

CUSTODY/ CARE OF UNDERAGE CHILDREN

الْحَمْدُ لِلَّهِ نَحْمَدُهُ وَنَسْتَعِينُهُ وَنَسْتَغْفِرُهُ. وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ
أَعْمَالِنَا. مَنْ يَهْدِهِ اللَّهُ فَلَا مُضِلَّ لَهُ وَمَنْ يُضِلَّهُ فَلَا هَادِيَ لَهُ.

أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، وَأَشْهَدُ أَنَّ سَيِّدَنَا مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ.
اللَّهُمَّ صَلِّ وَسَلِّمْ وَبَارِكْ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِهِ وَأَصْحَابِهِ أَجْمَعِينَ.
أَمَّا بَعْدُ،

فِيَا عِبَادَ اللَّهِ، اتَّقُوا اللَّهَ أَوْصِيكُمْ وَإِيَّايَ بِتَقْوَى اللَّهِ، فَقَدْ فَازَ الْمُتَّقُونَ.

Let us increase our righteousnes and obedience to Allah the Almighty by doing all that He prescribes and and leaving all that He prohibits. May we be blessed by Allah the Almighty in this life and the hereafter.

Dear brothers and sisters,

Children are gifts from Allah the Almighty to mankind. There is nothing more satisfying in this life than having a good family, peace and tranquility. In building a happy family, parents need to play important roles in nurturing their children with a conducive environment based on strong Islamic faith. The prophet (pbuh) said in a hadith narrated by Imam al-Bukhari:

“No baby is born but upon Fitra (as a Muslim). It is his parents who make him a Jew or a Christian or a Polytheist.”

Allah the Almighty says in chapter 8 (surah Al-Anfal) verse 28:

أَعُوذُ بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ
وَأَعْلَمُوا أَنَّمَا أَمْوَالُكُمْ وَأَوْلَادُكُمْ فِتْنَةٌ وَأَنَّ اللَّهَ عِنْدَهُ أَجْرٌ عَظِيمٌ ﴿٢٨﴾

Which means: *And know that your properties and your children are but a trial and that Allah has with Him a great reward.*

On this basis, the question of raising children is a matter of great concern in Islam. There is a special chapter in Fiqh study which discusses the question of law of inheritance i.e. child custody. Based on Islamic laws, the primary basis for consideration of custody (*hadanah*) is the extent to which the child's faith may be preserved when they are young and seeking the identity and guidance in life. These children need to be guided to know Allah the Almighty and the laws of Islam instead of being lavished with luxury and material possessions. The big question that arises is that in the event of divorce, does the mother or father have the right to care for the young children?

Dear brothers and sisters,

In the Shafie School of thought, the right to nurture a minor (*mumayyiz*), is the right of a Muslim mother. In Section 82 of the Pahang State Islamic Family Law Enactment, it is clear that mothers are the most entitled to the right of child custody; whether during marriage or after divorce. However, there are certain conditions in Section 83 that qualify mothers to obtain this right, namely:

- (i) she is a muslim;
- (ii) she is of perfect mind;
- (iii) she is of an age that permits her to give care and love that the child needs;
- (iv) she is morally sound and has good behavior
- (v) she lives in a place where the child is protected from physical and moral harm.

Although *ijma 'ulamak* (consensus or agreement of the Muslim scholars basically on religious issues) states that the mother is most entitled to custody of a minor, the right will be void, as set forth in Section 84, among others:

- (i) if the woman marries a man that will endanger the child's welfare;
- (ii) if the woman is immoral;
- (iii) if the woman is engaged in apostasy;
- (iv) if the woman is careless and abuses the child.

Dear brothers and sisters,

Our country had been shocked by the custody case of children born by non-muslims and then the husband embraced Islam. The civil court handed over one child to the Muslim father; while another child was handed over to the non-Muslim mother. Meanwhile, the Syariah court has ruled that the husband has the right to take care of the two children and the children are Muslims according to the religion of their father. This became a hotly discussed issue.

In this regard, no party has the jurisdiction to intervene in the decision of the syariah court; taking into account the position of Islam which is the federal religion, as well as the state's jurisdiction over islamic affairs and the role of the

rulers who are the heads of Islam that seek advice from muftis and state Islamic Religious Councils.

The 87th Fatwa Committee Muzakarah also decided in 2009 that, "When one of the spouses (parent) converts to Islam, the religious status of an underage child is Muslim."

The right to childcare of a Muslim parent does not necessarily mean that Islam denies family relationship with their non-Muslim parent. In fact, the Qur'an teaches that the filial relationship is to be maintained, even though custody is not granted.

Allah the Almighty syas in chapter 31 (surah Luqman) verse 15:

أَعُوذُ بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ

وَإِنْ جَاهِدَاكَ عَلَىٰ أَنْ تُشْرِكَ بِي مَا لَيْسَ لَكَ بِهِ عِلْمٌ فَلَا تُطِعْهُمَا وَصَاحِبُهُمَا فِي الدُّنْيَا

مَعْرُوفًا وَأَتَّبِعْ سَبِيلَ مَنْ أَنَابَ إِلَيَّ ثُمَّ إِلَيَّ مَرْجِعُكُمْ فَأُنَبِّئُكُمْ بِمَا كُنتُمْ تَعْمَلُونَ ﴿١٥﴾

Which means: *But if they endeavor to make you associate with Me that of which you have no knowledge, do not obey them but accompany them in [this] world with appropriate kindness and follow the way of those who turn back to Me [in repentance]. Then to Me will be your return, and I will inform you about what you used to do.*

بَارِكْ اللهُ لِيْ وَلَكُمْ فِي الْقُرْآنِ الْعَظِيْمِ، وَتَفَعَّلِيْ وَإِيَّاكُمْ بِمَا فِيهِ مِنَ الْآيَاتِ وَالذِّكْرِ
الْحَكِيْمِ، وَتَقَبَّلْ مِنِّيْ وَمِنْكُمْ تِلَاوَتَهُ إِنَّهُ هُوَ السَّمِيْعُ الْعَلِيْمُ، أَقُولُ قَوْلِيْ هَذَا وَأَسْتَغْفِرُ اللهَ
الْعَظِيْمَ لِيْ وَلَكُمْ، وَلِسَائِرِ الْمُسْلِمِيْنَ وَالْمُسْلِمَاتِ، وَالْمُؤْمِنِيْنَ وَالْمُؤْمِنَاتِ، فَاسْتَغْفِرُوهُ فَيَا فَوْزَ
الْمُسْتَغْفِرِيْنَ وَيَا نَجَاةَ التَّائِبِيْنَ.