

PSYCHOLOGICAL CONSIDERATIONS IN RELIGIOUS COURT JUDGES' DECISIONS ON CHILD CUSTODY

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Abstract: The duty to provide for and care for a child is a shared responsibility between the mother and father. This duty does not cease with the dissolution of the marriage. Where a dispute arises regarding child custody, the court may issue a ruling based on submissions from the parties. There are several psychological considerations that judges in religious courts must take into account when determining child custody, so that the child's fundamental rights and best interests are not compromised. The aim of this article is to examine the psychological considerations taken into account by judges in religious courts when determining child custody. This study employs a descriptive-analytical method, with the primary data source being the rulings of religious court judges, supported by several secondary data sources in the form of literature examining child custody. The findings of the discussion indicate that there are several psychological considerations frequently taken into account by judges in religious courts when determining child custody; amongst these, judges consider the child's basic needs and fundamental interests, the physical and emotional closeness between the child and the parents, and the differences in growth and development between boys and girls, which require different approaches. In making these considerations, judges draw upon Article 165 of the Compilation of Islamic Law, Articles 41 and 45 of Law No. 1 of 1974, Law No. 23 of 2002 as amended by Law No. 35 of 2014 on Child Protection, and the Convention on the Rights of the Child, adopted by the United Nations in 1989 and ratified by Presidential Decree No. 36 of 1996. Consequently, the religious court judge held that hadhanah is not, in fact, a right of the parents but rather a right of the child which constitutes an obligation on the part of the parents.

Keywords: Hadhanah, Psychological Considerations, Religious Court Judge

Introduction

Marriage in Islam is recognised as a sacred covenant established in the name of Allah SWT. The Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) accordingly defines marriage as a *mitsāqan ghalīẓan*, namely a solemn and enduring bond that carries both legal and spiritual responsibilities. This concept reflects the Qur'anic teaching in which Allah likens the marriage covenant to the covenant made with the Ulul Azmi Prophets and with the Children of Israel (QS. Al-Ahzab: 7). Therefore, marriage should not be regarded merely as a civil contract but as a religious institution intended to establish a harmonious family characterised by *sakinah*, *mawaddah*, and *rahmah*. Although divorce is legally permissible in Islam when justified by valid sharia grounds, it is considered a last resort because it may

undermine the stability of the family and generate long-term consequences for spouses and children (Al-Anwar, 2024).

One of the most significant legal consequences arising from divorce concerns child custody (*hadhanah*). In principle, both parents continue to bear equal responsibility for the care, education, and welfare of their children after the dissolution of marriage. Nevertheless, because divorced parents generally no longer reside together, the child must ordinarily live with either the mother or the father. This situation frequently gives rise to disputes that require judicial determination before the Religious Court. In resolving such disputes, judges are not solely guided by formal statutory provisions or the age of the child as stipulated in Islamic family law. Instead, judicial decisions increasingly prioritise the best interests of the child, recognising that child custody fundamentally constitutes the child's right rather than the parents' privilege. Consequently, judges evaluate various factors, including the emotional bond between parent and child, parental capability, living conditions, and the child's overall welfare before determining custody (Harid & Ashufa, 2025).

The increasing emphasis on the best interests of the child demonstrates that Religious Court judges exercise judicial discretion not only through normative legal interpretation but also by considering psychological and social dimensions affecting children's development. Custody decisions are therefore expected to ensure the child's physical, emotional, educational, and psychological well-being, rather than merely applying legal provisions in a rigid manner. This judicial approach reflects the progressive development of Islamic family law in Indonesia, whereby legal certainty is harmonised with substantive justice to achieve outcomes that genuinely protect children's welfare. Accordingly, this study examines the legal reasoning adopted by Religious Court judges in determining child custody following divorce, with particular emphasis on the integration of psychological considerations in implementing the principle of the best interests of the child (Suyinah et al., 2025).

Methods

This study employed an empirical legal research design using a qualitative socio-legal approach. A socio-legal approach was selected because the research examines not only the normative framework governing child custody (*hadhanah*), but also the manner in which Religious Court judges apply legal principles in actual judicial practice. In addition, this research adopted a descriptive-analytical method combined with a normative juridical approach to obtain an in-depth understanding of the legal phenomena under investigation and to analyse the relationship between statutory provisions, judicial reasoning, and psychological considerations in child custody disputes (Novianti, 2024). This integrated approach enables an analysis of how legal norms interact with psychological, social, and factual considerations in

determining the best interests of the child, thereby providing a comprehensive understanding of judicial decision-making in child custody disputes (Rika, 2021).

The research was conducted at selected Religious Courts in Indonesia that have adjudicated child custody cases following divorce. Informants were selected purposively and consisted of Religious Court judges with experience in deciding *hadhanah* cases. Primary data were collected through semi-structured interviews with judges, while secondary data consisted of court judgments, statutory regulations, the Compilation of Islamic Law (KHI), child protection legislation, and relevant legal literature. This combination of field data and documentary analysis provides a comprehensive basis for understanding the legal and psychological factors underlying judicial reasoning in child custody cases (Mursyid et al., 2024).

Data were collected through three techniques, namely in-depth interviews, document analysis, and literature review. Court decisions were analysed to identify the legal reasoning adopted by judges, particularly regarding the extent to which psychological aspects, including the child's emotional attachment, mental well-being, parenting capacity, environmental stability, and expert psychological opinions, influenced custody determinations. The integration of documentary evidence with interview findings enabled the researcher to compare judicial reasoning with actual courtroom practice and to identify recurring patterns in custody adjudication (Suyinah et al., 2025). The collected data were analysed using the interactive model of Miles, Huberman, and Saldaña, consisting of data condensation, data display, and conclusion drawing or verification. To ensure the credibility of the findings, source triangulation was conducted by comparing interview results, judicial decisions, statutory regulations, and scholarly literature. The findings were subsequently interpreted through the principles of the best interests of the child, judicial discretion, and Islamic family law to explain how psychological considerations influence Religious Court judges in determining child custody after divorce. This analytical framework is consistent with recent empirical studies emphasising that judicial decisions should integrate legal, psychological, and child welfare considerations to achieve substantive justice for children (Atupare & Yin, 2025).

Results and Discussion

This section presents and discusses the findings of the study concerning the psychological considerations adopted by Religious Court judges in determining child custody following divorce. The discussion is structured by first examining the concept of child custody (*hadhanah*) from the perspective of Islamic law as the normative foundation governing custody disputes in Indonesia. It then analyses the statutory framework regulating child custody, followed by an examination of the psychological considerations underlying judicial decision-making in Religious

Courts. Finally, the discussion evaluates how judges integrate Islamic legal principles, statutory provisions, and the principle of the best interests of the child in order to achieve substantive justice and protect children's physical, emotional, and psychological well-being. The findings are interpreted through both doctrinal and empirical perspectives to demonstrate the dynamic interaction between Islamic family law and contemporary judicial practice in Indonesia.

Child Custody from the Perspective of Islamic Law

1. The Concept of *Hadhanah*

In Islamic law, child custody is referred to as *hadhanah*, which denotes the responsibility of caring for, nurturing, protecting, and educating a child by a person who is legally entitled to undertake such responsibilities until the child reaches maturity (*bulugh*) or is capable of living independently. The primary objective of *hadhanah* is not merely to ensure the child's physical survival but also to safeguard his or her psychological, emotional, spiritual, and educational development. Classical Islamic jurists agree that *hadhanah* is fundamentally the right of the child and a corresponding obligation of the parents, although they differ regarding the age at which custody ends. The Hanafi, Shafi'i, and Hanbali schools generally maintain that *hadhanah* continues until the child reaches approximately seven or eight years of age or attains the stage of *mumayyiz*, whereas the Maliki school extends custody until the child reaches puberty or marries. Despite these differences, all schools of Islamic jurisprudence emphasise that the paramount objective of *hadhanah* is to protect the welfare (*maslahah*) of the child (Utama & Adly, 2025).

2. Legal Basis of *Hadhanah*

The legal foundation of *hadhanah* is derived from the Qur'an, the Sunnah, and the juristic interpretations of classical Islamic scholars. The Qur'an establishes parental responsibility through Surah Al-Baqarah (2:233), which regulates breastfeeding and the father's obligation to provide financial maintenance, while Surah At-Tahrim (66:6) commands believers to protect themselves and their families from harm. These Qur'anic principles are reinforced by Prophetic traditions stating that the mother has priority in child custody provided that she has not remarried, as well as traditions allowing a child who has reached the stage of *mumayyiz* to choose whether to live with the father or the mother. Collectively, these sources demonstrate that parental responsibility continues despite divorce and that the child's welfare remains the principal consideration in determining custody. These Islamic legal principles have subsequently influenced the development of Indonesia's positive law concerning child custody (Asman, 2023).

3. Persons Entitled to *Hadhanah*

Islamic jurisprudence establishes an order of priority regarding those entitled to exercise *hadhanah*, based upon kinship, compassion, and the ability to provide appropriate care for the child. The majority of jurists accord priority to the mother because of her close emotional attachment and greater capacity to provide affection and day-to-day care, followed by the maternal grandmother, other female relatives from the maternal line, and subsequently relatives from the paternal line. Where no eligible female relatives are available or capable of exercising custody, responsibility may pass to qualified male relatives according to the recognised order of kinship. Ultimately, where no suitable family member exists, the judge possesses the authority to appoint another competent individual to undertake the child's care. This hierarchical arrangement demonstrates that the right to *hadhanah* is determined not solely by blood relationship but also by the prospective custodian's ability to secure the child's welfare and best interests (Rohmah, Suyaman, & Mulyanti, 2023).

4. Requirements of a *Hadin* (Custodian)

A person entrusted with *hadhanah* must satisfy several legal and moral requirements to ensure that the objectives of child custody are fulfilled. A custodian should have reached legal maturity, possess sound mental capacity, be a Muslim, demonstrate good moral character, and be physically and psychologically capable of providing proper care, education, and protection for the child. In the case of the mother, classical jurists generally require that she has not remarried another man, based upon a Prophetic tradition granting priority in custody to the mother so long as she remains unmarried, although certain jurists recognise exceptions where remarriage does not compromise the child's welfare. These conditions illustrate that *hadhanah* is not an absolute parental entitlement but rather a legal trust (*amanah*) that may only be exercised by an individual capable of ensuring the child's physical, emotional, moral, and educational development. Consequently, where these conditions are no longer fulfilled, the court may transfer custody to another eligible person in order to safeguard the best interests of the child (Hanif, Salsabila, & Hubur, 2023).

Child Custody under Indonesian Statutory Law

1. The Compilation of Islamic Law (Kompilasi Hukum Islam)

The Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) constitutes the principal legal framework governing child custody (*hadhanah*) for Muslims in Indonesia. Under the KHI, *hadhanah* refers to the responsibility of caring for, nurturing, educating, and protecting a child until he or she reaches adulthood or becomes capable of living independently. Article 105 paragraph (1) of the KHI provides that custody of a child who has not yet attained the age of *mumayyiz* (under twelve years of age) shall, in principle, be granted to the mother. Conversely, Article 105 paragraph (2) stipulates that a child who has reached the age of *mumayyiz* is entitled to choose whether to reside with the father or the mother. Furthermore, Article 98 of the KHI defines legal adulthood as the age of twenty-one years, provided that the child is not physically or mentally disabled and has not entered into marriage. In addition, Article 156 establishes the order of persons entitled to exercise *hadhanah* should the mother be unable to assume custody, beginning with maternal female relatives, followed by the father, paternal female relatives, the child's sisters, and other female blood relatives according to the prescribed order of kinship. These provisions demonstrate that the KHI accommodates both classical Islamic jurisprudence and contemporary child protection principles by ensuring that custody arrangements are directed towards safeguarding the welfare of the child (Munthe & Dasopang, 2025).

2. Law Number 1 of 1974 concerning Marriage

In addition to the Compilation of Islamic Law, child custody is regulated under Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. Article 41 provides that, following the dissolution of marriage through divorce, both parents remain legally responsible for maintaining, educating, and caring for their children solely on the basis of the child's best interests. Where disputes arise concerning custody arrangements, the matter shall be determined by the court. Furthermore, Article 41 paragraph (2) places primary responsibility for the child's maintenance and educational expenses upon the father, although the court may require the mother to contribute where the father is unable to fulfil this obligation. Likewise, Article 45 emphasises that both parents have a continuing duty to care for and educate their children until they marry or become capable of supporting themselves, irrespective of whether the marital relationship has ended. These statutory provisions reinforce the principle that parental obligations survive divorce and that children's rights remain protected through judicial supervision (Farid, Albani, & Lubis, 2025).

3. Supreme Court Decision No. 126 K/Pdt/2001

Judicial interpretation has further strengthened the statutory regulation of child custody through Supreme Court jurisprudence. Supreme Court Decision No. 126 K/Pdt/2001 established that, where divorce involves a child who has not yet

reached the age of *mumayyiz*, custody should generally be awarded to the parent who has the closest emotional relationship with the child, namely the mother. Nevertheless, this principle is not absolute. More recent judicial practice demonstrates that Religious Court judges may award custody to the father where evidence indicates that such a decision better serves the child's physical, psychological, educational, and emotional welfare. Accordingly, Indonesian courts increasingly interpret statutory provisions in light of the principle of the best interests of the child rather than applying custody rules in a purely formalistic manner (Mulyana, Sulistiani, & Irwansyah, 2025).

Psychological Considerations for Granting Child Custody to the Mother

Islamic family law generally accords priority to the mother in exercising *hadhanah*, particularly where the child has not yet attained the age of *mumayyiz*. This preference is not intended to establish the superiority of the mother over the father; rather, it reflects the fundamental objective of Islamic law to safeguard the child's welfare (*maslahah al-walad*). Contemporary studies on Islamic family law in Southeast Asia demonstrate that the concept of child welfare has become the primary consideration in custody disputes, with courts increasingly interpreting statutory provisions through the principle of the best interests of the child. Accordingly, the mother's priority in *hadhanah* should be understood as a legal mechanism designed to ensure children's emotional stability, safety, and healthy development rather than as an exclusive parental privilege (Nasohah et al., 2025).

Classical Islamic jurists explain that mothers possess distinctive characteristics that support children's early psychological development. Mustafa al-Khin, in *Al-Fiqh al-Manhaji*, states that mothers are generally more compassionate, patient, gentle, and emotionally responsive in caring for children. These characteristics enable mothers to provide an environment in which children experience affection, security, and continuous emotional support during the most vulnerable stages of their development. Such an approach is consistent with the dynamic development of Islamic family law, which continuously adapts its application while maintaining the primary objective of protecting the family institution and children's welfare (Nasohah, 2024).

The psychological rationale underlying this principle is further reinforced by the Prophetic tradition narrated by Abu Ayyub, in which the Prophet Muhammad (peace be upon him) stated: "*Whoever separates a mother from her child, Allah will separate him from his loved ones on the Day of Resurrection*" (Narrated by al-Tirmidhi). This tradition reflects the importance of preserving the emotional bond between mother and child during early childhood. From a psychological perspective, continuous

interaction between the child and the primary caregiver contributes significantly to emotional attachment, personality formation, and psychological resilience. Consequently, separation from the primary caregiver at an early age may adversely affect children's emotional security, social adjustment, and cognitive development, thereby justifying the judicial preference for maintaining maternal custody where such custody serves the child's welfare (Nasohah et al., 2025).

Several psychological considerations further explain why custody is generally entrusted to the mother. First, pregnancy, childbirth, and breastfeeding establish a unique emotional attachment that strengthens the relationship between mother and child. Secondly, mothers generally devote more time to direct childcare, enabling them to recognise children's emotional expressions, behavioural patterns, developmental needs, and health conditions more comprehensively. Thirdly, mothers are frequently characterised by greater patience, empathy, warmth, and sensitivity in responding to children's emotional difficulties. These qualities contribute to children's sense of security and self-confidence, both of which are essential for healthy psychological development. Furthermore, mothers commonly provide continuous supervision of children's education, nutrition, healthcare, and daily routines, thereby ensuring consistency in parenting and emotional support (Nasohah et al., 2025).

Nevertheless, Islamic law does not regard the mother's entitlement to *hadhanah* as absolute. Rather, custody is recognised as a legal responsibility shared by the mother, the father, and, most importantly, centred upon the rights of the child. Consequently, where the mother is unable to provide appropriate care because of neglect, abuse, immoral conduct, psychological incapacity, or circumstances that may endanger the child's welfare, judges may transfer custody to another person who is better able to protect the child's interests. Recent judicial studies demonstrate that Religious Court judges increasingly exercise judicial discretion by evaluating parental competence, emotional attachment, living conditions, educational opportunities, and the child's overall welfare instead of relying solely upon formal legal provisions. This approach reflects the transformation of *hadhanah* from a purely normative legal institution into a child-centred mechanism designed to realise substantive justice and the best interests of the child (Nasution, Pagar, & Asmuni, 2022).

Accordingly, psychological considerations constitute one of the most significant elements in determining child custody within Religious Court proceedings. The assessment extends beyond biological parenthood and encompasses the prospective custodian's ability to provide affection, emotional security, moral guidance, educational support, and a stable family environment. Therefore, the preference accorded to mothers in Islamic family law should not be interpreted as

gender discrimination but rather as a manifestation of the principle that every judicial decision concerning child custody must ultimately protect the child's physical, psychological, emotional, and social well-being. This approach demonstrates the harmonious integration of Islamic legal principles, contemporary psychological knowledge, and the universal principle of the best interests of the child (Nasohah et al., 2025).

Psychological Considerations in Religious Court Decisions on Child

The determination of child custody in the Religious Courts is fundamentally based on the principle that custody constitutes the right of the child rather than the right of either parent. Accordingly, judges are required to prioritise the best interests of the child above the competing interests of the father or the mother. This principle reflects a child-centred approach in which judicial decisions are directed towards ensuring children's physical safety, psychological security, emotional stability, educational continuity, and moral development following parental divorce. Consequently, the primary objective of custody adjudication is not to determine which parent is legally superior but rather to identify which parent is most capable of providing an environment conducive to the child's holistic development (Chandra & Alias, 2025).

This principle becomes particularly significant during early childhood. Children below the age of twelve are generally regarded as being in a critical developmental period during which rapid cognitive, emotional, behavioural, and social development occurs. At this stage, children require continuous affection, stable caregiving, and psychological security to facilitate healthy personality formation. For this reason, Religious Court judges increasingly regard child custody not merely as a legal consequence of divorce but as a mechanism for protecting children's developmental rights. Contemporary studies demonstrate that judges now interpret the provisions of the Compilation of Islamic Law in conjunction with the principle of the best interests of the child, thereby ensuring that judicial decisions provide substantive rather than merely procedural justice (Kadarisman, Thursina, & Arifin, 2025).

Although Article 105 of the Compilation of Islamic Law provides that children who have not yet attained the age of *mumayyiz* should ordinarily remain in the custody of their mother, this provision is not applied mechanically. Rather, judges undertake a comprehensive assessment of whether the proposed custodian is capable of fulfilling the child's physical, emotional, educational, moral, and psychological needs. Where the mother is unable to provide appropriate care because of neglect, abuse, incapacity, or circumstances likely to jeopardise the child's welfare, custody may be transferred to the father or another qualified family member. This approach

is consistent with Article 156 of the Compilation of Islamic Law, which permits the transfer of custody where the legal custodian cannot guarantee the child's physical and spiritual well-being. Accordingly, the statutory preference for maternal custody functions only as a rebuttable presumption and remains subordinate to the principle of child welfare (Chandra & Alias, 2025).

From the perspective of legal psychology, child custody encompasses two complementary dimensions, namely legal custody and physical custody. Legal custody refers to the authority to make fundamental decisions concerning the child's education, healthcare, religion, financial maintenance, and general welfare. Physical custody concerns the child's daily care, including accommodation, supervision, emotional support, and direct parenting responsibilities. Religious Court Decision No. 4394/Pdt.G/2019/PA.Bdg demonstrates that these two dimensions cannot be separated because children's psychological well-being depends not only upon legal responsibility but also upon the continuity of daily care and emotional attachment with the primary caregiver.

Judicial practice further indicates that Religious Court judges frequently evaluate psychological factors before determining custody arrangements. These include the child's emotional attachment to each parent, the continuity of caregiving prior to divorce, parental emotional maturity, the stability of the family environment, parenting competence, and each parent's capacity to provide a safe and supportive atmosphere for the child's development. In addition, judges may consider the developmental differences between boys and girls where such differences are relevant to the child's welfare. These considerations demonstrate that judicial reasoning has moved beyond a rigid application of statutory provisions towards an individualised assessment of each child's psychological needs. Research conducted in the Religious Court of Pekanbaru similarly found that judges consistently considered emotional stability, caregiving continuity, and the child's social environment in determining custody disputes (Lazuarman, Ikromi, & Ismail, 2025).

The award of custody to one parent does not extinguish the parental responsibilities of the other. Custody merely determines the child's principal place of residence and identifies the parent responsible for day-to-day care. Both parents nevertheless remain jointly responsible for ensuring the child's education, healthcare, financial maintenance, moral guidance, and psychological development. Divorce therefore terminates only the marital relationship between husband and wife and does not diminish their continuing obligations towards their children. This approach reflects the contemporary development of Islamic family law, which increasingly integrates the principles of child protection, developmental psychology, and *maqāṣid al-sharī'ah* in order to ensure that every custody decision genuinely serves the child's

best interests and long-term welfare (Kadarisman et al., 2025; Lazuarman et al., 2025).

Conclusion

This study demonstrates that the determination of child custody (*hadhanah*) in the Religious Courts is fundamentally guided by the principle of the best interests of the child, rather than by the competing rights or interests of either parent. Although Islamic law and the Compilation of Islamic Law generally accord priority to the mother in exercising custody over children who have not yet attained the age of *mumayyiz*, this preference is neither absolute nor unconditional. Instead, it represents a legal presumption based upon the mother's perceived ability to provide greater affection, emotional warmth, patience, and continuous care during the child's early developmental stages.

The findings further reveal that psychological considerations have become an integral component of judicial reasoning in child custody disputes. In addition to applying statutory provisions and principles of Islamic jurisprudence, Religious Court judges evaluate a range of psychological factors, including the child's emotional attachment to each parent, continuity of caregiving, parental competence, emotional stability, parenting capacity, and the ability to provide a safe and supportive environment for the child's physical, educational, moral, and psychological development. Consequently, judicial discretion enables judges to depart from the general rule favouring maternal custody whenever evidence demonstrates that the child's welfare would be better protected by awarding custody to the father or another eligible guardian.

This study also confirms that the concept of *hadhanah* in contemporary Indonesian Islamic family law has evolved from a parent-oriented approach towards a child-centred approach that harmonises Islamic legal principles, Indonesian statutory law, developmental psychology, and international child protection standards. Accordingly, child custody should no longer be understood merely as a legal consequence of divorce or as a parental entitlement, but rather as a legal mechanism designed to guarantee children's rights and promote their holistic development. Therefore, psychological considerations should continue to serve as one of the primary foundations of judicial decision-making in Religious Court custody cases in order to ensure that every decision genuinely reflects the child's best interests and contributes to the realisation of substantive justice.

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