*O you who have believed, protect yourselves*

¹ Abu Ishāq al-Syātībī Ibrāhīm ibn Mūsa al-Lakhmī al-Gharnāṭī al-Mālikī, *Al-Muwāfaqāt fī Uṣūl al-Syari'ah*, (Beirut: Dār al-Kutub al- 'Ilmiah, 2001), Vol 2 :3.

² 'Ilāl Al-Fāsī, *Maqāṣid al-Syari'ah al-Islāmiyah wa Makārimihā*, (Dār al-Gharb al-Islāmī, 1993), 3.

³ Nurizal Ismail, *Maqāṣid Syari'ah dalam Ekonomi Islam* (Yogyakarta: Smart Wr,2014), 6.

⁴ Ghazali, "Kepentingan Maqasid Syariah dalam Berfatwa di Malaysia", *Journal of Fatwa Management and Research*, Vol 4, No 1 (2018): 9

and your families from a Fire whose fuel is people and stones” (At-Tahrim: 6) This emphasis indirectly fosters awareness among family leaders to educate their children in a more positive manner, ultimately reducing instances of abuse. Through these educational efforts, the objective is to impart religious knowledge and to underscore the sacredness of children's entitlements and the critical importance of preserving their welfare within an Islamic context. Equipping families with these fundamental values forms a robust groundwork to counter abusive behaviours while fostering a nurturing and protective atmosphere for children's holistic development.

Furthermore, the reduction of abuse cases can be accomplished through the establishment of community centres and support networks, aimed at nurturing a profound sense of belonging and cultivating a religious atmosphere. These centres function as secure havens, fostering a caring community that actively participates in activities designed to strengthen positive religious teachings. Recognizing that many parents may feel a sense of emptiness or fatigue in their parental roles, this community serves as a support system to assist parents in need of both moral and physical support. This assistance has the potential to avert repercussions that might compromise parents' ability to fulfil the responsibilities entrusted to them by Allah. A dynamic community infused with positive Islamic values acts as a collective reminder of goodness and is essential for parents navigating child abuse cases. Allah said, *"By time, indeed, mankind is in loss, except for those who have believed and done righteous deeds and advised each other to truth and advised each other to patience"* (Al-[‘] Asr:1-3).

On the flip side, safeguarding the religious well-being of children, known as *Hifz al-dīn*, is equally essential. This involves providing them with thorough nurturing and education in the principles and teachings of Islam to ensure their spiritual development and understanding. By instilling a strong foundation of Islamic knowledge, we contribute to the holistic protection and growth of children in their religious identity.

In summary, the measures to prevent abuse for the preservation of religious interests include providing religious education through formats such as workshops, lectures, and the like. Additionally, establishing community centres is suggested to foster a sense of belonging and create a positive environment.

4.2.2 Preservation of Life (*Hifz al-Nafs*)

"*Hifz al-nafs*" can be defined as the preservation of life or the soul. It is considered the second most important objective in the sequential order of the *Maqāsid shari'ah*,⁵ following the principle of "*Hifz al-dīn*," which pertains to the preservation of religion or faith. This objective promotes both physical and mental health. The Quran highlights the sanctity of life and the protection of the soul. It states that "Whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely" (5:32). This verse highlights the importance of preserving life as emphasized in Islam.

Preservation of life emphasizes the importance of maintaining a healthy body, through practices such as regular exercise, a balanced diet, and cleanliness. Therefore, promoting a healthy lifestyle through activities such as jogging or running, cycling, and swimming is strongly encouraged to address the issue of abuse by positively influencing parents' mental well-being and decision-making. Furthermore, daily activities, such as walking or cycling instead of driving short distances, and doing household chores actively, like gardening and cleaning, help in keeping one's mind sane. This idea seeks to promote individuals' mental well-being as they face stress and challenges through physical care, thereby directly fostering positive impacts on their rational thinking and behaviour.⁶

Additionally, in the fight against child abuse within the context of preserving life, programs such as counseling services and educational campaigns can be implemented to increase awareness about the detrimental effects of alcohol, drugs, and gambling. These programs substantially offer solutions in addressing both physical and mental health challenges and encourage parents to maintain a healthy lifestyle and steering clear of detrimental habits. Considering that substances such as drugs, alcohol, and other intoxicants are among the main factors contributing to child abuse and neglect, making changes to adopt a healthier lifestyle can help reduce cases and achieve the objective of preservation of life. It reflects a commitment to protect and promote the

⁵ Hasri Harun & Haslina Mohd, "Hifz Nafs berdasarkan Maqāsid Shari'ah dalam menghadapi Pandemi Covid-19", *International Conference on Shari'ah and Law (2021)*, 58

⁶ Tinh Doan et al., "Healthy minds live in healthy bodies – effect of physical health on mental health: Evidence from Australian longitudinal data." *Current Psychology*, Vol 42, No 22 (2023)

overall well-being of individuals, in accordance with the broader objectives of Islamic law.

Similarly, parents bear the responsibility of safeguarding the health, life, and mental well-being of their children. This encompasses providing necessary healthcare, ensuring access to proper nutrition, and fulfilling basic necessities. By prioritizing these aspects, parents contribute to the overall protection and holistic development of their children, fostering an environment where they can thrive physically and emotionally.

4.2.3 Preservation of Intellect (*Hifz al-'Aql*)

The concept of "*Hifz al-'Aql*" refers to the preservation and protection of the intellect or the rational faculty of the human being. Allah said,

Indeed, in the creation of the heavens and the earth, and the alternation of the night and the day, and [in] the [great] ships which sail through the sea with that which benefits people, and what Allah has sent down from the heavens of rain, giving life thereby to the earth after its lifelessness and dispersing therein every [kind of] moving creature, and [His] directing of the winds and the clouds controlled between the heaven and the earth are signs for a people who reason. (Al-Baqarah: 164)

This verse highlights the importance of contemplating the power of Allah. Humans are encouraged to ponder everything crafted by Allah on this earth, ensuring that these creations are harnessed for their benefit. In this process, individuals are urged to employ their intellect to comprehend and analyse each aspect thoroughly. Thus, mental health is important for achieving the ability to think and make decisions.

Initiating proactive measures involves the implementation of education initiatives, focusing on developing and supporting programs aimed at cultivating critical thinking, emotional intelligence, and conflict resolution skills in combating child abuse. For instance, through school-based programs, such as Life Skills Education and Anti-Bullying Programs, entail the integration of modules on critical thinking, emotional intelligence, and conflict resolution into the school curriculum. These programs aim to teach students about empathy, tolerance, and conflict resolution to prevent bullying, which is often linked to child abuse. These programs not only aim to achieve the goal

of preserving mental well-being but also constitute a comprehensive initiative to mitigate the occurrence of abuse in Malaysia.

Additionally, within the framework of *Sharī'ah* objectives with the aim of preserving the intellect (*Hifz 'Aql*), other measures that can be taken to ensure a decrease in cases of child neglect and abuse include parenting training programs, such as Child parenting program, Behaviour management program, Emotion management, or breathing technique. These programs, which can be done in the form of workshops, seminars, or classes, focus on providing resources to enhance positive parenting skills, emphasizing effective communication, and advocating for positive discipline. These programs are designed to equip parents with better readiness for the imminent arrival of their child. These programs offer prospective parents an early and realistic understanding, facilitating timely preparations, and mitigating expectations that could hinder the process of raising their child. The program can be conducted periodically or as needed, akin to well-established marriage preparation courses.

4.2.4 Preservation of Lineage (*Hifz al-Nasl*)

Hifz al-Nasl, known as the preservation of lineage, is realized through legitimate marital relations in accordance with *Sharī'ah* law, aiming to build and extend generations for the continuity of the human lineage. The lineage status of a born child is ascribed to their father. *Sharī'ah* strictly prohibits all forms of adultery to safeguard personal honour and ensure the uninterrupted succession of the lineage.⁷

Among the steps that can be taken within the *Maqāṣid* framework, under the objective of preserving lineage, is the establishment of family counselling services. This involves implementing comprehensive family counselling services tailored to tackle disputes, financial difficulties, and interpersonal issues within the family structure. Such problems are often contributing factors to the increase in cases of child abuse. The provision of family counselling aims to foster healthier family dynamics, resolve

⁷ Nur Izyan Farihah & Syed Salim, “Peranan Maqāṣid Sharī'ah “Hifz Al-Nafs” dan “Hifz Al-'Aql” dalam Penutupan Sekolah dan Universiti di Malaysia Semasa Pandemik Covid-19” *E-Prosiding Seminar Antarabangsa Falsafah, Tamadun, Etika dan Turath Islami (i-STET)* (pp. 266–271).

conflicts, and provide support to parents, ultimately creating a safer and more nurturing environment for children.

Furthermore, in addressing issues related to the safety and welfare of children, legal support can be employed. Providing legal assistance is important to protect children from situations involving abuse and to ensure their rights are protected. Expanding the role of legal support can involve offering legal aid services for children involved in abusive situations. This includes providing legal advice, representing them in court, and ensuring legal protection for children who may be at risk. It is also vital to enhance awareness about the rights of children and the legal channels accessible to them. Initiatives in this regard may include community education on reporting offenses or abusive situations, as well as facilitating access to legal services for families and children in need. Children who undergo abuse frequently find themselves unaware of the available courses of action, prompting them to remain silent. In certain instances, they face neglect and mistreatment, culminating in tragic outcomes. Timely legal advice and early intervention can act as a preventive measure, creating a barrier against the continuation of abuse. Therefore, this step is considered crucial in preventing abuse, thereby preserving the lineage.

Often, relationships outside of marriage, such as having girlfriends and other illicit connections, can lead to complications in custodial relationships. Therefore, ensuring adherence to Islamic family values and principles is a crucial step in preventing child abuse. By promoting and upholding Islamic teachings on familial relationships and marital fidelity, a foundation is established for a stable and nurturing environment that prioritizes the well-being of children and strengthens custodial arrangements.

4.2.5 Preservation of Property (*Hifz al-Mal*)

The preservation of property, known as *Hifz al-Māl*, stands as a paramount objective within *Sharī‘ah*. Islamic scholars emphasize that the essence of *Hifz al-Māl* is not only safeguarding of wealth itself but it also advocates for the promotion, accumulation, preservation, and equitable distribution of wealth in a manner that is just and fair. Allah has mandated self-sufficiency and the provision of support to dependents, instituting laws to govern commerce and transactions among individuals. These regulations aim to uphold principles of equitable trade, economic justice, and to mitigate oppression and disputes.⁸

A viable strategy for addressing this challenge involves reinforcing financial empowerment through the creation of economic opportunities and support systems to alleviate financial stress within families. For instance, programs include initiatives such as job training and affordable housing options. Access to job training not only empowers individuals lacking skills to enter the workforce or start businesses but also holds the promise of a substantially enhanced life. Securing job opportunities that offer a minimum wage and fair salary is essential. Neglect caused by financial constraints can be deeply distressing. Meeting the high cost of living and fulfilling the necessities in raising children, including diapers, healthy food, and essential cleaning items like toothbrushes and shampoo, is vital. These employment opportunities will contribute to easing the burden on the family.

Furthermore, providing affordable house contributes to establishing a comfortable living environment for families in need. For low and moderate-income families, this housing assistance will provide a shelter for the family and the children. Economic stability serves as a solution to addressing abuse issues stemming from economic burdens. This initiative can be carried out not solely by the government but also by rallying support from private companies and other entities.

Moreover, the implementation of comprehensive social welfare programs has the capacity to distinctly contribute in providing support to families grappling with

⁸ M. S. Sujimon, “Preserving Property of Wealth (Hifū Al-Mól) From The Maqāsid Sharī‘ah’s Perspective.” In *The Mudzaffar Hotel, Malacca 4th International Conference On Human Sustainability* (2017)

economic hardships. These initiatives address immediate financial challenges and significantly contribute to reducing the likelihood of child abuse in vulnerable households. For example, Mobilizing *Baitulmal* institution to address the issue of abuse serves as a viable strategy to confront the problems, such as the allocation of *Baitulmal* funds specifically for child welfare programs, covering education scholarships, healthcare, and counselling services. Indirectly, this opens doors for neglected children who may lack the opportunity to attend school. Children facing malnutrition, trauma from abuse, or vulnerability to abuse are all given a second chance. Simultaneously, this strategy addresses issues rooted in economic problems.

Strengthening this social welfare program can offer a renewed beginning for neglected and abused children, affording them an opportunity for a fresh start.

4.2.6 Preservation of Honour (*Hifz al-Ird*)

Preserving honour stands as a paramount objective, dedicated to ensuring the protection of an individual's dignity and esteem. Some scholars designate the preservation of honour, known as *Hifz al-‘Ird*, as the sixth principle among the *Maqāṣid sharī‘ah*.⁹

One of the initiatives and means to achieve this objective is through awareness campaigns. These campaigns serve as a proactive and impactful tool to challenge traditional beliefs that might contribute to instances of abuse and neglect. The objective of this public awareness campaign is to break down detrimental stereotypes, dispel misconceptions, and cultivate a shared awareness regarding the significance of upholding honour and safeguarding the dignity of individuals, particularly children. Programs such as media campaigns and forums can be implemented. This initiative is imperative for instilling awareness within the community regarding the dignity inherent in each individual. The failure to disseminate this awareness within the community will serve as a measure of the inadequate efforts in addressing and preventing cases of abuse.

Furthermore, community engagement is also a key component in achieving the preservation of honour and directly reduce child abuse cases. Strengthening efforts to

⁹ Al-Shurbaynī, Hāshiyah, ‘Abd al-Wahhāb bin ‘Alī Tājuddīn al-Subkī, Hāshiyah al-‘Allamah al-Bannānī‘alā Matni Jam’i al-Jawāmi,’(Beirut: Dār al-Fikr, 1982). Vol 2, 281.

encourage community members to actively participate in protecting the dignity and rights of children is important. This can be achieved by promoting continuous dialogue and collaboration among the community, local agencies, and non-governmental organizations. Community awareness programs, training workshops, and educational initiatives can be introduced to raise awareness about issues of child abuse and provide community members with the knowledge and skills to take action. It is a collective effort involving all individuals within the community to help address issues of abuse. Allah said, "*Cooperate in righteousness and piety*" (Al-Mai'dah: 2) The verse encourages us to help each other in goodness. The importance of the community being actively involved is not only in recognizing issues of child abuse but also in creating a safe environment and support for at-risk children. This involves fostering a culture of mutual care and empowering families.

4.2.7 Preservation of Justice (*Hifz al-Adl*)

The objective of *Sharī'ah* in the preservation of justice revolves around ensuring fairness, equity, and the protection of individual rights within the framework of Islamic law. This objective aims to establish a just and balanced society where legal, social, and economic systems work together to uphold the principles of justice.

Numerous additional initiatives play a role in achieving the objective of preserving justice. Recognizing the paramount importance of shielding the well-being and rights of children, it is important to advocate for legal reforms that strengthen child protection laws. Through this effort, the legal system can be fortified to ensure swift and effective justice for victims of child abuse. These reforms are vital in alignment with the primary objectives of *Sharī'ah*, particularly in the preservation of justice and the prevention of harm, through collective efforts to enhance legal frameworks. According to Mohammad Adib, a potential resolution involves bolstering the *suluh* system¹⁰ to alleviate child abuse arising from family conflicts at the grassroots level.

¹⁰ The term "suluh" denotes mediation or reconciliation. It is plausible that there are or have been initiatives or systems integrated into the Malaysian legal framework involving mediation or alternative dispute resolution methods, particularly in the context of divorce cases.

Strengthening the *suluh* framework not only acts as a deterrent to divorces but also effectively tackles the root causes of abuse stemming from these disputes.¹¹

Furthermore, another initiative that can be undertaken is through Community Mediation. Establishment of community-based mediation processes can resolve disputes and conflicts in a fair and just manner. This community-based mediation involves engaging the parties directly involved in the conflict resolution with the assistance of a neutral mediator. It is not only providing a platform for the involved parties to express their views but also encourages open dialogue and collaboration to achieve mutually satisfactory resolutions. The researcher recommends promoting joint parenting¹² for divorced parents. This step aims to peacefully resolve custody disputes arising from family conflicts and provide the best solution for the well-being of the children. Advocating for mediation at the community level enables us to foster an environment supportive of peaceful resolutions and provides opportunities for communities to understand, respect, and collectively collaborate in resolving conflicts.

4.2.8 Preservation of Freedom (*Hifz al-Huriyyah*)

Preserving freedom stands as a factor in the fight against child abuse, and a strategic approach to achieve this lies in the implementation of targeted social programs; initiatives that address the foundational causes that contribute to criminal involvement, such as unemployment and limited opportunities. These are instrumental in cultivating a sense of liberation from societal pressures. In the face of economic hardships, individuals may resort to criminal activities either as a desperate means of survival or as a consequence of the limited availability of lawful alternatives. Besides, programs, such as pathways for education, skill enhancement, and employment, empower individuals, particularly those in vulnerable populations, to liberate themselves from the recurring cycles of adversity. These programs go beyond addressing the immediate consequences of child abuse; they proactively work to prevent its occurrence by addressing the root issues. Consequently, the preservation of freedom emerges as a potent instrument in building resilient communities that prioritize the well-being and

¹¹ Muhammad Adib, Interview by the Researcher, Sharia Judiciary Department, Bangunan Mahkamah Syariah Sultan Idris Shah, 27 November 2023.

shielding of children, ensuring a future unburdened by the chains of abuse and societal challenges.

In the pursuit of justice preservation and combating child abuse, a strategy involves the idea of providing rehabilitation services. These services, tailored for individuals entangled in criminal activities, help in steering them towards recovery and successful reintegration into society. The program not only seeks to rectify the behaviour of those engaged in criminal actions but also ensures their positive assimilation back into the community. Providing a comprehensive rehabilitation service, including psychosocial guidance, skills training, and community support, can contribute to the establishment of an environment conducive to sustained recovery. Effective recovery extends beyond mere punitive measures, delving into the roots of criminal behaviour, offering opportunities for correction, and fortifying support networks to prevent relapses. Through this multifaceted approach, the objective of justice preservation is realized, granting individuals a second chance and contributing to the creation of a safer and more equitable society.

This comprehensive framework is designed to tackle the underlying causes of societal issues related to child well-being, employing a holistic approach guided by the principles of *Maqāṣid sharī'ah*. At its core, the framework places a strong emphasis on education, recognizing it as a fundamental tool for fostering awareness, instilling values, and promoting positive behavioural change. Community support is another key pillar, acknowledging the influential role of communal ties in shaping a protective and nurturing environment for children. Legal protection forms an integral part of the framework, ensuring that robust laws and regulations are in place to safeguard children from harm and exploitation. Additionally, social welfare initiatives are incorporated to address economic disparities, aiming to uplift families and create conditions conducive to the optimal development of children. The implementation of these ideas can establish an environment where the well-being and safety of children are not only prioritized but actively nurtured, aligning with the overarching principles of *Maqāṣid sharī'ah*, namely the preservation of religion, life, 'Aql, lineage, property, honour, justice, and freedom.

4.3 HOLISTIC CHILD SAFETY: INTEGRATING STRATEGIES ACROSS INDIVIDUAL, FAMILY, SOCIETAL, AND LEGAL LEVELS

Exploring a multi-tiered approach, we can identify and implement strategies at the individual, familial, societal, and legal levels to effectively tackle the root causes and safeguard the well-being of children.

4.3.1 Individual Level

A highly effective strategy at the individual level to mitigate cases of abuse involves the implementation of Personal Development Programs. These programs encourage participation in initiatives to enhance emotional intelligence, self-awareness, and stress management. Engaging in diverse programs, such as conflict resolution workshops, positive psychology courses, or wellness retreats, equips individuals with valuable skills and heightened awareness crucial for navigating challenging situations. The emphasis on personal growth fosters a resilient and empathetic approach towards both oneself and others. In turn, these initiatives create a supportive atmosphere, discouraging abusive behaviours while simultaneously fostering the growth of healthier relationships within the community. This approach aims to empower individuals with the necessary tools to contribute positively to their own lives and the well-being of those around them.

Furthermore, another noteworthy initiative involves the implementation of mentorship programs. These programs facilitate the development of mentoring platforms, offering individuals an opportunity to seek valuable guidance from positive role models within their community. Programs, such as parenting support mentorship program, dedicated to aiding parents, particularly those confronting difficulties, involves mentorship from seasoned individuals or professionals specialized in child development and parenting. Allah said, *“So ask the people of the message if you do not know”* (An-Nahl: 43) This verse promotes the idea of seeking knowledge and guidance from individuals who have wisdom and understanding. Parents without sufficient knowledge who may feel reluctant to seek help can benefit from this mentorship program, which offers guidance on parenting. This initiative aims to equip parents with valuable insights, effective strategies, and a supportive network to enhance their

parenting skills, ultimately fostering a healthier and more nurturing environment for their children.

4.3.2 Familial Level

Additionally, as part of the efforts to minimize cases of abuse, a significant family-level initiative involves offering parenting classes. Implementing mandatory parenting classes for expecting parents or those with young children is a strategic measure to enhance their parenting skills and knowledge. These classes aim to deliver thorough preparation in child-rearing, covering essential aspects and fostering a profound understanding of the responsibilities inherent in parenthood. Through providing access to relevant resources and appropriate guidance, this initiative aims to shape a safer and more caring family environment, concurrently reducing the risk of child abuse.

Secondly, another dynamic initiative is the establishment of family counselling services. This effort involves providing accessible and culturally sensitive counselling services tailored to families, aiming to address conflicts, financial challenges, and other stressors that may arise. When counselling services are readily available, individuals within families can seek professional support to navigate and resolve issues, fostering healthier relationships. This initiative recognizes the diversity within families and seeks to create an inclusive and supportive environment where culturally relevant counselling can contribute to the overall well-being of families, helping them overcome challenges and directly reduce the incidents of abuse stemming from these issues.

Lastly, a comprehensive effort to simultaneously address and diminish instances of abuse stemming from family economic challenges involves the implementation of financial literacy programs. These programs provide practical knowledge on budgeting, savings, and responsible financial decision-making, thereby equipping families to navigate economic challenges more adeptly. The ultimate goal is to alleviate economic stress within households, fostering a financially resilient environment and directly contributing to the reduction of abuse associated with financial strains. Through enhancing financial literacy, families can build a foundation for long-term economic

stability, promoting overall well-being and minimizing the risk factors that may contribute to abusive situations.

4.3.3 Societal Level

Apart from efforts at the individual and family levels, strengthening initiatives at the societal level is essential in curbing cases of abuse. Among the efforts that can be undertaken are:

One of the efforts that can be undertaken is initiating comprehensive Community Awareness Campaigns. This is not just an educational aspiration but a societal call to action. These campaigns function as indicator of enlightenment, shedding light on the effects of child abuse. They instill a collective responsibility within the community to protect the well-being of every child. Through the meticulous dissemination of information and active engagement with community members, the overarching aim is to cultivate a shared understanding of the devastating impact of child abuse. This, in turn, fosters a community-wide commitment to preventive measures and timely interventions, creating a resilient social fabric that stands united against the menace of child abuse.

Additionally, another effort involves instituting Community Support Groups within neighbourhoods and localities. These groups offer a dedicated platform for individuals to openly share their experiences, seek valuable advice, and receive crucial emotional support. Serving as an invaluable resource for those grappling with the challenges of child abuse, these support groups provide a safe and empathetic space where community members can connect, empathize, and collaboratively work toward solutions. Cultivating a spirit of unity and shared responsibility can play a significant role in establishing a protective network within the community, where mutual support becomes a foundational element in the battle against child abuse.

Ultimately, among the efforts that can be undertaken at the community level is forming strategic collaborations with local law enforcement agencies to implement community policing initiatives. This represents a proactive stance in creating a secure and protective environment. These initiatives are designed to build positive

relationships between the police force and the community, fostering an atmosphere of trust and cooperation. Through collaborative efforts, law enforcement and community members address concerns related to child safety, contributing significantly to the overall well-being of the neighbourhood. The visibility and approachability of community policing efforts serve as a deterrent to potential abusers, reinforcing the collective message that the community stands united against child abuse.

In fact, Islam strongly advocates for the collective responsibility of all members of society to contribute towards the common pursuit of goodness. *“Let there arise out of you a group of people inviting to all that is good (Islam), enjoining Ma'ruf and forbidding Munkar. And it is they who are the successful”* (Ali-Imran: 104) This verse inspires the establishment of a united Muslim community dedicated to upholding virtue and integrity, actively deterring wrongdoing and promoting righteousness. It calls upon believers to assume an active stance in championing Islamic values, fostering what is morally upright, and opposing actions that contradict these principles. Encouraging others toward goodness, termed as da'wah, is a fundamental tenet of Islam. Allah said, *“For every religion, we have appointed rites which they perform. So, [O Muhammad], let them not contend with you over the matter but invite them to your Lord. Indeed, you are upon straight guidance”* (Al-Hajj: 67) *Maa'ruf*, encompassing virtuous acts endorsed by religious law, extends from promoting communal prayers and charitable deeds to fostering enriching conversations. Every action leading to rewards falls under *maa'ruf*. Remarkably, those who advocate for goodness reap rewards akin to performing these acts themselves. *“Whoever invites others to do good will receive a reward like the one who actually does it, without diminishing the reward of the latter in any way.”* (Bukhari, Sahih Bukhari)¹³ This duty transcends individuals; It is a collective responsibility. The Divine highlights the best as those who inspire virtue and hinder transgression.

¹³ Sahih Muslim, Kitab al-Zakat, Bab Fadha'il al-Sadaqah (Book of Zakat, Chapter on the Merits of Charity), Hadith no. 1006.

4.3.5 Legal Level

In the collaborative efforts to reduce instances of child abuse and maltreatment, the legal domain takes central stage, assuming a pivotal role in crafting and enhancing legal structures tailored to protect the rights and well-being of children.

Firstly, it is imperative to bolster child protection laws to create a safer environment for youth. Advocating for the enhancement of these laws is essential, with a focus on making them comprehensive, enforceable, and capable of imposing stringent penalties for offenders. The legal framework should evolve to reflect the evolving nature of child protection issues, addressing gaps and ensuring a robust system that acts as a deterrent for potential abusers. By actively engaging in the advocacy for stronger and more effective child protection laws, society can contribute to building a protective shield around children, safeguarding their well-being and future.

In addition, another significant measure that can be implemented at the legal level is the establishment of whistleblower protection mechanisms. These mechanisms are designed to provide safeguards and incentives for individuals who come forward to report instances of child abuse. Through robust whistleblower protection policies, the legal system aims to create an environment where individuals feel secure and protected when disclosing information related to child abuse, ensuring that they can report such incidents without fear of retaliation or adverse consequences. This approach not only encourages transparency and accountability but also contributes to the overall effectiveness of child protection efforts by fostering a culture where reporting abuse is actively supported and protected within the legal framework.

Moreover, Legal aid services involve providing readily accessible legal assistance to families and individuals confronted with legal challenges, thereby guaranteeing equal access to justice for everyone. This initiative strives to bridge the gap in legal representation, ensuring that those facing financial constraints or other barriers can still avail the necessary legal support for themselves. Assistance in navigating complex legal processes can empower individuals to assert their rights, address legal issues, and participate effectively in the legal system. The overarching goal is to foster a fair and equitable legal landscape, where individuals, regardless of

their socioeconomic background, can seek and obtain the legal aid they require for a just resolution of their concerns.

Lastly, one of the key initiatives to address child abuse is the establishment of child advocacy centres. These systematically designed centres serve as comprehensive facilities, providing vital services such as medical examinations, legal support, and counselling in a child-friendly setting. This holistic approach not only addresses immediate needs but also emphasizes creating an atmosphere attuned to the unique challenges children may face. Ultimately, the implementation of child advocacy centres signifies a significant stride in cultivating a comprehensive support system for child abuse victims, fostering their healing journey in a compassionate and child-centric manner.

4.3.6 Cross-Cutting Strategies

In the realm of addressing abuse-related concerns, cross-cutting strategies present a dynamic and integrative methodology for confronting intricate challenges spanning diverse sectors. Diverging from conventional siloed approaches that concentrate on singular issues, these strategies discern the interconnected nature within a complex system. Their objective is to surpass traditional boundaries, nurturing collaboration and synergy to achieve outcomes that are both comprehensive and sustainable.

Firstly, when addressing child abuse in Malaysia, implementing cultural competency training is a commendable initiative. This effort enhances the skills of child protection professionals through comprehensive training on understanding and respecting diverse cultural norms. For example, incorporating cultural competency into their expertise, practitioners gain nuanced skills to navigate various cultural contexts with sensitivity. The training stresses comprehending cultural subtleties, values, and practices, enabling professionals to tailor their approaches to child protection in a deeply respectful and inclusive manner. The overarching goal is to create an environment characterized by heightened cultural sensitivity, ensuring effective interventions and support services across Malaysia's diverse cultural landscape. This approach recognizes

the significance of cultural awareness in establishing trust and collaboration between child protection professionals and the communities they serve.

Secondly, the application of technology-based reporting systems is important for improving mechanisms to report suspected cases of child abuse. This initiative focuses on creating user-friendly reporting platforms that utilize technology, enhancing convenience for individuals to report concerns anonymously. Using technological solutions, the goal is to simplify the reporting process, ensuring accessibility for those who may be hesitant to come forward. The use of technology not only facilitates reporting but also prioritizes anonymity, providing a secure space for individuals to share their concerns without fear of reprisal. This forward-looking strategy acknowledges the transformative role of technology in strengthening the fight against child abuse and fostering a safer environment for children.

Besides, one influential strategy to prevent child abuse is school-based programs, integrating comprehensive educational initiatives into the school environment to address child protection, conflict resolution, and foster a positive atmosphere. Crafted to instil awareness among students, educators, and staff about the importance of child protection and abuse prevention, the curriculum goes beyond traditional subjects. Modules educate students on recognizing and reporting signs of abuse, emphasizing conflict resolution skills to empower them in navigating challenges. The goal is to create a school culture prioritizing every child's safety, fostering a secure and supported environment. Through blending these initiatives, the strategy proactively addresses the root causes of child abuse, promoting a culture of awareness, prevention, and intervention for a safer and more supportive school community.

In the comprehensive effort to combat child abuse, a strategy involves the implementation of research and data collection initiatives. This entails the continuous evaluation of intervention effectiveness and the identification of emerging trends in child safety and well-being through dedicated resource allocation. Through dedicating funding in research, a systematic examination of the current state of child abuse, the impacts of interventions, and evolving patterns or challenges becomes feasible. The commitment to ongoing research not only enriches understanding but also facilitates evidence-based decision-making, ensuring interventions adapt based on the latest

insights. As a critical component of addressing child abuse, research and data collection contribute to informed strategies and policies, fostering a more effective and responsive approach to safeguarding the well-being of children.

As a conclusion, executing comprehensive strategies across different levels is paramount. Prophet (ﷺ) said, “Whoever among you sees an evil, let him change it with his hand; if he is unable to do so, then with his tongue; and if he is unable to do so, then with his heart, and that is the weakest faith.” This Hadith suggests that the level of responsibility corresponds to an individual's capabilities and authority, underscoring the importance of confronting and combating wrongdoing to the best of one's abilities. A critical aspect is the empowerment of individuals by placing a strong emphasis on education and awareness to equip both children and adults with the knowledge and tools needed to identify, prevent, and report abuse. Simultaneously, fortifying family units by providing resources and support systems, such as parenting classes and counselling services, strengthen familial bonds and promote positive parenting practices. Last but not least, these strategies collectively enable communities to develop a holistic and multifaceted approach, addressing the fundamental causes of child safety issues.

4.4 COMPREHENSIVE STRATEGIES AGAINST CHILD ABUSE: PREVENTION, ELIMINATION, AND HARM MINIMIZATION

Child abuse is a major harm, and harm elimination is an obligatory duty in Islam, as mentioned in the hadith “No harm shall be inflicted or reciprocated” (*lā ḍarar wa lā ḍirār*), and Islamic legal maxim “harm must be eliminated” (*al-ḍarar yuzāl*)¹⁴. Harm elimination can be categorized into three steps (1) prevention of harm, (2) removal of harm, and (3) minimization of harm.¹⁵

¹⁴ Al-Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, 83; Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 85; al-Ḥamawī, *Ghamz*, 1: 37; Abū Sa'īd al-Khādimī, *Manāfi' al-Daqā'iq* (Istanbul: al-Ṭabā'at al-Āmirah, 1308), 323.

¹⁵ Sayyed Mohamed Muhsin, Muhammad Amanullah and Luqman Zakariyah, (2019) *Framework for harm elimination in light of the Islamic legal maxims*. Islamic Quarterly, 63 (2). pp. 233-272.

4.4.1 Prevention Stage

Firstly, one of the programs that can be implemented is the early intervention program. This program targets at-risk families and individuals exposed to the threat of abuse. Some activities within this program include providing support services such as counselling, parenting classes, and financial assistance. The program aims to identify issues at an early stage before they worsen. The saying "Prevention is better than cure" is most fitting in addressing abuse problems at the grassroots level. Therefore, by identifying troubled families, various parties can collaborate in providing assistance and support to prevent this issue from escalating within the community. This initiative is the crucial aspect that must be undertaken in the effort to reduce abuse within Malaysian society.

Additionally, an initiative that can be implemented involves organizing a community program on Healthy Relationships. Such programs focus on nurturing healthy family relationships, promoting effective communication, and teaching conflict resolution techniques to prevent issues that might lead to abuse. Various forms of programs, such as workshops, forums, and seminars, can be conducted. Those who misinterpret the difference between educating and abusing children might continue engaging in violence over time. Hence, it is imperative to heighten awareness as a preventive measure against perpetuating acts of abuse and neglect. This awareness is essential not only for children to comprehend their rights but also for parents to fully grasp their responsibilities consequently, reducing the escalating rate of such cases. The program's objective is to enhance awareness and provide education for the cultivation of a harmonious family, aspiring to create an ideal family as mentioned in the Quran. Allah said, "And those who say, *“Our Lord, grant us from among our wives and offspring comfort to our eyes and make us an example for the righteous”* (Al-Furqan: 74).

One of the initiatives that can be implemented is the establishment of School-Based Prevention Programs. These programs should be integrated into the school curriculum to teach children about personal boundaries, safe touch, and how to seek help. According to Nasrun, many children may experience trauma and may not know

how to react when subjected to physical punishment or neglect.¹⁶ Therefore, this program becomes a crucial initiative for them. Simultaneously, there is a need to provide teachers and parents with an understanding of recognizing signs of abuse. The primary goal of this program is to educate children about their rights. With such programs, enlightenment regarding early-stage abuse can be achieved. Implementation can occur through school campaigns, lectures, or engaging presentations on Children's Day. Early exposure through these initiatives serves as a preventive measure to avoid instances of abuse.

Furthermore, a proactive step to take into account is the establishment of Parenting Support Hotlines. Consider implementing 24/7 hotlines, managed by trained professionals, to provide guidance, resources, and a sympathetic ear for parents dealing with challenging situations. Numerous parents encountering difficulties may lack awareness of the proper steps to take in raising children and might be contending with various issues. This hotline serves as more than just a platform for listening to parents' concerns; it also offers expert advice and solutions. Consequently, it indirectly aids in diminishing instances of abuse involving both parents and children.

Finally, one of the efforts that can be undertaken is public awareness campaigns. This campaign aims to raise awareness among all layers of society about the importance of preventing child abuse and fostering a culture of sensitivity and protection. This is crucial to safeguard the fundamental rights of children and to cultivate a culture of mutual care. Various platforms, such as social media, television, newspapers, Facebook websites, and others, can be utilized, either through organic social media posts or paid advertisements. Early-stage awareness through social media needs to be mobilized on a large scale, considering that media platforms are easily accessible and have extensive reach.

¹⁶ Mohamed Nasrun, Interviewed by the Researcher, Clinical Psychologist at Jiwa Damai, Jiwa Damai Clinic Putrajaya, 23rd November 2023.

4.4.2 Elimination Stage

The elimination stage focuses on eradicating the underlying causes that trigger child abuse. Taking proactive measures is imperative to effectively achieve the goal of reducing this pervasive issue.

During the initial stages of the elimination process, offering intensive family counselling to those already facing challenges emerges as a viable alternative. The objective is to tackle underlying issues early on, encompassing family conflicts and financial concerns. Furthermore, this initiative seeks to improve communication and eradicate factors contributing to abuse that could potentially harm the children. This proactive step holds the potential to offer valuable insights to families seeking advice and guidance, thereby preventing further harm to the children.

Furthermore, as part of the elimination process, a proactive measure to combat abuse involves the creation of programs that empower families economically. This includes offering job training, employment opportunities, and establishing avenues for caregivers to break free from the stress induced by poverty. Initiatives like financial literacy education can be introduced, serving as a long-term economic investment that equips parents with knowledge to fortify the family's economic standing and foster self-reliance. This concerted effort seeks to alleviate financial strain and eradicate potential triggers for abuse.

The ultimate phase involves offering Rehabilitation Services for offenders. Researchers posit that implementing a recovery program for those who have engaged in child abuse not only facilitates the rehabilitation of the perpetrators but also affords an opportunity for both the victims to lead a healthy and joyful life alongside their parents. According to Nasrun,¹⁷ an individual who engages in abusive behavior may have experienced childhood trauma resulting from abuse or violence. Unresolved trauma tends to lead a person towards committing acts of abuse. Therefore, this rehabilitation center not only provides a second chance for perpetrators of violence to reform but also offers an opportunity for those who may have experienced abuse to heal from their trauma. The recovery process emphasizes therapy and treatment, providing

¹⁷ Mohamed Nasrun, Interviewed by the Researcher, Clinical Psychologist at Jiwa Damai, Jiwa Damai Clinic Putrajaya, 23rd November 2023.

a pathway to a brighter future and a fresh beginning, thereby actively contributing to the decrease in incidents of child abuse.

4.4.3 Harm minimization stage

Individuals subjected to abuse, whether it is physical, sexual, or mental, often endure significant negative consequences and potential trauma. Taking this measure is imperative to safeguard their well-being and alleviate the adverse effects they may face.

The initiation of a dedicated therapy unit for child abuse is crucial at this stage. Children facing abuse frequently contend with emotional turmoil and trauma. Hence, the establishment of such a therapy unit serves to alleviate the negative emotions and regret experienced by abuse victims. Alongside counselling, the implementation of programs featuring customized coping mechanisms for each victim contributes to their healing. Serving as a supportive ally, the therapy unit provides a platform for victims to express their suppressed emotions.

Among other measures is the tightening of the law to prevent perpetrators from encountering their victims. This is aimed at avoiding triggers and further harm to the victims. This step also provides a period of calm for the victims. According to Harun, individuals who have experienced abuse can easily be triggered by their surroundings, leading them to feel fear and a sense of insecurity. Therefore, tightening the law is a crucial step towards minimizing the harm.

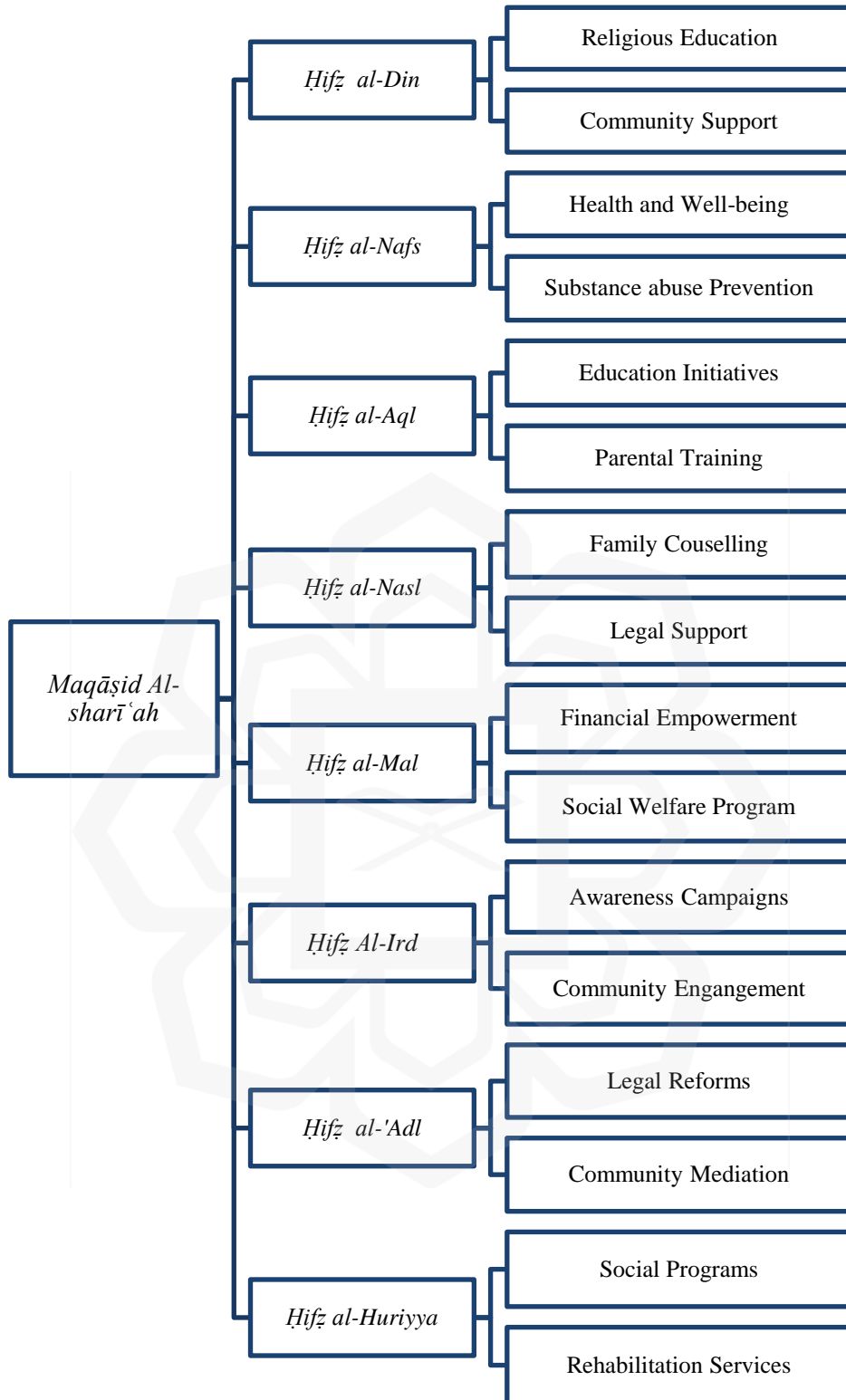


Figure 4.1 (*Maqāshid Al-sharī'ah* in Combating Child Abuse In Malaysia)

In Figure 4.1, the strategies for utilizing *Maqāṣid Al-sharī'ah* in combating child abuse in Malaysia are depicted, focusing on nine main objectives: Preservation of Religion, Life, Intellect, Lineage, Property, Honour, Justice, and Freedom. In the objective of preserving religion, establishing Religious Education and Community support is considered appropriate, aiming to educate and instil religious understanding while providing moral support to parents and communities facing abuse-related issues.

Moving to the objective of preserving life, a reasonable suggestion is to focus on health and well-being care since it is a zero-cost approach, and adopting a healthy lifestyle is an effective preventive method. Substance abuse prevention is also crucial considering its significant contribution to the rise in abuse cases. Furthermore, in the pursuit of the goal to combat child abuse through the objective of preserving intellect, initiatives like education programs and parental training can be implemented. These efforts help parents understand proper child-rearing practices and raise awareness about child abuse within the community.

In the objective of preserving lineage, efforts such as family counselling and legal support are recommended. Legal support is vital in safeguarding children's interests and rights, aligning with the goals of *Sharī'ah*. Addressing the objective of preserving property, powerful initiatives include Financial Empowerment and Social Welfare programs. These programs aim to lift families out of poverty, providing them with the means to raise their children comfortably. The sixth objective, preserving honour, suggests implementing awareness campaigns and community engagement. These programs are seen as effective measures to curb abuse within communities. Additionally, in the objective of preserving justice, actions like legal reforms and community mediation are suggested. These approaches can shed new light on the escalating issue of abuse in Malaysia.

Lastly, in the objective of preserving freedom, proactive steps such as social programs and Rehabilitation Services are recommended. These efforts provide opportunities for individuals to change and start a new, better life, ultimately preventing recurring abuse.

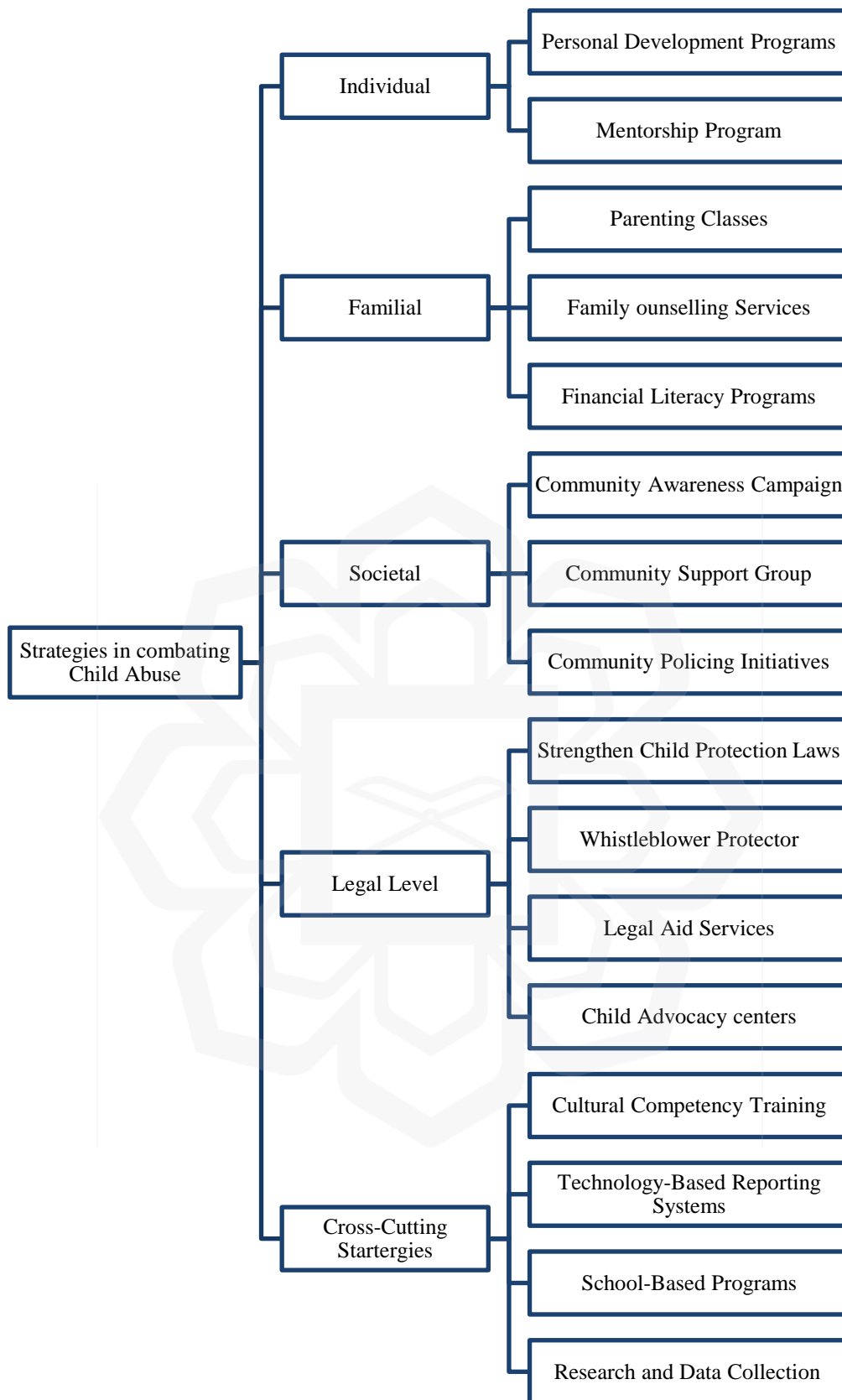


Figure 4.2 (Strategies in Combating Child Abuse based on levels)

Figure 4.2 illustrates strategies for combating child abuse at various levels. This category is divided into five main sections: strategies at the individual, family, societal, legal, and cross-cutting levels. At the individual level, recommended measures include Personal Development Programs and mentorship programs aimed at nurturing individuals capable of educating and raising children. The second involves family-level strategies, utilizing approaches such as Parenting Classes, Family Counseling Services, and Financial Literacy Programs to assist families in overcoming challenges and avoiding involvement in abusive activities.

At the societal level, initiatives such as Community Awareness Campaigns, Community Support Groups, and Community Policing aim to provide moral and physical support to address child abuse. Legal efforts include Strengthening Child Protection Laws, establishing whistleblower protection, providing Legal Aid Services, and establishing Child Advocacy Centres, all focused on protecting children and those involved in efforts to combat child abuse. Lastly, cross-cutting strategies encompass cultural competency training, technology-based reporting systems, school-based programs, and research and data collection, aiming to enhance efforts to curb child abuse.

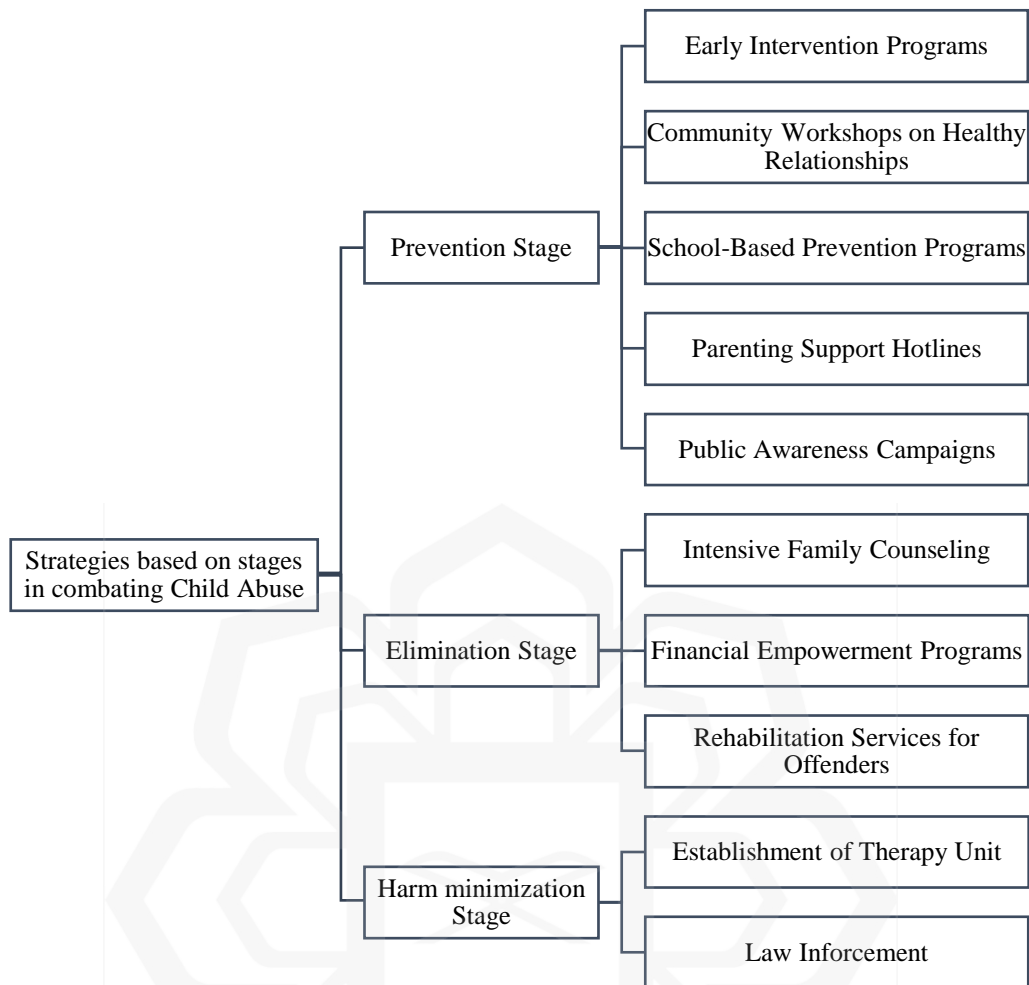


Figure 4.3 (Strategies based on stages in combating Child Abuse)

Figure 4.3 illustrates strategies based on stages in combating child abuse. The relevant categories include the Prevention stage, Elimination stage, and Harm Minimization stage. In the Prevention stage, efforts can be undertaken, such as Early Intervention Programs, Community Workshops on Healthy Relationships, School-Based Prevention Programs, Parenting Support Hotlines, and Public Awareness Campaigns. All these endeavours aim to prevent abuse from occurring. This step is crucial as it focuses on prevention rather than treatment.

Next is the Elimination stage, where efforts include Intensive Family Counselling, Financial Empowerment Programs, and Rehabilitation Services for Offenders. To reduce instances of abuse and prevent recurrence, these steps are worth considering. The last stage is Harm Minimization, aiming to reduce harm to children through the establishment of therapy units and law enforcement.

4.5 CONCLUSION

In conclusion, after examining the factors and impact of child abuse, this section presents a holistic plan to address the increasingly dangerous problem of child abuse with the aim of restraining and eradicating incidents of abuse. The researcher divides this section into three main parts. The first and foremost is a holistic solution using the *Maqāṣid Al-sharī'ah* framework, which focuses on safeguarding Religion, Life, Intellect, Lineage, Property, Honor, Justice, and Freedom. The second part involves strategies to combat child abuse at various levels, namely individual, family, society, law, and cross-cutting.

Initially, by employing *Maqāṣid Al-sharī'ah* to combat child abuse in Malaysia, the researcher concentrates on nine primary objectives: Preservation of Religion, Life, Intellect, Lineage, Property, Honour, Justice, and Freedom. Concerning the preservation of religion, the proposal includes the establishment of Religious Education and Community support to educate and instil religious understanding while providing moral support to parents and communities facing abuse-related issues. Additionally, in the preservation of life, the focus is on health and well-being. Moreover, in the pursuit of combating child abuse through the preservation of intellect, initiatives such as educational programs and parental training are suggested. Addressing the preservation of lineage, family counselling and legal support are proposed measures. For the preservation of property, powerful initiatives include Financial Empowerment and Social Welfare programs. Furthermore, in the pursuit of justice, actions like legal reforms and community mediation are recommended. These approaches offer new insights into the escalating issue of abuse in Malaysia.

For the second section, the researcher divides the solution into several classifications. This classification is segmented into five primary sections: strategies at the individual, family, societal, legal, and cross-cutting levels. At the individual level, recommended solutions include Personal Development Programs and mentorship programs. The second set involves strategies at the family level, employing approaches such as Parenting Classes, Family Counselling Services, and Financial Literacy Programs. On the societal level, suggested initiatives encompass Community Awareness Campaigns, Community Support Groups, and Community Policing. Legal

efforts involve Strengthening Child Protection Laws, establishing whistleblower protection, providing Legal Aid Services, and establishing Child Advocacy Centres, all geared towards protecting children and supporting endeavours to combat child abuse. Finally, cross-cutting strategies include cultural competency training, technology-based reporting systems, school-based programs, and research and data collection, aiming to enhance efforts to curb child abuse.

The concluding phase of addressing child abuse entails the researcher presenting strategies organized into stages: Prevention, Elimination, and Harm Minimization. During the Prevention stage, diverse efforts can be deployed, such as Early Intervention Programs, Community Workshops on Healthy Relationships, School-Based Prevention Programs, Parenting Support Hotlines, and Public Awareness Campaigns. Progressing to the Elimination stage, initiatives include Intensive Family Counselling, Financial Empowerment Programs, and Rehabilitation Services for Offenders. In the last stage, Harm Minimization aims to decrease harm to children by establishing therapy units and strengthening law enforcement. In essence, these initiatives represent a systematic and strategic approach, and the concept of achieving a nation free from child abuse can be realized if all parties at every level actively play their respective roles in combating child abuse.

CHAPTER FIVE

CONCLUSION

In this study, the researcher undertook a comprehensive investigation into the foundational principles of *ḥaḍānah* from an Islamic juristic standpoint. Subsequently, the researcher explored the contributing factors to the abuse of *ḥaḍānah* in Malaysia and its impact on individuals. The research also examined the effective application of *fiqh* principles by the researcher to safeguard the well-being of children in Malaysia. The present study has achieved certain findings which are as follows:

1. The disturbing frequency of *Ḥaḍānah* abuse cases in Malaysia calls for immediate attention and a thorough intervention. These unsettling incidents not only endanger the immediate safety of children but also present significant threats to their enduring mental, psychological, and sexual well-being. The far-reaching consequences go beyond physical safety, encompassing the potential harm to the spiritual and emotional welfare of these vulnerable individuals.
2. The incidents involving children requiring care and protection have increased over the last three years, spanning from 2020 to 2022. Specifically, in the latest year, there were 6770 reported cases, as opposed to 5858 cases in 2020 and 6144 cases in 2021.
3. Children in Islam are considered an *Amānah*, a sacred trust bestowed by Allah, and parents will be held accountable for their stewardship of this entrusted responsibility. The Prophet serves as a poignant example, demonstrating profound love for children, and he should be emulated as a model for nurturing and caring for them.
4. Children have rights in Islam that extend both before and after birth. This begins with the selection of a righteous spouse, followed by the responsibility of bestowing a good name upon them after their birth.

Conducting the Aqiqah ceremony and fulfilling their needs are integral components of recognizing and upholding these rights.

5. The Islamic principle of *ḥaḍānah* involves the compassionate obligation to care for children who have not yet attained the capability of self-care. Both the Quran and Sunnah offer guidance on identifying those rightfully entitled to and fulfilling the conditions for assuming the guardianship of children. This duty transcends mere nurturing, encompassing a holistic commitment to their well-being, including comprehensive care and education, ensuring their optimal growth and development.
6. The Quran provides invaluable and dynamic insights into family dynamics and the responsibilities of parents. It places a strong emphasis on preserving family ties, upholding principles of equality and justice, and advocating for the comprehensive development of children within the family structure.
7. In accordance with the perspectives of the four schools of thought, the concept of *ḥaḍānah* involves giving precedence to the well-being of children, ensuring their needs are addressed until they reach a level of maturity that allows them to care for themselves independently. Fundamentally, a mother holding these responsibilities may risk forfeiting her rights if she neglects the welfare of her child.
8. The rights of children can be categorized into three main areas. Initially, there is the *ḥaḍānah* right, mainly given to women, especially mothers. Secondly, there is the responsibility of guardianship over the child's well-being, typically placed on men, notably fathers. Lastly, there is the guardianship right concerning the child's assets, wherein the responsibility for safeguarding these assets rests with men, particularly fathers.
9. In the context of custody entitlement, the prevailing perspective across the four schools of thought tends to favor the mother, especially when she remains unmarried. This preference reflects an acknowledgment of the mother's traditionally perceived role as the primary caregiver.

10. The general conditions for custody in Islamic jurisprudence include being a practicing Muslim, possessing the capability to adequately care for the child, ensuring a safe and nurturing environment, demonstrating maturity, and being free from the influence of a prohibited spouse.
11. The application of *ḥaḍānah* in present-day societies exhibits considerable variability across different nations. A prevailing trend in numerous modern Islamic countries involves the incorporation of a *Sharī'ah* legal framework as the fundamental basis for dealing with legal issues, notably those pertaining to child custody.
12. The *Maqāṣid sharī'ah* serves as a guide for ensuring the protection of children and acts as a beacon in fostering a culture of awareness and responsibility towards preventing child abuse in Malaysia. Through its emphasis on preservation of religion, life, Intellect, justice, and property, and the preservation of human dignity, this framework becomes an instrumental tool in shaping societal attitudes and policies that actively work against any form of harm or exploitation faced by the younger generation.
13. Malaysia's legal system consists of two distinct sets of laws: secular law, which is applicable to non-Muslims, and *Sharī'ah* law, which governs Muslims. The *ḥaḍānah* falls under the jurisdiction of the *Sharī'ah* law, specifically regulated by the Islamic Family Law Act 303 in Malaysia.
14. In the present-day global context, the significance of the *ḥaḍānah* concept is paramount in guaranteeing the well-being of children, marking its emergence as a foundational element within legislation aimed at protecting the rights of children in Malaysia.
15. The upward trajectory of child abuse cases in Malaysia, with a notable peak of 6,770 reported instances in 2022, brings heightened attention to the prevalent issue. Specifically, the states of Selangor and the Federal Territory emerge as significant contributors to this disturbing trend. This stresses the urgent necessity for implementing comprehensive measures and elevating

public awareness to effectively combat and mitigate the escalating instances of child abuse within these particular regions.

16. Abuse of custody rights takes various distressing forms, falling into four distinct categories. Neglect involves disregarding fundamental daily needs like food and love. Physical abuse includes hitting and punishing, while mental abuse comprises demeaning actions and threats of abandonment. Sexual abuse, the most severe form, encompasses assault, inappropriate touching, molestation, and exposure to explicit content.
17. Among the 19 factors reported, the root causes of the five highest instances of child abuse often stem from diverse factors, including influence from a boyfriend, family disputes, parental negligence, financial problems, and issues related to substance abuse.
18. The researcher has classified 19 factors related to child abuse into three primary categories. The first, Individual factors, delves into personal aspects like mental health or behavioral tendencies. The second, Familial factors, scrutinizes dynamics within the family, including disputes, negligence, and relationships. Finally, Social factors investigate broader societal influences, such as financial problems, substance abuse, and external relationships.
19. In Islamic teachings, the recognition of various factors influencing individuals to engage in wrongdoing underscores the complexity of human behavior. These contributing elements include the influence of Satan, the impact of personal choices, and other external factors at play. The multifaceted nature of these influences serves as a reminder within Islamic beliefs that the path towards wrongful actions involves a combination of internal and external dynamics.
20. The abuse of child custody rights profoundly affects the objectives of *Maqāṣid sharī'ah*, particularly in preserving religion, life, and intellect. This misconduct undermines family stability and the religious environment, challenging the aspect of preserving religion. It also endangers the physical

well-being of children, jeopardizing the objective of preserving life. Negative influences on the mental and emotional development of children are observed in preserving intellect.

5.1.1 RECOMMENDATIONS

1. To effectively combat child abuse, it is essential for all parties to actively fulfil their roles across diverse levels, including individuals, communities, and government entities. These collective efforts are directed towards ensuring the effective pursuit of safeguarding children's welfare.
2. The government is mandated to proactively set the well-being of children as a primary objective, prioritizing it on the national agenda, and commencing collaborative endeavours in an anti-abuse campaign to ensure that efforts to curb maltreatment are not merely aspirational.
3. Parents are advised to deepen their knowledge in educating their children and instil a sense of fear of consequences from Allah upon those parents who neglect the children entrusted to them. By adopting these measures, endeavors to mitigate instances of abuse can be executed with efficacy.
4. The community is urged to act as vigilant observers, cooperating with law enforcement by staying informed and promptly reporting any instances of abuse within their vicinity. Additionally, it is advisable for the community to establish itself as a supportive network for individuals experiencing abuse.
5. Public servants; teachers, doctors, police, and lawyers are encouraged to actively fulfill their roles in all sectors, including education, healthcare, and law. A collaborative effort is essential, requiring all parties to join forces in achieving the common objective of child well-being.

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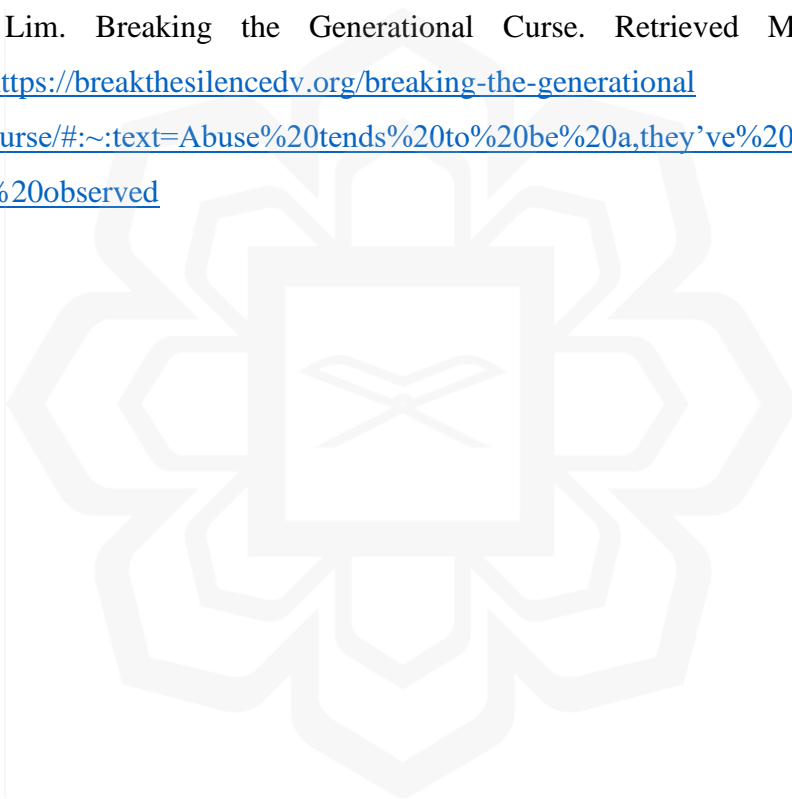
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APPENDIX A

Interview Questions for Chief Judge of Sharī'ah court, Selangor:

The authority will be queried within the context of their responsibilities regarding child abuse and the Malaysian court system.

1. How does the court assess evidence and testimony in cases of child abuse that may result in the loss of custodial rights?
2. What steps and roles does the *Sharī'ah* court take in disputes over child custody involving an apostatized parent, ensuring the child's well-being and upholding *Sharī'ah* objectives?
3. Can you discuss any notable cases or precedents within the Sharī'ah court system that have contributed to the jurisprudence surrounding child abuse and custody?
4. In the case of Zubaidi Amir Qusyairi Abdul Malek, a foster child later claimed by his biological mother, and subsequent unfortunate events leading to his death, what caused this situation, and how can it be addressed to prevent custody rights misuse?
5. What challenges or specific issues related to child custody should be considered in court proceedings?
6. Are there ongoing initiatives or proposed reforms to prevent the abuse of child custody rights (*Haḍānah*), especially in Selangor?
7. What is Dato's stance on Nik Elin's claim concerning "Selling or Giving a Child to Non-Muslims or Muslims of Bad Moral Character" (Section 13)?
8. How does Dato envision the future for children affected by parental divorce in Malaysia, particularly in Selangor, over the next 5 years?

9. What measures can be implemented to enhance *Shari'ah* laws in Malaysia?

10. In your opinion, how can the *Shari'ah* court collaborate with religious scholars, community leaders, and social workers to create a more comprehensive approach to preventing and addressing child abuse?



APPENDIX B

Interview Questions for Clinical Psychologist

This interview offers insights into selected clinical perspectives and are referenced when discussing qualitative findings in the main text.

1. What are the implications of abuse on the emotional development of children?
2. How can abuse affect the social development of children?
3. What clinical signs may manifest in children who have experienced abuse?
4. Which type of abuse is most likely to result in long-term effects on children?
5. How does the variation in children's ages impact their response to abuse?
6. What environmental factors can influence the effects of abuse on children?
7. What intervention approaches or therapies are effective in assisting children who have experienced abuse?
8. How crucial is family support in the recovery of children who have experienced abuse?
9. What preventive measures can be implemented to protect children from abuse?
10. Is it possible for children who have experienced trauma due to abuse to fully recover?