

## The Implementation of Descente in Hadhanah Disputes: A Juridical and Child Psychological Perspective in Religious Courts

\*Barkah Ramdhani<sup>a</sup>, Wasman<sup>a</sup>, Sugianto<sup>a</sup>, Edy Setyawan<sup>a</sup>,  
Khiyaroh<sup>b</sup>

<sup>a</sup> Universitas Islam Negeri Siber Syekh Nurjati Cirebon, Indonesia

<sup>b</sup> Sekolah Tinggi Agama Islam Yogyakarta, Indonesia

Corresponding author: [bramdhanish@gmail.com](mailto:bramdhanish@gmail.com)

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### Abstract

*This study aims to analyze juridically the implementation of descente (local examination) in influencing judges' consideration of child custody disputes (hadhanah) in the Religious Court by focusing on the psychological perspective of the child. The main problem lies in the limitations of the descente function, which is classically oriented to material matters, but in practice it is beginning to be used to assess the child's parenting and emotional relationships. This study uses a qualitative method with an empirical juridical approach through literature studies, decision analysis, and in-depth interviews with judges. The data were analyzed by examining the suitability of descente practices to Islamic civil procedure law and its relevance to the psychological needs of children, such as a sense of security, emotional closeness, and developmental stages. The results of the study show that descente plays a strategic role in enriching the judge's consideration base because it is able to present the reality of children's lives that are not fully revealed through formal evidence. The child's psychological perspective also emphasizes the urgency of descent as an instrument to actualize the principle of the best interest of the child. However, it was found that there were variations in the intensity, quality, and integration of descent results into the consideration of the decision, which had implications for the inconsistency of the application of child protection principles. Thus, this study recommends strengthening normative guidelines through Supreme Court regulations and increasing the capacity of judges in understanding aspects of child psychology so that the implementation of descente is more optimal as an instrument to protect children's rights and welfare in hadhanah cases.*

**Keywords:** *Descent; Hadhanah; The Best Interests of The Child; Child Psychology.*

### Abstrak

Penelitian ini bertujuan menganalisis secara yuridis pelaksanaan descente (pemeriksaan setempat) dalam memengaruhi pertimbangan hakim pada sengketa hak asuh anak (hadhanah) di Pengadilan Agama dengan menitikberatkan pada perspektif psikologis anak. Permasalahan utama terletak pada keterbatasan fungsi descente yang secara klasik berorientasi pada perkara kebendaan, namun dalam praktik mulai digunakan untuk menilai kondisi pengasuhan dan relasi emosional anak. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis empiris melalui studi

kepastakaan, analisis putusan, serta wawancara mendalam dengan hakim. Data dianalisis dengan menguji kesesuaian praktik descente terhadap hukum acara perdata Islam serta relevansinya dengan kebutuhan psikologis anak, seperti rasa aman, kedekatan emosional, dan tahap perkembangan. Hasil penelitian menunjukkan bahwa descente berperan strategis dalam memperkaya basis pertimbangan hakim karena mampu menghadirkan realitas kehidupan anak yang tidak sepenuhnya terungkap melalui alat bukti formal. Perspektif psikologis anak juga mempertegas urgensi descente sebagai instrumen untuk mengaktualisasikan prinsip *the best interest of the child*. Namun demikian, ditemukan adanya variasi dalam intensitas, kualitas, dan integrasi hasil descente ke dalam pertimbangan putusan, yang berimplikasi pada inkonsistensi penerapan prinsip perlindungan anak. Dengan demikian, penelitian ini merekomendasikan penguatan pedoman normatif melalui regulasi Mahkamah Agung serta peningkatan kapasitas hakim dalam memahami aspek psikologi anak agar pelaksanaan descente lebih optimal sebagai instrumen perlindungan hak dan kesejahteraan anak dalam perkara hadhanah.

**Kata Kunci:** Penurunan; Hadhanah; Kepentingan Terbaik Anak; Psikologi Anak.

## INTRODUCTION

The issue of child custody (*ḥadḥanah*) after divorce is a crucial issue in family law, both from the perspective of national law and Islamic law. Divorce not only ends the legal relationship between husband and wife, but also gives birth to complex juridical and social consequences, especially related to the protection and fulfillment of children's rights. Children as fully incapable legal subjects need continuous upbringing, protection, and attention from both parents. Therefore, arrangements regarding child custody are very important to ensure the sustainability of children's growth and development optimally, both physically, emotionally, and spiritually.<sup>1</sup>

Sociologically, the increasing divorce rate in Indonesia, especially in the West Java region, has direct implications for the increase in child custody disputes in the Religious Courts. This phenomenon shows that divorce is not only a private issue, but has also developed into a public issue that requires legal intervention. In many cases, custody of children is often influenced by emotional conflicts between parents, which can ultimately override the best interests of the child as a key principle in modern family law.<sup>2</sup>

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<sup>1</sup> Andi Arizal Sastra Tjandi, Aksah Kasim, and Andi Heridah, "*The Position of Child Custody Due to Living Divorce*," *Asmir Journal of Litigation*, X, 2 2022, p. 164

<sup>2</sup> Supardi, "*Hadhanah and the Responsibility of Child Protection*", *Al Manahij Journal* Vol 8 No 1, 2014, p. 58

In the perspective of Islamic law, the concept of ḥadhanah is not only interpreted as a mere right to care, but also as a moral and religious obligation to take care of and raise children until they are able to be independent. This concept is rooted in the principle of maqāṣid al-syarī'ah, especially in safeguarding offspring (ḥifz al-naṣl) and safeguarding reason (ḥifz al-'aql). Thus, childcare is not only oriented to material aspects, but also includes fostering faith, morals, and children's education holistically. However, in practice, the application of these principles often faces challenges when faced with dynamic and complex social realities.<sup>3</sup>

Normatively, the regulation of child custody in Indonesian positive law is regulated in the Compilation of Islamic Law (KHI), especially Article 105 and Article 156. This provision generally stipulates that a child who is not mumayyiz (under the age of 12) is in the care of the mother, while a child who has been mumayyiz is given the right to choose to be cared for by his father or mother. However, this provision is general and has not been able to reach the various complexities of cases that arise in judicial practice, such as the issue of religious differences between parents, moral feasibility, and the psychological condition of children.<sup>4</sup>

In judicial practice, judges have a central role in determining child custody through decisions that are not only based on written legal norms, but also on considerations of substantive justice and benefits. This process involves the discovery of the law (*rechtsvinding*) which in the perspective of Islamic law can be analogous to a form of *ijtihad* of judges. Judges are required to be able to interpret legal norms

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<sup>3</sup> The terms Court, judiciary and trial are different things. According to R Subekti, the Court (*rechtsbank, court*), is the body that carries out the judiciary, namely investigating, and deciding legal conflicts and violations of laws or legislation. The judiciary (*rechtspraak, Judiciary*) is everything related to the state's duty in upholding law and justice. So the concept of the court is more aimed at the understanding of its organizational structure, while the judiciary is more emphasized on its function. See: R. Subekti and R. Tjiptsoedibio, *Dictionary of Law* (Jakarta: Pradnya Paramita Publisher, 1971), pp. 82-83

<sup>4</sup> Yahya Harahap, *Some Reviews of the Judicial System and Dispute Resolution*, (Bandung: Citra Aditya Bakti Publishers, 1997), p. 237; Lilik Mulyadi, *The Corruption Case Examination System Studied from the Perspective of Jurisprudence and Policy Shifts of the Supreme Court of the Republic of Indonesia*, Article, p. Sec. 9.

contextually by considering social, psychological, and best interests for children.<sup>5</sup>

Furthermore, the dynamics of legal discovery by judges show that the paradigm of judges as a "funnel of law" (*bouche de la loi*) has shifted. Judges no longer only apply the law textually, but also play an active role in shaping the law through decisions (judge made law). This is in line with the character of the Indonesian legal system which is a combination of civil law and common law traditions, where judges' decisions (jurisprudence) have an important contribution to the renewal of national law.<sup>6</sup>

In the context of the *hadhanah* dispute, there are various court decisions that show deviations or reinterpretations of the normative provisions of the KHI. One important example is the Supreme Court's decision that gives child custody to the father with the consideration of maintaining the child's faith. This kind of ruling shows that judges are not solely bound by normative provisions, but also consider moral and religious aspects as part of the best interests of the child.<sup>7</sup>

Another problem that arises is related to the age limit of *mumayyiz* which is set limitatively in the KHI, which is 12 years. In practice, this age limit is not always relevant to the individual psychological and developmental condition of the child. The difference of views among classical *fiqh* scholars regarding the age of *mumayyiz* shows that the determination of a child's maturity should be flexible and contextual.<sup>8</sup>

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<sup>5</sup> Darmokoo Yuti Witanto & Arya Putra Negara Kutawaringin, *Judge's Discretion: An Instrument for Upholding Substantive Justice in Criminal Cases*, (Bandung: Alfabeta, 2013), p. 26; Soetandyo Wignjosoebroto, *From Colonial Law to National Law of Socio-Political Dynamics in the Development of Law in Indonesia*, (Jakarta: Raja Grafindo Persada, 1994) cet. I, p. Sec. 125.

<sup>6</sup> Abdul Manan, *Islamic Law Reform in Indonesia*, (Jakarta: PT Raja Grafindo Persada, 2006), p. 301; Soeyono Koesoemo Sisworo, *Some Thoughts on the Philosophy of Law*, (Semarang: Diponegoro University, tt) p. 8; Achmad Ali, *Revealing Legal Theory and Judicial Prudence*, (Jakarta: Kencana Prenada Media Group, 2009), p. 478.

<sup>7</sup> Mardi Candra, *Aspects of Indonesian Child Protection Analysis of Underage Marriage*, (Rawamangun: Kencana, 2018), p. 8; Otje Salman, Anton F. Susanto, *Legal Theory, Remembering, Collecting and Reopening*, (Bandung: Refika Aditama, 2005), p. 67; Syamsuhadi Irsyad, *Capita of Religious Civil Law at the Cassation Level*, in case. 20. and Achmad Djunaeni, *Decision of the Religious Court in the Jurisprudence of the Supreme Court*, p. 149, each in *Kapita Selektta of Religious Civil Law and its Application*, Supreme Court of the Republic of Indonesia, 2004.

<sup>8</sup> Soerjono Soekamto, *The Usefulness of Legal Sociology for Legal Circles*, (Bandung: Citra Aditya Bakti, 1991), pp. 50-51; Bagir Manan, *Disstenting Opinion in*

Therefore, an interpretive approach is needed that allows the judge to assess caustically based on the child's real condition.

In addition, there has also been a phenomenon of innovation in judicial practice, such as the use of the descente method (local examination) in the case of ḥaḍhanah to find out the factual condition of the child directly. This practice shows the judge's efforts to unearth material truth more comprehensively, although traditionally this method is more often used in material matters. This kind of innovation reflects the need for a more progressive approach to resolving child custody disputes.<sup>9</sup>

On the other hand, there is a tension between legal certainty and justice in the settlement of ḥaḍhanah disputes. Legal certainty requires the consistent application of norms, while justice demands flexibility in considering the concrete conditions of each case. In this context, judges are faced with a dilemma between strictly following normative provisions or making legal breakthroughs (*contra legem*) in order to achieve substantive justice.<sup>10</sup>

Based on this description, it can be seen that child custody disputes are not only normative issues, but also involve complex philosophical, sociological, and psychological dimensions. Therefore, a comprehensive study is needed to analyze the judge's legal considerations in deciding the case of ḥaḍhanah, especially in the context of religious justice in Indonesia. This review is important to assess the extent to which the judge has integrated the principles of Islamic law, national law, and the best interests of the child in his decision.

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*the Indonesian Judicial System*, Varia Perjudian No. 253, p. 6; Sudarsono, *Introduction to Law*, (Jakarta: Rineka Cipta, 1991), p. 113.

<sup>9</sup> Ahmad Kamil, M. Fauzan, *Jurisprudence Law Principles*, (Jakarta: Prenada Media, 2005), p. 40; Emeritus John Gilissen and Emeritus Frits Gorle, *An Introduction to the Legal History*, Translated by Freddy Tangker, (Bandung: Refika Aditama, 2005), p. 348; Soedjono Dirdjosisworo, *Introduction to Law*, (Jakarta: Raja Grafindo Persada, 2005), p.159; Mariam Darus Badruzaman, *Civil Code Book III of the Law of Engagement with Explanation*, (Bandung: Alumni, 1996), p. Sec. 108.

<sup>10</sup> H.S.A. Al Hamdani, *Risalah Nikah Hukum Perhariinan Islam*, (Jakarta: Pustaka Amani, 2002), p. 325; Abdul Manan, *The Application of Civil Procedure Law in the Religious Court*, Revised Edition, Cet 3, (Jakarta: Pranata Media, 2005), p. 426; Lili Rasjidi, Ira Rasjidi, *Fundamentals of Philosophy and Legal Theory*, (Bandung: Alumni, 2001), p. 66; Tinuk Dwi Cahyani, *Marriage Law*, (Malang: UMM Press, 2020, Cet. First), 91.

Thus, this study is relevant to examine in depth the dynamics of judges' considerations in child custody disputes, including the possibility of reinterpretation of normative provisions and innovations in judicial practice. The results of this research are expected to contribute to the development of Islamic family law that is more responsive, adaptive, and fair, as well as a reference for policymakers and legal practitioners in formulating regulations and judicial practices that are more in the best interests of children.

## **RESEARCH METHODS**

This research uses a normative legal research method with a prescriptive-analytical character, which aims to study, interpret, and formulate legal concepts related to the settlement of child custody disputes (*ḥaḍhanah*) in the perspective of Islamic law and national law. The approaches used include a statute approach, a conceptual approach, and a case approach. The legislative approach is used to examine the norms contained in the Compilation of Islamic Law (KHI), the Marriage Law, and other related regulations. The conceptual approach is used to examine legal doctrines, especially related to the concept of *hadhanah*, *maqāṣid al-syarī'ah*, and the best interests of the child. The case approach is used to analyze relevant court decisions in order to see the dynamics of judges' considerations in judicial practice.

The data sources in this study consist of primary legal materials and secondary legal materials. Primary legal materials include relevant laws and regulations, such as Law Number 1 of 1974 concerning Marriage and its amendments, the Compilation of Islamic Law (KHI), as well as court decisions, especially the decisions of the Religious Court and the Supreme Court related to child custody disputes. Meanwhile, secondary legal materials include scientific literature in the form of books, reputable national and international journals, the results of previous research, and the views of legal experts relevant to the research topic. In addition, tertiary legal materials such as legal dictionaries and encyclopedias are also used to strengthen conceptual understanding.

The data collection technique is carried out through library research by tracing, identifying, and studying various relevant legal sources in a systematic manner. Furthermore, the data obtained were analyzed using a qualitative analysis method with a descriptive-analytical approach. The analysis is carried out through the process of legal interpretation, legal construction, and legal reasoning to find the relationship between judicial norms, doctrines, and practices. The results of the analysis are then systematically compiled to produce

comprehensive legal arguments, so as to provide constructive recommendations for the development of Islamic family law, especially in the settlement of child custody disputes that are oriented towards justice and benefit.

## RESULTS AND DISCUSSION

### Legal Basis Used by Judges in Deciding Child Custody Cases

The legal evidence regarding *hadhanah* is sourced from the Qur'an, Hadith, and *ijma'* ulama. One of the bases of the Qur'an that is often used as a reference is surah Al-Baqarah verse 233:<sup>11</sup> Mothers should breastfeed their children for two whole years, that is, for those who want to perfect breastfeeding." This verse shows that Islam places the role of mothers as the main party in nurturing and nurturing children, especially at an early age. However, the verse also affirms that the father has the responsibility to bear the maintenance during the parenting period.

In addition to the evidence of the Qur'an, the hadith of the Prophet PBUH also strengthens the provisions regarding *hadhanah*. One of the hadiths narrated by Abu Dawud and Ahmad mentions that when a woman came to the Messenger of Allah and said, "O Messenger of Allah, my son is my belly that contains him, my womb that nurses him, and my lap protects him, but his father wants to take him away from me." So the Messenger of Allah said, "You have more rights to your children as long as you are not married again."<sup>12</sup> This hadith emphasizes the priority of mothers in the right of care, as long as she is still able and there are no obstacles to sharia.

In positive legal practice in Indonesia, the principles of *hadhanah* are adopted in laws and regulations, especially in the Compilation of Islamic Law (KHI). Article 105 of the KHI states that children who have not been *mumayyiz* have the right to be cared for by their mother, unless the mother is proven to be unfit to carry out the obligation.<sup>13</sup> Then, the maintenance of a child who is not *mumayyiz* or has not yet reached the age of 12 is the right of the mother, unless it is proven that the mother is not fit to carry out the obligation.<sup>14</sup> This provision emphasizes that minors are the rights of their mothers, unless it is proven that the mother is unable to guarantee the safety and welfare of the child. In this case, the court has the authority to objectively assess the mother's condition, both

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<sup>11</sup> QS. al-Baqarah (2): 233.

<sup>12</sup> Abu Dawud, *Sunan Abi Dawud*, Hadith No. 2276.

<sup>13</sup> Compilation of Islamic Law, Article 105.

<sup>14</sup> Compilation of Islamic Law, Article 105.

from a moral, economic, and psychological perspective.<sup>15</sup> If evidence is found that the mother is unable to provide good parenting, then the right *to hadhanah* can be transferred to the father or other parties who are considered more capable.

This provision is in line with the principle *of hadhanah* in fiqh, which is to maintain the welfare of children as the top priority. Thus, both Islamic law and positive Indonesian law affirm that *hadhanah* is a moral, social, and spiritual responsibility that must be carried out for the welfare of children.

In national law, the regulation of *hadhanah* is found in:

- 1) Law Number 1 of 1974 jo Law Number 16 of 2019 concerning Marriage Article 41 letter (a);
- 2) Law Number 35 of 2014 concerning Child Protection; and

Judges have a central role in determining who is most suitable to be a caregiver based on the principle of *the best interest of the child*.<sup>16</sup> In this process, the judge not only considers the formal legal aspects, but also assesses the social, emotional, and environmental conditions in which the child will be raised. Therefore, an in-depth examination of the facts and conditions of the parties to the dispute is the main key in determining a fair verdict.

The judge's consideration in *hadhanah* cases often involves a psychological approach.<sup>17</sup> The judge may use the help of an expert, such as a child psychologist or social worker, to assess the extent of the child's emotional connection with each parent. This approach is in line with the spirit of child protection regulated in Law Number 35 of 2014 concerning Child Protection, which emphasizes that all decisions related to children must be oriented towards their best interests.<sup>18</sup>

In the practice of religious courts, psychological considerations are often strengthened through a local examination (*descente*) or the testimony of a child psychologist. Through this way, the judge can gain a more complete understanding of the factual condition of the child and the surrounding environment. This juridical-empirical approach reflects

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<sup>15</sup> R. Subekti, *Principles of Civil Law* (Jakarta: Intermedia, 2005), 97.

<sup>16</sup> Siti Musdah Mulia, *Justice and Gender Equality in Islam* (Jakarta: LKiS, 2007), 211.

<sup>17</sup> Mardani, *Islamic Family Law in Indonesia* (Jakarta: Prenadamedia, 2016), 232.

<sup>18</sup> Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection, Article 4.

a new paradigm in Islamic family law that integrates a positive legal approach with human and psychological values.<sup>19</sup>

In addition, judges also need to consider the principle of substantive justice in making *hadhanah* decisions. Substantive justice means giving decisions that not only conform to the legal text, but also meet the sense of justice that lives in society. Thus, the judge's consideration must be able to balance legal *certainty*, *utility*, and justice.<sup>20</sup>

Good judge's judgment is also reflected in the structure of the decision. In the "legal considerations" section, it can generally be explained systematically, starting from the description of legal facts, the legal basis used, to the normative and moral arguments that underlie the decision. The regularity and rationality of these considerations will be a measure of the professionalism of judges in enforcing the law on the basis of justice.<sup>21</sup> Ultimately, *judicial reasoning* in *hadhanah* cases reflects the balance between law and humanity. Judges not only play the role of enforcers of legal norms, but also as protectors of human values and guardians of children's rights.

The results of *the descente* implementation have an important authority in the formation of the judge's conviction (*conviction intime*), because the findings directly in the field are able to reflect the reality of the child factually and objectively.<sup>22</sup> In *hadhanah disputes*, *the results of descente* often provide a stronger picture than the evidence of letters or witness statements which can be subjective and limited, as is done in the case decision in this study.<sup>23</sup>

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<sup>19</sup> Ahmad Mujahidin, *Religious Justice in Indonesia* (Jakarta: Rajawali Pers, 2020), 156.

<sup>20</sup> Gustav Radbruch, *Rechtsphilosophie* (Leipzig: Quelle & Meyer, 1932), 107.

<sup>21</sup> Yahya Harahap, *Civil Procedure Law on Lawsuits, Trials, Confiscation, Proof, and Court Decisions* (Jakarta: Sinar Grafika, 2017), 274.

<sup>22</sup> Yahya Harahap, *Civil Procedure Law* (Jakarta: Sinar Grafika, 2017), p. 270.

<sup>23</sup> Retnowulan Sutantio & Iskandar Oeripkartawinata, *Civil Procedure Law in Theory and Practice* (Bandung: Mandar Maju, 2019), p. 175.

**Table 1.** Summary of the Judge's Decision in Deciding the Hadhanah Case at the Locus of this Research

Decision Number	Judge's Legal Considerations	Verdict
2316/Pdt.G/2025/P A.Badg (Bandung Religious Court)	The judge upholds the principle of <i>the best interest of the child</i> and considers the psychological stability of the child	The right to <i>hadhanah</i> is given to the mother
2683/Pdt.G/2022/P A.Tsm (Tasikmalaya Religious Court)	The judge considers the principle of the benefit and sustainability of children's education	The right to <i>hatahah</i> remains with the person who knows from the mother as the main caregiver
1278/Pdt.G/2018/P A.Cms (Ciamis Religious Court)	The judge used <i>the descente results</i> as the main factual assessment for the safety of the child	The right to <i>hadhanah</i> is transferred to the mother because the mother's environment is safer and supports the growth and development of the child

The decision of the case by the panel of judges in various Religious Courts in this study is based on consideration of the results of the implementation of *descente*, both from the juridical, psychological, and sociological aspects, using *descente* as a stronger determining tool in the formation of judges' convictions (*conviction intime*) to determine the most qualified party to carry out the care. In relation to the judge's beliefs, the interviewee explained that the findings of the field during *the descent* provided a factual picture that was impossible to guess only from the testimony of the parents at the trial. Therefore, *descente* is often the ratio decidendi in the hadith verdict.<sup>24</sup>

<sup>24</sup> Interview Results with Drs. H. Abdul Mujib A.Y., M.H. & Drs. H. Darul Palah, M.H., December 5, 2025.

The decision of the panel of judges in *the hadhanah* case studied in this study was influenced by the implementation of *descente*. The case was decided with number 2316/Pdt.G/2025/PA. Badg at the Bandung Religious Court is based on observation of the living conditions of fathers and mothers and children's interactions. It is obtained that children are closer and feel safe with their mothers with the record of observations in the father's environment that there is a moral risk.

Termination of *the hadhanah* case with number 2683/Pdt.G/2022/PA. Tsm at the Tasikmalaya Religious Court also uses *the practice of descente* to assess the readiness of post-divorce parenting. The results were obtained that the father did not have the emotional readiness and adequate facilities to take care of the child.

Case number 1278/Pdt.G/2018/PA. The CMS at the Ciamis Religious Court conducted a *descente practice* to seek validation of witness conflicts regarding the feasibility of father's care by obtaining results that the father's house was found to be less conducive and the child showed anxiety when with his father.

Thus, it can be concluded that *hadhanah* is not only a matter of civil law between father and mother, but also a moral and humanitarian responsibility. Both Islamic law and positive law in Indonesia affirm that the main purpose of *hadhanah* is to ensure the well-being of children, both physically, emotionally, and spiritually.<sup>25</sup> Therefore, every court decision regarding *hadhanah* must be based on the principle of substantive justice, which is oriented towards the protection and happiness of children as the next generation.<sup>26</sup>

### **Decision of the Bandung Religious Court Number 2316/Pdt.G/2025/PA. Badg**

In the Decision of the Bandung Religious Court Number 2316/Pdt.G/2025/PA. Badg, the panel of judges based the determination of the right of *hadhanah* on a combination of Islamic legal norms and positive Indonesian law by emphasizing the principle of the *best interest of the child* as the main consideration. In Islamic law, the panel refers to the provisions of Article 105 letter (a) of the Compilation of Islamic Law which states that the maintenance of a child who has not been *mumayyiz* is basically a mother's right, as long as the mother meets the eligibility requirements as a *hadhanah* holder. This provision is in line with *the*

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<sup>25</sup> Mohammad Daud Ali, *Islamic Law: Introduction to Islamic Law and Legal System in Indonesia* (Jakarta: RajaGrafindo Persada, 2010), 157.

<sup>26</sup> Bustanul Arifin, *Religious Courts in the Framework of Legal Reform in Indonesia* (Jakarta: Prenada, 2015), 284.

*view of fiqh* which places mothers as the main party in early childhood care because of the emotional closeness factor and psychological needs of children.<sup>27</sup>

Judge Syarip Hidayat emphasized the aspect of children's access to both parents. According to him, even though the *right to hadhanah* is given to the mother or grandmother in accordance with Article 105 of the KHI, the judgment must still include the obligation of the *hadhanah holder* to give access to the father so that he can meet his child. This is in line with Article 9 paragraph (3) of Law No. 23 of 2002 jo. Law No. 35 of 2014 concerning Child Protection, which emphasizes that children have the right to know their parents and maintain an emotional relationship with them.<sup>28</sup>

From the perspective of Islamic law, Judge Syarip emphasized that affection and friendship with fathers remain part of the welfare of children. Therefore, even if the mother or grandmother is the holder of *the right to hadhanah*, the relationship between the child and the father must not be severed. This approach shows that the legal basis used emphasizes not only on who has normative rights, but also on the protection of the child's right to grow up with the emotional support of both parents.<sup>29</sup>

However, the panel emphasized that the mother's priority in hadhanah is not absolute, but relative and tentative, so it can be ruled out if based on the facts of the trial it is proven that the interests of the child are more guaranteed if they are cared for by the father. This consideration is strengthened by the testimony of witnesses and the confession of a child who has the ability to express his will (*mumayyiz*), who stated that he prefers to live with his father. From a positive legal perspective, the panel also referred to Article 41 of Law Number 1 of 1974 concerning Marriage which affirms that both parents are still obliged to maintain and educate children even though the marriage has broken up. Thus, the determination of hadhanah in this decision is not solely based on textual norms, but also considers the sociological and psychological conditions of children in order to ensure optimal protection and growth and development of children.<sup>30</sup>

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<sup>27</sup> Decision of the Bandung Religious Court Number 2316/Pdt.G/2025/PA. Badg.

<sup>28</sup> Interview Results with Drs. H. Syarip Hidayat, M.H.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

### **Decision of the Tasikmalaya Religious Court Number 2683/Pdt.G/2022/PA. Tsm**

In the Decision of the Tasikmalaya Religious Court Number 2683/Pdt.G/2022/PA. Tsm, the panel of judges based the consideration of hadhanah law on the principle of protection of children's rights as regulated in Islamic law and national laws and regulations. From the perspective of Islamic law, the panel referred to the provisions of Article 156 letter (a) of the Compilation of Islamic Law which affirms that children who have not been mumayyiz are in the care of the mother, unless there is a valid legal reason to transfer the right. This principle is in line with the doctrine of *fiqh hadhanah* which emphasizes that the main purpose of childcare is to maintain the child's religion, soul, and morals so that they grow up in a balanced and dignified manner.<sup>31</sup>

In addition, the panel also linked the consideration of *hadhanah* to the provisions of Law Number 35 of 2014 concerning Child Protection, especially the principle that every child has the right to be cared for by his own parents, unless the separation is carried out in the best interests of the child and is a last resort. The judge considered that child custody cannot be separated from the obligation of parents to ensure the growth and development of children physically, mentally, and socially. Therefore, in deciding this case, the panel assesses the feasibility of the parties based on actual ability, stability of the parenting environment, and alignment with the needs of the child, so that the hadhanah decision is directed to ensure the fulfillment of the child's rights as a whole, not solely based on formal status as a parent.<sup>32</sup>

Judge Darul Palah emphasized that in *the hadhanah* case, the principle of the *best interest of the child* must be the main consideration. This is in line with Supreme Court Jurisprudence Number 110 K/AG/2007, which emphasizes that custody is not solely given to the normative party who has the right, but to the party who is most able to guarantee the welfare of the child. Thus, even though in *fiqh* the mother has more rights, if it is proven that the child is more peaceful and secure with the father, then the right of hadhanah can be transferred.<sup>33</sup>

In addition, Judge Darul Palah also referred to SEMA Number 1 of 2017, which provides guidelines for judges to conduct a local

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<sup>31</sup> Decision of the Tasikmalaya Religious Court Number 2683/Pdt.G/2022/PA.Tsm.

<sup>32</sup> Ibid.

<sup>33</sup> Interview Results with Drs. H. Darul Palah, M.H., December 5, 2025.

examination (*descente*) to ascertain the factual condition of the child. This examination is important so that the judge not only adheres to normative postulates, but also directly sees the welfare of the child from physical, mental, and social aspects. With a combination of Islamic law and positive law, his ruling emphasizes the balance between *fiqh norms* and the principle of child protection in national law.<sup>34</sup>

#### **Decision of the Ciamis Religious Court Number 1278/Pdt.G/2018/PA. CMS**

In the Decision of the Ciamis Religious Court Number 1278/Pdt.G/2018/PA. Cms, the panel of judges uses the basis of hadhanah law that integrates the norms of *fiqh hadhanah* and the principle of child protection in Indonesia's positive law. Juridically, in the *hadhanah case* in the Ciamis PA case, Judge Abdul Mujib emphasized that the main legal basis used in Article 105 and Article 156 of the Compilation of Islamic Law which stipulates that children who have not been *mumayyiz* are basically in the care of the mother, but these rights can be transferred if the mother cannot guarantee the physical and spiritual safety of the child. This provision reflects the principle of Islamic law that *hadhanah* is a mandate that must be carried out for the benefit of children, not solely the rights of parents.<sup>35</sup>

This provision is strengthened by the views of scholars such as Prof. Dr. Wahbah Az-Zuhaili who places the maternal grandmother as the second party entitled to hadhanah, because they have the same emotional closeness as the mother. In addition, the hadith narrated by Abu Dawud and al-Baihaqi is used as a normative basis that mothers have more right to take care of their children as long as they are not married again.

In its consideration, the panel also paid attention to the facts of the trial which showed that there were not ideal parenting conditions and the potential for hampering of the child's relationship with other parents if the right to *hadhanah* was still given to certain parties. From a positive legal perspective, the panel based its decision on Law Number 35 of 2014 concerning Child Protection which obliges the state and law enforcement officials to guarantee children's rights to nurture, affection, and protection from all forms of neglect. The Panel of Judges assessed that children are more prosperous with their mothers and grandmothers because of stable economic support, good education, and consistent

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<sup>34</sup> Ibid

<sup>35</sup> Decision of the Ciamis Religious Court Number 1278/Pdt.G/2018/PA.Cms.

affection. Therefore, the father's lawsuit was rejected because it did not meet *the requirements of hadhanah*, both in terms of *fiqh* and positive law

Thus, the legal basis of *hadhanah* in this decision emphasizes that the best interests of the child must be placed above the interests of the parents, so that the determination of custody is directed to create the safest parenting environment and support the child's development optimally.

### **Judicial Considerations in Child Custody Decisions from a Child Psychological Perspective**

Jurisdiction is the authority given by the state to the court to examine, adjudicate, and decide a case. This concept includes the authority of *ratione materiae* (type of case), *ratione personae* (subject of law), and *ratione loci* (territory). Without proper jurisdiction, a judgment will be considered invalid or *null and void because* it was made by an unauthorised body.<sup>36</sup>

Jurisdiction determines the validity of decisions, while judicial products are the main instruments that provide legal certainty for the community. If jurisdiction is not complied with, then the judgment becomes legally flawed, as affirmed by many jurisprudences that misjurisdiction is an *error in procedendo* that has implications for the annulment of the judgment.<sup>37</sup>

The existence of jurisdiction also serves to maintain legal order so that there is no overlap of authority between judicial bodies. Thus, jurisdiction is a mechanism for the distribution of authority that ensures efficiency and justice in the judicial system. Meanwhile, the product of the judiciary is the final result of the law enforcement process carried out through a series of court examinations. The product includes judgments, determinations, and interlocutory judgments and various other judicial administrative instruments.

Judicial products also function as a source of law, especially jurisprudence which is a reference in the formation of new legal norms, both in the realm of religious, civil, criminal, and state administrative courts. Therefore, jurisdiction and judicial products are pillars that maintain the sustainability of the national legal system.

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<sup>36</sup> Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Liberty, 1998), 45.

<sup>37</sup> Decision of the Supreme Court of the Republic of Indonesia No. 1400 K/Pdt/2006.

Judicial *reasoning* is the argumentative basis that underlies a court decision. In every decision, the judge is obliged to provide a clear and logical reason for his consideration so that the decision is not arbitrary. This consideration is the *ratio decidendi* or legal reason that underlies the determination of a decision. The judge should not just declare a decision without explaining his considerations, because doing so will create legal uncertainty and reduce the legitimacy of the decision in the eyes of the parties to the case.<sup>38</sup>

In the context of *hadhanah* (child custody) cases, the judge's considerations have become increasingly complex. This is because *hadhanah* cases are not only concerned with the legal interests of parents, but also with the future and psychological well-being of children. The judge in this case plays the role of guardian of *the best interest of the child*, which requires moral and social sensitivity in addition to mere juridical expertise.<sup>39</sup>

Formal juridical considerations in *hadhanah cases* are usually based on the provisions of the Compilation of Islamic Law (KHI), especially Article 105 and Article 156 letter (c), which state that children who have not been *mumayyiz* have the right to be cared for by their mother, unless there are strong reasons that prevent them. However, the judge must also consider the empirical facts that emerge at the trial, such as economic conditions, moral behavior, and the ability of parents to give attention and affection to the child.<sup>40</sup>

In addition, moral considerations are an important element in *the judicial reasoning* of *hadhanah* cases. A judge is required to have sensitivity to the moral values that live in society and the teachings of Islam that emphasize the importance of compassion, responsibility, and protection for children. Thus, the judge's decision is not only the result of positive legal reasoning, but also the result of moral reflection on human values.<sup>41</sup>

The social aspect in the judge's consideration also cannot be ignored. The social environment in which children grow up has a great influence on their personality development. Therefore, the judge must

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<sup>38</sup> Sudikno Mertokusumo, Indonesian Civil Procedure Law (Yogyakarta: Liberty, 2019), 87.

<sup>39</sup> Muhammad Abu Zahrah, *Uṣūl al-Fiqh al-Islāmī* (Cairo: Dār al-Fikr al-'Arabī, 1997), 212.

<sup>40</sup> Compilation of Islamic Law, Article 105 and Article 156 letter (c).

<sup>41</sup> M. Quraish Shihab, *Insight of the Qur'an: Tafsir Maudhu'i on the Various Problems of the Ummah* (Bandung: Mizan, 2000), 143.

assess whether the social environment of the prospective caregiver supports the healthy growth and development of children, both in terms of education, spirituality, and social interaction. This assessment often requires the help of an expert such as a psychologist, social worker, or child protection agency.<sup>42</sup>

Furthermore, the psychological aspect is an important basis in the judge's consideration of the *hadhanah case*. The child who is the subject of the case is not a passive object, but an individual with feelings and emotional needs that must be respected. The judge needs to understand the child's psychological condition, such as his emotional closeness to one of the parents, mental stability, and the potential for trauma due to divorce or family conflict.<sup>43</sup>

### **Decision of the Bandung Religious Court Number 2316/Pdt.G/2025/PA. Badg**

In the Decision of the Bandung Religious Court Number 2316/Pdt.G/2025/PA. Badg, the juridical considerations of the panel of judges do not stop at determining the subject who is normatively most entitled to *hadhanah*, but is directed at testing the legal *fitness* of each parent in carrying out their parenting obligations. The judge considered that the *hadhanah dispute* was not a dispute over absolute rights, but a dispute regarding the implementation of the parent's legal obligations to the child. Therefore, the panel uses an evaluative juridical approach by associating the norms of *hadhanah* with the legal facts revealed at the trial.<sup>44</sup>

Judge Syarip Hidayat emphasized that juridical considerations in *hadhanah cases* must pay attention to the right of children to stay in contact with their parents. Although Article 105 of the KHI affirms the mother's right to a child who has not been *mumayyiz*, the judge considered that the judgment must still include the obligation of the *hadhanah* holder to provide access to the father. This consideration is based on Article 9 paragraph (3) of Law No. 23 of 2002 jo. Law No. 35 of 2014 concerning Child Protection, which affirms the right of children to know and relate to their parents.<sup>45</sup>

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<sup>42</sup> Soerjono Soekanto, *Factors Affecting Law Enforcement* (Jakarta: Rajawali Press, 2018), 115.

<sup>43</sup> Desmita, *Psychology of Student Development* (Bandung: Remaja Rosdakarya, 2017), 92.

<sup>44</sup> Decision of the Bandung Religious Court Number 2316/Pdt.G/2025/PA. Badg.

<sup>45</sup> Interview Results with Drs. H. Syarip Hidayat, M.H.

From the perspective of Islamic law, the judge considers that affection and friendship with fathers are part of the benefit of children. Therefore, even if the mother or grandmother is the holder of *the right to hadhanah*, the relationship between the child and the father must not be severed. These juridical considerations show that judges emphasize not only on who is normatively entitled, but also on the protection of the child's right to grow up with the emotional support of both parents.

The panel of judges juridically considers the testimony of the child who has the ability to express his will (*mumayyiz*) as part of valid and relevant evidence in *the hadhanah case*. This consideration shows that the judge does not position the child as a mere object of dispute, but as a subject of law whose opinion should be considered as long as it does not conflict with his best interests. In addition, the judge assessed the consistency of the parties' behavior in carrying out their parenting responsibilities as the main indicator of the eligibility of the custody holder.<sup>46</sup>

Furthermore, the panel applies juridical considerations in the form of the principle of *continuity of care*, namely that drastic changes in custody have the potential to cause psychological instability of children. Therefore, although the norms of Islamic law prioritize mothers, judges juridically judged that maintaining the conditions of care that have been running and proven to be stable is more in line with the legal objectives of child protection. With this approach, the judge shows a shift from *legal formalism* to *judicial pragmatism* that is oriented towards the protection of children's rights in real terms.

#### **Decision of the Tasikmalaya Religious Court Number 2683/Pdt.G/2022/PA. Tsm**

In the Decision of the Tasikmalaya Religious Court Number 2683/Pdt.G/2022/PA. Tsm, the judge's juridical considerations are built through a proportional assessment between parental rights and children's rights, by placing children's rights as the main parameter of whether or not the hadhanah claim is valid or not. The judge expressly held that a claim for custody by the parents should be juridically tested on the basis of the ability to meet the legal obligations of the parent, not merely biological status or blood relationship.<sup>47</sup>

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<sup>46</sup> Ibid.

<sup>47</sup> Decision of the Tasikmalaya Religious Court Number 2683/Pdt.G/2022/PA.Tsm.

The panel of judges uses a preventive juridical approach by assessing the potential risks that can arise when custody is given to a certain party. This consideration shows that the judge not only looks at the facts of the past, but also projects the legal and social impact of *the hadhanah* decision on the future of the child. In this context, the judge assessed environmental stability, educational continuity, and communication ability between parents as relevant juridical factors.

In addition, the panel applies the principle of *ultimum remedium* in the separation of children from parents, namely that separation or change of parenting can only be justified if it is legally proven to be the last option in the best interests of the child. This juridical consideration reflects the prudence of judges in using discretionary authority, as well as showing that *hadhanah* disputes are seen as cases with a dimension of children's rights. Thus, the judge's decision is the result of a comprehensive legal assessment process and oriented towards the prevention of child harm.

Judge Darul Palah emphasized that juridical considerations in *the hadhanah case* are not only based on the textual norms of the KHI, but also on the principle of the best interest of the child. He referred to Supreme Court Jurisprudence Number 110 K/AG/2007, which emphasizes that even though the mother is normatively entitled, custody can be transferred to the father if it is proven that the child is more peaceful and secure with the father.<sup>48</sup>

Juridical considerations are also strengthened by SEMA Number 1 of 2017, which provides guidelines for judges to conduct a local examination (*descente*) in order to obtain a factual picture of the child's condition. Thus, the judge not only assesses from the formal side of Islamic law, but also from the empirical side of child welfare. This consideration shows the balance between *fiqh* norms and the principle of child protection in Indonesian positive law.

#### **Decision of the Ciamis Religious Court Number 1278/Pdt.G/2018/PA. CMS**

In the Decision of the Ciamis Religious Court Number 1278/Pdt.G/2018/PA. Cms, the judge's juridical considerations are directed to test the effectiveness of the parenting that has been carried out by the parties in fulfilling the legal objectives of *hadhanah*. The judge considers that the existence of children in the care of certain parents must be juridically tested based on their impact on the physical, mental, and

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<sup>48</sup> Interview Results with Drs. H. Darul Palah, M.H., December 5, 2025.

social development of the child, not solely based on the normative order of the custody holders.<sup>49</sup>

The panel uses a corrective juridical approach by assessing the existence of indications of neglect of care as a legal basis for transferring the right of *hadhanah*. This consideration shows that the judge views *hadhanah* as a legal mandate that can be revoked if it is not carried out responsibly. In addition, the judge considered that the limited access of children to one of the parents was a violation of the principle of child protection which must be prevented through a court decision.

Furthermore, the judge's juridical considerations also reflect the application of the *maximum protection principle* to children, where any doubt in the evidence is interpreted in the best interests of the child. With this approach, the judge positions himself not only as an interpreter of legal norms, but also as a protector of children's rights within the framework of family justice. The *hadhanah* decision in this case is thus a form of juridical intervention aimed at correcting the conditions of parenting that are considered no longer in line with the legal objectives.

In the *hadhanah case* in the Ciamis Provincial Court, Judge Abdul Mujib emphasized that the main juridical consideration is the consistency of legal facts with the norms of the Compilation of Islamic Law (KHI). The Panel considered that the Plaintiff's arguments were not proven, because the father did not show attention or responsibility for alimony after the divorce. This juridical consideration is based on Article 105 of the KHI which affirms the right of the mother to a child who has not *been mumayyiz*, and is strengthened by the hadith narrated by Abu Dawud and al-Baihaqi.<sup>50</sup>

In addition, the judge assessed the condition of the child to be healthy, happy, and taken care of with his grandmother as proof that the best interests of the child had been met. Juridical considerations also refer to Law No. 35 of 2014 concerning Child Protection, which emphasizes the physical, mental, and social protection of children. Thus, the father's lawsuit was rejected because it did not meet the juridical requirements and requirements of fiqh *hadhanah*.

### **Implications of the Judge's Decision on Parents' Rights and Children's Future in Hadhanah**

The three cases show that *hadhanah disputes* are a sensitive social phenomenon because they concern the psychological stability of

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<sup>49</sup> Decision of the Ciamis Religious Court Number 1278/Pdt.G/2018/PA.Cms.

<sup>50</sup> Interview Results with Drs. H. Abdul Mujib A.Y., M.H., December 5, 2025.

children. *Descente* reinforces the understanding that post-divorce parenting cannot be determined by a parent's ego or material ability alone. Successful parenting depends heavily on emotional presence, a stable daily routine, and a close relationship between the child and his or her primary caregiver.<sup>51</sup> In society, this *hadhanah case* sends a message that good parenting requires the collaboration of both parents, not competition. Even when custody falls to one party, both parents are still obliged to maintain a harmonious relationship with the child, in accordance with the provisions of the KHI and the Child Protection Law.<sup>52</sup>

In the decision of the Bandung PA Number 2316/Pdt.G/2025/PA. Badg, the judge emphasized that custody is not absolute and does not automatically attach to one parent based on gender. The assessment of the feasibility of parenting is carried out comprehensively by considering legal aspects and factual conditions. The juridical implication is that it opens up space for the court to limit and even transfer custody to parties who are considered more capable of guaranteeing the welfare of children.<sup>53</sup>

Furthermore, these decisions also emphasized the separation between the right to care and the obligation to alimony. In practice, parents who do not obtain the right to hadhanah still have a legal obligation to provide support, attention, and protection to their children. This shows that the hadhanah ruling does not remove parental status, but only regulates the proportional distribution of roles. Thus, the responsibility for the child remains attached to both parents despite differences in the physical control of the child.

In addition, the court also affirmed the limitation of parental authority in order to ensure the best interests of the child, as reflected in the Tasikmalaya PA Decision Number 2683/Pdt.G/2022/PA.Tsm. The judge placed himself as a supervisor of the implementation of parental obligations by ensuring that any custody claim must be based on the interests of the child, not personal interests. The implication of this approach is the avoidance of the practice of making children the object of dispute or a tool to achieve certain goals in parental conflict.

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<sup>51</sup> Tasikmalaya PA Decision No. 2683/Pdt.G/2022/PA. Tsm, the description of the facts of stable parenting by mothers.

<sup>52</sup> Law No. 35/2014 on Child Protection, Article 4 and Article 7.

<sup>53</sup> Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, chapter on the custody trust.; Evidence P-15 of the Bandung PA Decision No. 2316/Pdt.G/2025/PA. Badg about the emotional bond of mother-child.

In a more normative context, PA Ciamis Decision Number 1278/Pdt.G/2018/PA. CMS strengthens the conception of hadhanah as a legal mandate, not just a personal right. Custody can be revoked if the parents are unable to carry out their parenting responsibilities properly, both from physical and psychological aspects. This shows that the quality of parenting is the main parameter in determining the sustainability of the right to hadhanah, as well as affirming the existence of legal accountability for parental negligence.

The implications of the hadhanah decision on the future of children can also be seen from the judge's attention to the stability and sustainability of parenting. In some cases, the judge considers the real conditions that have taken place as well as the will of the child who has been *mumayyiz*. This approach provides a guarantee for the emotional and psychological stability of children, because children are not forced to change environments that have the potential to cause mental stress. Thus, continuity of parenting is an important factor in supporting children's growth and development optimally.

On the other hand, hadhanah decisions also function as an instrument to prevent the psychological impact of parental conflict. The transfer of custody is positioned as a last resort and should not take away the emotional connection of the child with both parents. The implication of this principle is that the child's right to receive affection and attention from both parties is maintained, so that the child does not become a victim of prolonged conflicts that can affect his personality development.

The court also plays a role in ensuring the creation of a safe and decent parenting environment for children. Assessment of the quality of parenting is the basis for determining the party that is most able to meet the needs of children, both physically and mentally. Judge intervention under certain conditions is important to prevent long-term impacts that can be detrimental to children's future. Thus, the hadhanah decision is not only in the nature of resolving disputes, but also oriented towards the protection of children comprehensively.

Furthermore, the three decisions show that there is a strengthening of the position of children as legal subjects who have independent interests. Children are no longer seen as objects of dispute, but rather as individuals whose rights must be actively protected by the state through court decisions. This shift has an impact on the birth of decisions that are more responsive to children's needs, including in educational, psychological, and social aspects, so that the main orientation of family law is increasingly directed towards the future of children.

However, from an implementation perspective, there are still obstacles in the implementation of descente in hadhanah cases, especially because there is no standardization of special procedures for non-material object cases. The practice of descente carried out on an ad hoc basis has the potential to reduce the depth of factual analysis, especially with the lack of involvement of child psychologists. This condition shows the need to strengthen regulations and cross-disciplinary collaboration so that the proof process is not only formal, but also able to describe the psychological condition of children in its entirety. Thus, the renewal of the descente mechanism is an urgent need to improve the quality of hadhanah decisions that are oriented towards the benefit of children.

### **CONCLUSION**

This study shows that the judge's decision in hadhanah cases at the Bandung, Tasikmalaya, and Ciamis Religious Courts has significant implications for the protection of children's rights and the reconstruction of parental responsibilities after divorce. The integration between Islamic legal norms, national laws and regulations, and jurisprudence shows the harmonization of the legal system that is not only oriented towards legal certainty, but also on substantive justice. The implementation of descente as an empirical proof instrument strengthens the quality of judges' decisions because it allows a direct assessment of the social, psychological, and environmental conditions of children. Thus, the main implication of this study lies in strengthening the child-centered justice paradigm and the need for a multidisciplinary approach in religious justice practice.

The findings of this study confirm that the basis of judges' considerations in deciding hadhanah cases does not solely rely on written legal norms, but also integrates the psychological and sociological aspects of the child as an integral part of judicial considerations. The principle of "the best interest of the child" is the main foundation in every decision, which is operationalized through indicators of parental ability, emotional closeness, environmental stability, and socio-moral influence on children's development. In addition, the practice of descente has proven to provide significant added value in strengthening evidence, as it presents a factual dimension that cannot be fully revealed through formal evidence. Thus, this study finds that the empirical approach through descente contributes to the realization of more comprehensive, humanistic, and substantive justice decisions.

Based on these findings, this study recommends that the practice

of descente be optimized and standardized as an integral part of the examination of hadhanah cases, especially in assessing psychological aspects and children's welfare. In addition, it is necessary to strengthen the capacity of judges through interdisciplinary training that includes child psychology, family sociology, and child protection to improve the quality of decision considerations. Normatively, policymakers are expected to formulate more detailed technical guidelines related to the application of the principle of the best interest of the child in the context of religious justice. Further research is suggested to expand the scope of the area and use a comparative approach to test the consistency of the application of descente and its effectiveness in ensuring substantive justice and the broader benefit of children.

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