



## **THE PRINCIPLE OF THE CHILD'S BEST INTERESTS IN CUSTODY AND POST-DIVORCE CARE**

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### **Abstract**

This article presents a conceptual discussion of hadhanah and child care after divorce in Islamic family law. It examines how the principle of the best interests of the child provides a central normative reference for determining custody arrangements and organising daily care. The discussion outlines classical and contemporary views on the allocation of custody rights according to the age and developmental stage of the child, while considering the need for flexibility when courts face diverse family situations. Particular attention is given to judicial reasoning in custody disputes, including the consideration of religion, gender relations, extended family support, and the psychological well-being of the child. The article argues that custody orders should be treated as a trust combining rights and obligations, rather than as a simple legal entitlement for parents. By linking religious norms, state regulation, and child rights standards, the paper offers a framework that can support more child centred decisions in divorce cases and guide future empirical and doctrinal research in Islamic family law.

**Keywords:** Hadhanah, Child Custody, Post Divorce Parenting, Islamic Family Law, Best Interests of the Child, Family Court, Child Welfare.

## Introduction

Divorce is a legal event that simultaneously touches the emotional and social layers of family life. When a marriage bond ends through a court decision, the relationship between husband-and-wife changes fundamentally; however, their relationship with their children does not automatically end. Children still need the presence of their parents, a sense of security, and continuity of care in order to grow and develop normally. In various social studies, the family is often regarded as the first environment that greatly influences the development of a child's personality and social abilities; therefore, changes within the family will also affect the child's developmental process (Hariani, Safira, & Wahyuni, 2021). In the post-divorce situation, families face a reorganization of roles, responsibilities, and patterns of communication. At this point, the issue of hadhanah (child custody) becomes very important, as it concerns who has the authority and responsibility to care for the child on a daily basis, how the child maintains relationships with the parent who does not live in the same household, and how major decisions related to education, health, and moral development are made (Hariani, Aaliyah, & Issalillah, 2021). This reality shows that divorce cannot be viewed merely as the termination of the marital relationship between husband and wife, but rather as the beginning of a new phase in regulating child care that requires clarity and fairness (Zartler, 2011).

In the tradition of Islamic family law, hadhanah is understood as both a right and an obligation to nurture, care for, and educate children who are not yet capable of living independently. Historically, this right has often been associated with the physical and psychological capacity of the caregiver, emotional closeness to the child, and the ability to safeguard the child's religion and moral character. When divorce occurs, the question of who is most appropriate to bear the responsibility of hadhanah arises with considerable intensity. This indicates that child care is not only related to legal relationships but also involves the social responsibility of families and communities in protecting children from various forms of vulnerability (Aidan bin Abdullah, 2021). Extended families, customary norms, and religious values often shape perceptions of the ideal caregiver. In practice, there is an assumption that children at certain ages are better cared for by their mothers, while at other ages they may be closer to their fathers, or that

custody arrangements should be implemented gradually. However, these perspectives continue to interact with the development of contemporary thought regarding children's rights, gender equality, and the best interests of the child in various academic discussions.

The principle of the best interests of the child has developed into the main normative reference in discussions on post-divorce parenting. This principle places the physical, psychological, moral, and spiritual needs of the child as the primary considerations in determining custody rights (Safira, 2021). Within this framework, parents are viewed as trustees responsible for fulfilling the child's needs rather than absolute owners of the child. Several studies also emphasize that the quality of interaction within the family plays a significant role in maintaining children's mental health and emotional balance; therefore, decisions regarding custody must consider the overall condition of family relationships (Safira et al., 2021). When disputes over *hadhanah* arise, the court faces the obligation to weigh various factors related to the child's welfare, such as environmental stability, the quality of the child's relationship with each parent, and the readiness of the social environment surrounding the potential caregiver's residence (Mardikaningsih, 2021). In practice, the interpretation of the child's best interests is often not simple, as it involves evaluating family situations that are complex and filled with emotional nuances.

Child care after divorce presents particular challenges because the child is situated between two households that have different dynamics. A child may live permanently with one parent but still has the right to maintain regular contact with the other parent. Arrangements regarding meetings, communication, and involvement in important aspects of the child's life must be structured by considering the child's emotional stability and the feasibility of the relationship between the parents (Shin et al., 2021). Environmental support, access to education, and the economic condition of the family also influence the quality of a child's life after changes occur in the family structure (Suwito et al., 2021). Unresolved tensions between former spouses often spill over into *hadhanah* arrangements, placing the child in a situation of divided loyalty. In this context, the quality of post-divorce parenting is strongly influenced by the parents' ability to separate marital conflict from the interests of the child.

In court, the determination of custody often becomes the most sensitive part of the divorce process (Braver et al., 2011). The disputing parties bring their respective narratives regarding their capability as caregivers and the shortcomings of the other party. Judges are faced with the obligation to interpret normative provisions concerning *hadhanah*, consider the facts revealed during the trial, and anticipate the consequences of the decision for the child's future. Questions regarding custody according to the child's age often emerge as an initial guideline but cannot always be applied rigidly. Young children require intensive physical closeness, while older children begin to develop their own views and preferences regarding where they live and which caregiver they feel most comfortable with. The importance of balance between social, economic, and community welfare aspects is essential so that the decisions made can support the sustainability of family life and the protection of children (Mardikaningsih & Hariani, 2021). Judicial processes must accommodate these differences while ensuring that decisions remain rooted in the interests of the child.

Problems arise when the principle of the child's best interests and the normative provisions concerning *hadhanah* encounter complex social realities (Fakala, 2019). In some cases, custody disputes are driven more by parental ego conflicts than by objective considerations of the child's welfare. Children may be used as instruments to pressure former partners, for example by restricting visitation access or using custody as a bargaining tool in other disputes. On the other hand, societal perceptions that are biased toward the roles of fathers or mothers in parenting may influence how the parties view who deserves *hadhanah*. When traditional perspectives do not align with the child's actual needs, decision-making becomes increasingly complicated.

Another issue relates to the diversity of legal bases and judicial considerations in *hadhanah* cases (Nasir et al., 2021). In some regions, judges place greater emphasis on classical *fiqh* provisions that prioritize the mother's right to *hadhanah* at certain ages, while in other regions there is a tendency to consider the child's voice and the actual conditions of care. In cases involving interfaith families or differences in religious views between parents, the issue becomes more complex because it concerns the protection of the child's freedom of religion and the preservation of their religious identity. In the literature, debates regarding the age limits of *hadhanah*, the

priority of certain relatives, and the scope of judicial discretion indicate that custody determination is never purely technical but is deeply embedded with value considerations.

The purpose of this study arises from the need to clarify the normative foundations and patterns of reasoning that should guide decision-making, both in academic settings, judicial practice, and policy formulation. Amid social changes that influence family structures, women's participation in the public sphere, and increasing awareness of children's rights, understanding of *hadhanah* needs to be updated without severing its connection with established legal traditions (Mihamad et al., 2016). A literature study enables the exploration of various scholarly opinions, court decisions, and legal research that have been conducted, which can then be compiled into a systematic discussion of the principle of the child's best interests, the regulation of custody based on stages of age, and the dynamics of custody determination in courts.

The objective of this paper is to develop a coherent conceptual discussion of *hadhanah* and child care after divorce by emphasizing three main points. First, to explain the principle of the best interests of the child as the basis for assessment in custody cases. Second, to describe patterns of custody arrangements based on the age and developmental stages of children as reflected in various Islamic legal literatures and judicial practices. Third, to illustrate the dynamics of custody determination in courts, including religious, social, and psychological considerations that influence judicial decisions. From a theoretical perspective, this study is expected to enrich the understanding of contemporary Islamic family law. From a practical perspective, this discussion is expected to provide references for judges, legal practitioners, and relevant stakeholders in formulating policies and decisions that are more responsive to the interests of children.

## Method

This study employs a qualitative literature study approach oriented toward reorganizing ideas that have developed regarding *hadhanah* and child care after divorce. Arfa and Marpaung (2018) explain that Islamic legal research based on written sources requires careful selection of primary, secondary, and tertiary legal materials, followed by interpreting the relationship between textual norms and social practices. Dalhat (2015) emphasizes that

in Islamic studies, research methodology is not limited to data collection techniques but also involves the ability to examine the heritage of fiqh, statutory regulations, and judicial decisions in an integrated manner. Within this framework, the research does not rely on interviews or observations, but rather on a structured reading of relevant literature and organizing it into clear and balanced normative arguments.

The connection between methodology and the theme of hadhanah can be seen in the selection of references that encompass the dimensions of fiqh, positive law, and judicial practice. Adil and Saidon (2017) demonstrate how religious factors are used as determinants of child welfare in custody cases. Nurlaelawati (2016) also provides an overview of the dynamics of gender relations and legal authority. These authors illustrate how research centered on legal documents and court decisions can produce a sharp understanding of the direction of family law development. This literature study is directed toward constructing a conceptual framework of hadhanah grounded in the principle of the best interests of the child, custody arrangements according to age, and the dynamics of judicial considerations in practice.

## Result and Discussion

Hadhanah in the literature of Islamic family law is often understood as the responsibility to care for and educate a child until reaching a certain level of independence. In the context after divorce, hadhanah functions as a bridge that ensures that the child's rights to affection, protection, and education remain guaranteed even though the marital bond has ended. Conceptually, hadhanah contains both the dimensions of rights and obligations. On the one hand, parents and other qualified parties may submit claims to become the primary caregiver. On the other hand, the party who obtains the right of hadhanah is obliged to carry out that trust sincerely for the welfare and happiness of the child. Thus, hadhanah cannot be viewed as a right that stands independently from responsibility, but rather as a trust that carries both moral and legal obligations. This shows that child care does not only concern legal regulations but also involves social relationships that shape the behavior and development of children in everyday life (Evendi et al., 2021).

The principle of the best interests of the child becomes the primary starting point in assessing who deserves custody rights (Goldstein, 2015).

This principle places the child as the main subject whose rights and needs must take precedence over the competitive interests of the parents. Within this framework, traditional hadhanah criteria such as the caregiver's religion, morality, physical health, and material capability must be connected with the concrete needs of the child at certain ages and developmental stages. For example, early childhood requires intensive physical and emotional attachment, so the stability of the primary caregiver's presence becomes important. School-age children require learning support, supervision of social interactions, and consistent moral guidance. Adolescents require dialogue, guided independence, and a trustworthy adult figure. A stable family environment plays a significant role in helping children face social pressures that arise during the stages of growth and identity formation (Fajar et al., 2021). All these dimensions need to be considered simultaneously when the principle of the child's best interests is applied in hadhanah cases.

In the literature of fiqh, discussions regarding hadhanah often classify custody rights based on the stages of a child's age (Firdausia, 2020). In general, there is a tendency to prioritize maternal care during early childhood, with several conditions such as sound mental health, good moral character, and the ability to ensure proper care. After the child reaches a certain age, some fiqh perspectives shift consideration toward the father or provide an opportunity for the child to choose to live with one of the parents. This age-based classification shows an awareness that the needs of children change as they grow. These changing needs are also influenced by social conditions developing within society, so parenting patterns cannot be separated from the dynamics of social life that continue to evolve (Gani et al., 2021). However, its application in modern judicial practice is not always identical to classical formulations, because courts often must consider the actual conditions of the family, the aspirations of the child, and national policies regarding child protection.

Custody rights according to the child's age are also related to the child's capacity to express their wishes consciously. In several legal systems, children who have reached a certain age are given the opportunity to express their opinions regarding the place where they wish to live. This opinion does not automatically bind the judge but becomes one of the considerations in making a decision. This approach recognizes that children are not merely objects of protection but individuals who possess

their own will and feelings. However, the involvement of children in such processes must be managed carefully so that they are not burdened by loyalty conflicts between their parents. Courts must ensure that the child's voice being heard is a free expression rather than the result of pressure or indoctrination from one of the parties. This is in line with the view that healthy interactions within the family play an important role in maintaining children's emotional balance and mental health while they face changes in family structure (Safira et al., 2021).

The dynamics of determining custody in court demonstrate the meeting point between fiqh norms, provisions of positive law, and the judge's assessment of evidence and the arguments of the parties. Judges must interpret general provisions regarding hadhanah within the concrete situations presented before them. In cases involving custody claims from both parties, judges need to assess evidence concerning the behavior of each parent, household conditions, support from the extended family, as well as readiness to provide time and attention for the child. In addition, factors of religion and morality are often presented as important considerations, particularly in legal systems that give strong recognition to religious norms. In managing values and differences in social backgrounds, decision-making also requires an approach that considers values developing within society (Hariani & Mardikaningsih, 2021). As a result, hadhanah decisions contain both the textual elements of legal rules and contextual assessments of the family life concerned.

The presence of the mother as a caregiving figure often receives special attention in hadhanah cases. Mothers are traditionally viewed as having emotional closeness and an intensive daily role with the child, especially during early childhood. Many fiqh perspectives place the mother as the first party entitled to hadhanah, as long as there are no strong reasons preventing it, such as serious negligence, behavior that endangers the child, or relocation to an environment considered unsupportive (Baharudin & Yusoff, 2020). However, in modern literature, discussions have also emerged regarding the importance of active paternal involvement in parenting, not merely as the provider of financial support. This opens space for a more balanced evaluation of the parenting capacities of both parents, especially when the child has reached an age where the father's role significantly influences personality formation and social identity.

Fathers in hadhanah cases are often associated with the obligation of financial support and authoritative guidance, particularly in matters of religious education, moral development, and life orientation (Rahim et al., 2020). In addition, fathers are viewed as having the responsibility to provide a safe and proper household environment. In judicial practice, custody claims by fathers will be evaluated based on the extent to which they can ensure the child's physical and emotional needs, not solely economic capability. When a father submits a hadhanah request, the court must assess whether the father child relationship during the marriage demonstrated closeness and care, or whether he was rarely involved in daily parenting. This assessment is important so that hadhanah does not fall to a party who formally possesses the right but is practically unprepared to carry out the caregiving function.

The extended family also appears as an important actor in the dynamics of post-divorce parenting. Grandmothers, grandfathers, uncles, aunts, and other relatives often provide practical as well as emotional support to the child and to the single parent. In several schools of fiqh, the order of relatives entitled to hadhanah is regulated in detail to anticipate situations where both parents are unfit or unable to provide care (Ibrahim & Mohd, 2021). On the one hand, the involvement of the extended family can strengthen the protection network for the child. On the other hand, differing perspectives between the father's and mother's extended families may intensify custody disputes. Judges must carefully assess the extent to which the extended family environment provides healthy support for the child's development, rather than merely serving as the basis of claims based on blood relations. Support from the surrounding environment is also an important element in creating balance between social needs, economic conditions, and community welfare (Mardikaningsih & Hariani, 2021).

The religious dimension in hadhanah becomes a primary concern in literature that connects Islamic family law with the principles of children's rights (Nasution & Nasution, 2021). Parents are expected to ensure that children grow up in an environment that supports the reasonable practice of religious teachings. In interfaith cases, the question of which religion the child will follow becomes highly sensitive. Some perspectives place religious similarity between the caregiver and the child as an important factor in ensuring consistency in religious upbringing. However, the development of

human rights and child protection perspectives encourages a more careful consideration of the religious dimension by taking into account freedom of religion and the child's long-term psychological interests. This makes religious considerations in hadhanah a domain of reasoning that requires additional wisdom from judges. A stable value environment, including religious values, is viewed as helping children develop emotional balance and the ability to manage feelings, which ultimately influences their psychological well-being (Yıldız et al., 2021).

The gender perspective cannot be separated from the discussion of hadhanah. Women often find themselves in a socially and economically vulnerable position after divorce, while simultaneously bearing a large burden of child care. On the one hand, granting custody to the mother without adequate economic guarantees can place the child in a difficult situation. On the other hand, granting custody to the father who has greater resources without considering the child's emotional closeness to the mother may result in psychological harm. Modern family law literature attempts to find a balance between recognizing the caregiving contribution of the mother and the economic responsibility of the father so that hadhanah decisions do not create new inequalities that disadvantage the child and one of the parents. Social conditions and environmental support often greatly influence individual well-being, both mentally and physically, so decisions regarding child care need to consider the social situation surrounding the family (Warin, 2021).

The dynamics of determining custody in court are also influenced by the capacity of judicial institutions to handle family cases sensitively. Judges who handle divorce and hadhanah cases face parties who are under high emotional pressure (Hak et al., 2019). Skills in communication, empathy, and the ability to understand children's needs become important. In several jurisdictions, family courts have begun adopting more child-friendly approaches, for example by providing special spaces to hear children's views or by involving experts such as psychologists in the assessment process. Such measures aim to ensure that hadhanah decisions are not only legally valid but also aligned with the emotional needs and development of the child. A more humane approach in legal processes is often considered important because family issues concern not only legal rules but also the psychological conditions of the parties involved (Issalillah & Khayru, 2021).

Within a theoretical framework, hadhanah can be seen as the meeting point of three main dimensions, namely religious norms, state legal norms, and universal standards of children's rights (Firdausia, 2020). Religious norms provide moral foundations and a basic framework regarding who ideally should care for the child. State legal norms regulate procedures, institutional competence, and the binding force of decisions. Meanwhile, children's rights standards place the child as a subject who has the right to be protected from violence, neglect, and discriminatory treatment. These three dimensions do not always operate in harmony, thus requiring serious reasoning efforts so that the hadhanah determined does not disadvantage any of these dimensions. Literature studies help trace various perspectives that have been proposed to bridge them. Legal regulations and instruments are considered necessary to continue developing so that they can provide effective protection for the interests of society, including in matters related to family and child welfare (Herisasono et al., 2021).

Child care after divorce is also related to the continuity of the child's relationship with the parent who does not hold primary custody (Narbona et al., 2021). Even if a person does not become the daily caregiver, they still have moral and legal obligations toward the child. A continuing relationship with both parents has proven important for children's emotional balance and identity formation. Therefore, arrangements regarding visitation rights, communication, and involvement in important decisions concerning the child need to be clearly structured. In hadhanah decisions, courts ideally emphasize this relational pattern so that the ruling does not merely determine the child's place of residence but also preserves the bridge of relationship with the other parent.

The psychological aspects of children in the process of divorce and the determination of hadhanah must not be ignored. Parental divorce is an event that has the potential to create feelings of loss, confusion, and anxiety in children (Tahirović & Demir, 2018). If custody disputes become intense and prolonged, the psychological burden on the child may become even heavier. Children may feel that they must choose one parent, or they may carry a sense of guilt over the conflict that occurs. Within the framework of the best interests of the child, mechanisms for resolving hadhanah disputes should encourage processes that are as swift as possible, clear, and minimize the child's exposure to conflict. Child psychology literature provides

extensive explanations regarding the importance of stable caregiving and consistent emotional support after divorce.

The regulation of hadhanah according to the child's age can be enriched with an understanding of psychosocial developmental stages (Firdausia, 2020). Toddlers have needs related to basic attachment and predictable routines. School-age children begin to enter a broader social environment, so the quality of educational support and supervision of peer interactions becomes more prominent (Tiliouine & Achoui, 2018). Adolescents face identity exploration and pressures from peer environments. Each stage requires a different parenting approach, and hadhanah decisions should ideally adjust to these needs. Therefore, the classification of custody rights based on age should be understood as a flexible guideline that can be adapted to the child's real circumstances and the quality of the available caregivers.

In some cases, the need arises to review hadhanah decisions due to changing circumstances. For example, the primary caregiver may experience a serious illness, behavioral changes that endanger the child, or relocation to a very distant place. In such situations, the principle of the child's best interests requires mechanisms to reorganize caregiving arrangements. This shows that hadhanah is not a static status that cannot change but rather a determination that can be adjusted according to evolving conditions (Mansoor & Abdullah, 2010). Legal literacy within society needs to be improved so that concerned parties understand that requests for changes in custody can be pursued through available legal channels, rather than through unilateral actions that may harm the child.

Child care after divorce also raises questions regarding the role of institutions outside the family, such as schools, religious institutions, and local communities (Bastais & Mortelmans, 2016). These institutions often become a second environment for children after the home, enabling them to help observe signs of declining child well-being and provide additional support. Teachers, religious leaders, and community figures who are sensitive to the conditions of children from divorced families can become references for parents and courts when assessing the child's situation. The involvement of institutions outside the family should be understood as support for caregiving without diminishing the primary responsibility of parents and legally recognized caregivers

As part of family law, hadhanah continuously faces social change. Developments in communication technology, work mobility, and patterns of gender relations within families have created new forms of caregiving, such as long-distance parenting, flexible co-parenting arrangements, and the involvement of grandparents as primary caregivers (Cagle & Munn, 2012). These changes compel legal literature to re-examine traditional categories and remain open to more varied regulatory possibilities, as long as the child's best interests are not neglected. Therefore, the discussion of hadhanah developed in this literature study must open space for creative interpretation while remaining grounded in the fundamental principles of child protection.

Through the overall discussion, it appears that hadhanah and child care after divorce stand at the intersection between normative principles and social realities. The principle of the best interests of the child functions as a compass guiding various legal, moral, and psychological considerations (Salter, 2012). Custody arrangements based on age provide an initial framework for mapping children's needs at particular stages, while the dynamics of custody determination in court demonstrate how these principles and frameworks are applied in concrete cases. Literature studies on this theme are important to organize the diversity of perspectives and provide a strong conceptual foundation for the development of family law that is more responsive to the interests of children.

## Conclusion

Hadhanah and child custody after divorce constitute a field of study that places the child at the center of both normative and practical considerations. Divorce alters the family structure; however, the obligation to maintain and protect the child remains attached to the parents. The principle of the best interests of the child serves as the primary benchmark in determining who deserves custody, how visitation rights should be arranged, and when a review of custody arrangements becomes necessary. The classification of custody based on the child's age and developmental stage helps provide general guidelines, while the dynamics of custody determinations in court demonstrate that the application of these guidelines always requires sensitive assessment of the concrete conditions within a family. The synergy between fiqh norms, positive law, and child rights standards is essential so that

hadhanah decisions are not only formally valid but also aligned with the child's broader well-being.

The implications and recommendations of this study emphasize the importance of strengthening normative and institutional frameworks grounded in the principle of the best interests of the child in every divorce case involving hadhanah. Judges, advocates, and disputing parties need to enhance their understanding of children's developmental stages, the psychological impacts of divorce, and the role of extended family and institutions outside the family in supporting child care. It is recommended that judicial institutions expand the use of child-friendly approaches, including the involvement of psychological experts and the provision of a safe space for children to express their views when necessary. At the academic level, further studies are needed to examine hadhanah decisions in various regions through comparative approaches so that the conceptual framework developed can be tested and enriched. In this way, the development of family law concerning hadhanah is expected to move toward a form that is increasingly aligned with the protection of children's rights.

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**The Principle of the Child's Best Interests in Custody and Post-Divorce Care**  
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