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A Critical Study of the Permissibility of Viewing Perspective Spouse Woman Being for Merriage

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ABSTRACT

This study employs a qualitative research approach using the library research method. Data were obtained from primary and secondary sources, including classical and contemporary *fiqh* books, works on *usul al-fiqh*, as well as literature on *maqashid al-shariah* and *qawaid fiqhiyyah*. The approaches employed were *maqashid al-shariah* and *qawaid fiqhiyyah* to understand Islamic law comprehensively, not merely from a textual perspective, but also by considering the objectives and welfare underlying Islamic legal rulings. The findings show that the permissibility of looking at a woman who is being proposed for marriage is recognized by all *Mazhabs* of *fiqh*, although the permissible limits differ. The majority of *Mazhabs* restrict such viewing to the face and palms, while *Mazhab Hanafi* and *Mazhab Hanbali* provide limited flexibility. Meanwhile, *Mazhab Zhahiriyah* permits a broader scope based on a textual approach. From the perspective of *maqashid al-shariah* and *qawaid fiqhiyyah*, particularly *hifz al-'ird* and the legal maxim *al-darar yuzal*, such permissibility should be understood proportionally and preventively.

ARTICLE INFORMATION

Fiqh, Mazhab Zhahiriyah, Maqashid al-Shariah.

1. Introduction

The purpose of marriage is to establish a happy family based on the belief in the One and Only God by forming a strong physical and spiritual bond between a man and a woman as husband and wife. According to the prevailing laws and regulations, religion and belief are closely related to marriage. The legal requirements for marriage in Indonesia include civil and legal registration, as well as compliance with the applicable laws and regulations, in addition to the respective religions and beliefs of the parties (Rahmawati, 2021).

The marriage process is not something undertaken arbitrarily; rather, it involves a series of stages prescribed by the sharia. One of these stages is the engagement process. The prospective wife is formally proposed to, after which the proposal is considered and either accepted or rejected (Mayandri & Mashur, 2017).

Islam and its tolerant sharia have established a set of fundamental principles and practical guidelines that should be followed by prospective couples intending to marry. Marriage will be harmonious, with love and affection between husband and wife, when the man and woman adhere to these guidelines. Allah SWT has instructed prospective couples to become acquainted with one another (*ta'aruf*) so that their marriage can be conducted properly based

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Vol. 8 No. 2 Tahun 2026

on sound views and considerations (Maulana et al., 2024).

The term "*peminangan*" is derived from the word "*pinang, meminang*" (a verb). The synonym of *meminang* is *melamar*, which is referred to in Arabic as *khitbah*. Etymologically, *meminang* or *melamar* means, among other things, proposing to a woman to become a wife, either for oneself or for another person. Terminologically, *peminangan* refers to an activity or effort directed toward establishing a prospective marital relationship between a man and a woman. In other words, it refers to a man asking a woman to become his wife through the customary procedures generally practiced within society (Mega Utami Imyansah et al., 2024; Tihami & Sahrani, 2009). Muslih, Nurdin, & Marzuki, (2020) state that *meminang* means asking a young woman to become one's wife, while *pinangan* refers to a request to marry a woman, and the person who makes the proposal is called a *peminang*. Meanwhile, *peminangan* refers to the act of making a marriage proposal (Rodiana, 2024).

The word tunangan is derived from the word "*tunang, tunangan*" (a verb), which is synonymous with meminang or melamar, referred to in Arabic as *khitbah*. Peminangan is equivalent to *khitbah*. In Arabic, the word *khitbah* derives from the Arabic root خطب – يخطب – خطبًا – خطبةً, which means a request or proposal,(Rahmia et al., 2023) and is simply understood as the expression of an intention to establish a marital union. The term الخطبة is standard Arabic commonly used in everyday communication. Islamic jurists (fuqaha) define khitbah in several ways, including the following:

a. Abu Zahrah defines peminangan as a man's request addressed to the guardian (*wali*) or to a woman with the intention of marrying her (Kasdim Bustami, 2021).
b. According to Bani Ahmad Saebani, *meminang* refers to a man expressing his intention to marry a woman, either directly or through a trusted intermediary. Such a proposal is permitted in Islam for widows or unmarried women whose *iddah* period has ended, except for women who are still in the period of *iddah ba'in*, for whom a proposal is permitted only through indirect or implicit expressions (Maharani, 2026).
c. Sayyid Sabiq defines *meminang* as a man's request to a woman to become his wife, through the customary procedures generally practiced within society (Nasriman et al., 2025).
d. Wahbah Az-Zuhaily states that *khitbah* is a man's expression of his intention to marry a particular woman, which is then communicated by the woman to her guardian (*wali*). Such an expression of intention may be conveyed either in clear and explicit language (*sharih*) or through indirect expressions (Maharani, 2026).

2. Literature Review

2.1 The Concept of Seeing an Engagement According to the Four Schools of thought

Imam Malik holds that looking at a woman during *khitbah* is permissible, but only to the extent of her face and palms. Imam Syafi'i stated, "If a man intends to marry a woman, he is not permitted to look at her while her *awrah* is uncovered. Rather, he may look at her face and both palms while she remains properly covered, whether with or without her permission." (Bairuha, 2023)

Imam Hanbali permits looking at the parts of the body that are ordinarily visible, such as the face, both palms, neck, and feet. This view is based on the understanding that when the Prophet (peace be upon him) permitted a man to look at a woman whom he intended to propose to without her knowledge, it can be understood that he permitted looking at all parts of the body that are ordinarily visible. This is because it would not be reasonable to restrict the

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Vol. 8 No. 2 Tahun 2026

viewing solely to the face, while other parts of the body are also ordinarily visible (Susilowati & Ilmie, 2023).

2.2 Theory of Justice

One of the grand theories employed in this study is the Theory of Justice. Justice is generally classified into two main forms: distributive justice and corrective justice. Distributive justice concerns the fair allocation of rights, obligations, and benefits according to proportional considerations, while corrective justice focuses on restoring balance when a legal violation has occurred through appropriate sanctions and remedies. In addition to the theory of justice within positive criminal law, this study also adopts the theory of *Maqasid al-Shariah* as a grand theoretical framework in formulating concepts of criminal liability and evidentiary law concerning child commercial sexual exploitation in Indonesia. (Munir, 2023; Rasyid et al., 2024)

Several justice theories serve as analytical frameworks in this research. First, the concept of distributive and corrective justice provides the foundation for the principle of equality before the law, ensuring that all individuals receive fair treatment within the legal system (Nurdin, 2022). Second, the theory of justice based on liberty and equal opportunity emphasizes that legal arrangements should particularly protect disadvantaged and vulnerable groups, including child victims of sexual exploitation. This perspective supports a victim-oriented approach that prioritizes recovery and protection alongside the punishment of offenders. Third, the theory that integrates legal certainty, justice, and social utility highlights that criminal law should not only provide clear and enforceable rules but also reflect moral values and generate benefits for society. These principles are particularly relevant in addressing child sexual exploitation, where legal protection must balance certainty, fairness, and the broader goal of safeguarding children's rights and welfare. (Miaw, 2023; Waris et al., 2025)

2.3 Maqāṣid al-Sharīʿah Theory (Imam Al-Shatibi)

Maqāṣid al-Sharīʿah (the objectives of Islamic law) is a fundamental concept in Islamic jurisprudence that emphasizes the underlying purposes and wisdom behind every legal ruling. According to *Imam Al-Shatibi* (d. 790 AH), the primary objective of Maqāṣid al-Sharīʿah is to promote *maslahah* (public welfare and universal good) and prevent *maslahah* (harm and corruption) in human life. (Niswatul Malihah & Tapa'ul Habdin, 2023)

The theory of *Maqāṣid al-Sharīʿah* serves as a philosophical framework for analyzing the implementation of parental responsibilities toward children after divorce in Palu. This theory not only evaluates the conformity of legal and social practices with Islamic principles but also provides a comprehensive perspective that integrates normative, sociological, and moral dimensions. (Asriyana et al., 2025)

Each empirical finding concerning child custody practices, the provision of financial support, or the psychological impacts of divorce is examined through the fundamental principles of *Maqāṣid al-Sharīʿah* to achieve a more holistic and comprehensive understanding.

2.4 The Reality of Child Sexual Exploitation in Selected Muslim-Majority Countries

Social Role Theory, developed by Biddle and Thomas, explains that individuals occupy specific social positions that are accompanied by behavioral expectations known as social roles. Originating from sociology, psychology, and anthropology, the theory emphasizes that social interactions are shaped by expectations, norms, actual behavior (performance), and the evaluation or sanctions imposed by society. Expectations and norms define how individuals are

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expected to behave, while performance reflects the actual enactment of those roles, which may vary across individuals. (Ja'far, 2021)

Evaluations and sanctions function as mechanisms through which society assesses and regulates role performance based on prevailing social standards.(Hutabarat, 2024)

In the context of family dynamics after divorce, Social Role Theory provides a useful framework for understanding the transformation of parental roles. Divorce often creates role conflict, role ambiguity, and role overload as parents adapt to new family structures and responsibilities. Fathers and mothers may be required to renegotiate their roles in relation to child support, caregiving, and decision-making, while simultaneously responding to social and cultural expectations. (Nasution & Meli Fauziah, 2024; Sasmita et al., 2021)

This process of role transition is influenced not only by social norms but also by religious and cultural values, particularly within Muslim communities where parental responsibilities toward children continue despite the dissolution of marriage. Consequently, the theory offers a comprehensive perspective for analyzing how divorced parents reconstruct and perform their parental roles in changing social circumstances. (Harahap, 2024; Nadeak et al., 2019)

3. Methodology

This study employed a qualitative approach with exploratory, interpretive, and constructive characteristics to examine the nature of parental responsibilities toward children after divorce from the perspective of Islamic law in Palu. (Arsyam & M. Yusuf Tahir, 2021; Sugiyono, 2017) The qualitative approach was chosen to gain an in-depth understanding of the experiences, perceptions, and social realities surrounding child support, custody, and parental obligations in post-divorce families. Using an empirical-sociological perspective, the study explored how Islamic family law norms, particularly those relating to child maintenance and parental responsibilities, are implemented in everyday life and influenced by social, economic, cultural, and religious factors. The research was conducted in Ulujadi District, Palu City, an area characterized by diverse socioeconomic conditions and strong local cultural values, making it a relevant setting for examining the practical implementation of parental responsibilities following divorce.

4. Results and Discussion

4.1 Parental Maintenance Responsibilities Toward Children After Divorce: An Islamic Family Law Perspective

Parental financial support (*nafkah*) after divorce is a fundamental obligation in Islamic family law aimed at ensuring the welfare and best interests of the child. *Nafkah* encompasses the provision of essential needs, including food, clothing, shelter, healthcare, and education, and remains the responsibility of parents, particularly the father, according to his financial capacity. Islamic teachings emphasize that this obligation is rooted not only in legal norms but also in moral and religious responsibilities arising from kinship and parenthood. The Qur'an and Hadith consistently affirm the duty of parents to safeguard the physical and social well-being of their children, even after the dissolution of marriage.

Beyond financial support, parents are responsible for the educational development of their children. This responsibility includes providing access to formal education, nurturing intellectual growth, and cultivating moral, ethical, and religious values. In Islamic thought, children are regarded as a trust (*amanah*) from Allah; therefore, parents are obligated to guide them toward faith, good character, and

responsible citizenship. Effective parental involvement creates a supportive environment that fosters self-confidence, personal development, and academic success while preparing children to contribute positively to society.

Parental responsibility also extends to caregiving and emotional support. Proper parenting involves protecting, nurturing, and guiding children through continuous interaction and affection. A healthy caregiving environment promotes emotional security, psychological well-being, and positive character formation. Following divorce, parents often face challenges in adapting to new family structures; nevertheless, both remain responsible for ensuring that children receive adequate care, supervision, and moral guidance. In the contemporary digital era, this responsibility further includes protecting children from harmful social and technological influences while encouraging healthy social relationships.

From the perspective of Islamic family law, parental responsibilities encompass the holistic development of the child, including physical, intellectual, spiritual, and social dimensions. Parents are expected to instill faith, moral values, discipline, and social responsibility through both instruction and exemplary conduct. Islamic legal sources, including the Qur'an, Hadith, and the Compilation of Islamic Law (KHI), emphasize that parental obligations continue after divorce and must be fulfilled in a manner that promotes justice, child welfare, and family stability. Consequently, the fulfillment of financial support, education, and caregiving responsibilities serves as an essential foundation for protecting children's rights and achieving their overall well-being.

4.2 The Implementation of Parental Child Support Responsibilities After Divorce in Palu City

The implementation of child maintenance responsibilities following divorce in Palu City indicates that the obligation to provide child maintenance, which is legally imposed on the father under Islamic family law, has not been fulfilled optimally. Interviews with former spouses, children, advocates, and other relevant parties reveal that most fathers do not provide maintenance regularly, and in some cases, they provide no maintenance at all after divorce. This situation results in the mother bearing most of the child's needs, including food, education, and healthcare. Such non-compliance is influenced by economic factors, a lack of legal and religious awareness, post-divorce conflicts, and weak supervision of the implementation of court judgments.

The study also found that unfulfilled maintenance obligations are not limited to material aspects but also encompass non-material support, including attention, affection, communication, and the father's involvement in the child's life. Many children from divorced families in Palu City experience increasingly distant relationships with their fathers due to limited communication and attention following divorce. Some children even feel neglected and experience the loss of a father figure, resulting in psychological effects such as sadness, disappointment, low self-esteem, and a diminished sense of security within the family.

In practice, the survival and well-being of children are largely sustained by the roles of mothers and extended family members. When fathers fail to fulfill their maintenance obligations, mothers assume dual roles as caregivers and breadwinners, while extended family members provide financial assistance, housing, and caregiving support. These findings indicate a factual shift in responsibility from fathers to mothers and the wider family network, even though, from a normative perspective, the obligation to provide maintenance remains

with the father under Islamic law and applicable legislation.

The most tangible impacts of the inadequate fulfillment of maintenance obligations in Palu City are evident in children's economic, psychological, social, and educational conditions. Insufficient maintenance forces some mothers to incur debt or rely on assistance from family members to meet their children's school expenses and basic needs. Furthermore, children become more vulnerable to emotional distress, limited social participation, and obstacles to continuing their education. These findings demonstrate that the fulfillment of post-divorce maintenance obligations is not merely a matter of legal responsibility but also a determining factor in the overall quality of children's well-being and their future prospects.

5. Conclution

From the perspective of Islamic family law, child support after divorce remains the father's ongoing responsibility, covering both financial and non-financial needs. However, in Palu, its implementation remains inadequate, as many fathers fail to provide consistent support, leaving mothers and extended families to bear most of the responsibility. This situation negatively affects children's economic well-being, education, and psychological development. The main contributing factors include economic hardship, poor post-divorce relations, low legal and religious awareness, and weak enforcement of child support obligations.

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