Interdisciplinary Explorations in Research Journal (IERJ)
Vol. 4, Number 3 (Sept-Dec, 2026), pp. 929-941
E-ISSN: 3032-1069

Reconstruction of the Concept of Child Custody (Ḥaḍānah) Perspective of Maqāṣid Al-Syarī'Ah: Harmonization Between Fiqh Norms and Human Rights Principles in the Indonesian Family Law System

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Received 05-09-2026| Received in revised form 30-09-2026 | Accepted 23-10-2026

Abstract
This study departs from the gap between the static, status-based ḥaḍānah norms in the Compilation of Islamic Law (KHI) and child rights principles that treat the best interests of the child as the primary standard. This gap has produced inconsistent court decisions. The study aims to analyze how ḥaḍānah norms are constructed in Islamic jurisprudence and Indonesian positive law, to map their convergences with and tensions against child rights principles in court decisions, and to formulate a maqāṣid al-sharī'ah-based reconstruction. As normative legal research, it combines statutory, conceptual, case, comparative, and Jasser Auda's systems-based maqāṣid approaches. The materials examined include classical fiqh works, national regulations, child rights instruments, the laws of seven Muslim countries, and ten court decisions. The findings show that fiqh and child rights converge at the level of objectives and diverge only at the level of means. Courts have also treated Article 105 of the KHI as a rebuttable presumption, though without an explicit balancing framework. Inconsistencies in interfaith custody cases prove to be explained by the presence or absence of a real threat to the child's religion. The study proposes the Maṣlaḥī Ḥaḍānah Model, which consists of five components and is operationalized through a best interests matrix and the muwāzanah maqāṣidiyyah method.
Keywords: *best interests of the child; ḥaḍānah; Islamic family law; legal harmonization; maqāṣid al-sharī'ah*

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INTRODUCTION

Children in Islamic teachings are positioned as a trust whose life, intellect, religion, and future must be safeguarded, not as an object of parental ownership. The trust is tested most severely when divorce breaks the husband-wife relationship without erasing the relationship between father and mother and child. Throughout 2021-2025, the divorce rate in Indonesia ranges from 394 thousand to 516 thousand

cases per year, with 438,168 cases recorded in 2025.[1] Of the 2,057 complaints of child rights violations received by KPAI in 2024, 1,097 cases originated from parenting issues, including custody disputes. [2] In fiqh, this issue is regulated through the institution *of ḥaḍānah* which relies on the hadith "*anti aḥaqqu bihi mā lam tankiḥī*" and the history of giving choice to the *children of mumayyiz*. From these two sources, three pillars of norms were born, namely maternal priority, the loss of maternal rights due to remarriage, and *takhyīr*. These three are elaborated in various ways by the four schools, especially related to age limits, order of caregivers, and religious requirements.[3]

This diversity indicates the *ijtihādī* character of the provision. Ibn Qayyim even emphasized that the prioritization of one parent is only valid as long as it produces benefits for the child.[4] In Indonesia, Article 41 letter a of Law Number 1 of 1974 affirms that child maintenance is carried out "solely based on the interests of the child". Meanwhile, Articles 105 and 156 of the KHI stipulate the maintenance of children under 12 years old as a mother's right, give the right to vote for *mumayyiz children*, and regulate the order of substitutes for caregivers. At the same time, the ratification of *the Convention on the Rights of the Child* through Presidential Decree No. 36 of 1990 and Article 14 of the Child Protection Law binds the state to the principles of non-discrimination, the best interests of the child, and the right of the child to have contact with both parents. The encounter of these two norm systems raises five tensions, namely maternal priority versus parental equality, rigid age limit versus child maturity, religious requirements versus nondiscrimination, the loss of the right of remarried mothers, and the absence of access rights in KHI.

The Supreme Court has responded to some of these tensions. Decision No. 110 K/AG/2007 prioritizes the welfare of children, SEMA No. 1 of 2017 requires parents to include access rights, and Decision No. 171 PK/Ag/2022 implements co-parenting.[5] However, the shift is partial because it is spread in instruments whose binding power is limited, while the text of KHI has not changed since 1991. As a result, some judges apply Article 105 textually, some retain it, and some combine the two without a uniform framework of argumentation. The study *of ḥaḍānah* in Indonesia has been

[1] A. Z Yonatan, "Divorce Rate in Indonesia to Increase by 2025," *GoodStats Data*, 2026.

[2] R. A Khaeron, "KPAI Data: 2,057 Child Protection Cases in 2024 Dominated by Parenting Issues," *Metro TV News*, 2025, https://www.metrotvnews.com/read/kewCM7r8-data-kpai-2-057-kasus-perlindungan-anak-pada-2024-didominasi-isu-pengasuhan.

[3] W Al-Zuḥailī, "Al-Fiqh Al-Islāmī Wa Adillatuhu (Cet. 4th, Juz 10)," *Dār Al-Fikr*, 1997.

[4] Ibn Qayyim al-Jauziyyah, "Zād Al-Ma'ād Fī Hady Khair Al-'ibād (Juz 5)," *Mu'assasah Al-Risālah*, 1994.

[5] Riki Perdana Raya Waruwu and Muqtadir Ghani Putranto, "The Evolution of Child Custody in Judges' Decisions," *Hukumonline*, 2023, https://www.hukumonline.com/berita/a/evolusi-hak-asuh-anak-dalam-putusan-putusan-hakim-lt65846d0fb2985/.

divided into two currents. The normative-fiqh current describes the opinions of the madhhab and the formulation of KHI, while the juridical-empirical current examines the judge's decision or view. Religious Court judges have been proven not to always apply KHI literally, but to negotiate between compilations, fiqh books, and social considerations.[6] The implementation of SEMA Number 1 of 2017 has also not detailed the form, time, and access mechanism, so judges must interpret it independently.[7]

At the theoretical level, Jasser Auda's system approach offers a cognitive, comprehensive, open, tiered, multidimensional, and goal-oriented reading of Islamic law.[8] The harmonizic approach also views Islamic law and international human rights law as being harmonized through the concept *of maṣlaḥah* and dynamic interpretation. [9] However, studies that bring together fiqh norms, positive laws, principles of children's rights, and jurisprudence in one complete *framework of maqāṣid* to produce an operational model are still limited. Previous research is generally partial because it only touches on one element, such as age, religion, or access rights. The use of *maqāṣid* in it has not been accompanied by a consistent weighing method. The novelty of this article lies in three things. First, a firm distinction between the end (*maqāṣid*) and the means (*wasā'il*) in the norm *ḥaḍānah*. Second, the formulation of the principle *of the best interests of the child* into the measurable *category of maqāṣid*. Third, the offer of a reconstruction model equipped with the formulation of norms and guidelines for judges.

Departing from this gap, this article answers three questions. First, how is the construction of *the norm of ḥaḍānah* in the jurisprudence of madhhab and positive law in Indonesia. Second, how the meeting point and tension between fiqh norms and the principle of children's rights are reflected in court decisions. Third, how can the reconstruction *of ḥaḍānah* the perspective *of maqāṣid al-syarī'ah* be a model of harmonization. The purpose of this article is to analyze the construction of these norms, map the relationship between the two norm systems in judicial practice, and formulate an applicable reconstruction model. Theoretically, this article enriches the

[6] E Nurlaelawati, "Modernization, Tradition and Identity: The Komcompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts," *Amsterdam University Press*, 2010, https://staibabussalamsula.ac.id/wp-content/uploads/2024/05/MODERNIZATION-TRADITION-IDENTITY-staibabussalamsula.ac_.id_.pdf.

[7] W Faradillah, "Judge's View: Towards Access Rights in SEMA Number 1 of 2017 (Study at PA Pasarwajo Southeast Sulawesi)," *Sakina: Journal of Family Studies* 3, no. 1 (2019): 1–9, http://urj.uin-malang.ac.id/index.php/jfs/article/view/343%0Ahttp://urj.uin-malang.ac.id/index.php/jfs/article/download/343/260.

[8] J Auda, "Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach," *International Institute of Islamic Thought*, 2008.

[9] Mashood A Baderin, "International Human Rights and Islamic Law," in *Oxford University Press, Oxford*, vol. 73, 2003, https://distantreader.org/stacks/journals/ajiss/ajiss-1751.pdf.

study of Islamic family law with *systemic maqāṣid* reasoning . Practically, this article is the subject of KHI revision and a reference for argumentation for judges, while reminding the public that custody is a trust, not a victory in divorce.

The findings aimed at are proof that harmonization does not mean subjecting fiqh to human rights or vice versa, but rather finding a common goal between the two. The principle of the best interests of the child is equivalent to *ḥifẓ al-nafs* and *ḥifẓ al-nasl*, while the right of the child to be heard is rooted in *takhyīr*. The right of children to have contact with both parents is also in line with the prohibition of harming parents because of their children in QS. al-Baqarah [2]: 233. On that basis, this article targets the birth *of the Ḥaḍānah Model of Maṣlaḥī* which is rooted in sharia and can be constitutionally accountable.

METHODS

This research is a literature-based normative legal research (*Library Research*) which is prescriptive. This research seeks to find legal rules, principles, and doctrines to answer the legal issues faced.[10] Five approaches are combined, namely legislative, conceptual, case, comparative, and *Squirtṣid* systemic Jasser Auda. The first four approaches produce a map of norms and a map of practice, which is then processed by the *Squirtṣid* systemic into a model of reconstruction. Primary legal materials include the Qur'an, hadith, fiqh books of four schools, and Indonesian laws and regulations. It also includes the Convention on the Rights of the Child and *General Comment* Numbers 12 and 14, family regulations of seven Muslim countries, and ten court rulings. The rulings were chosen purposively based on their relevance to the point of tension *ḥaḍAnd now*, its availability in the Supreme Court Decisions Directory, and the diversity of its reasoning patterns.

Secondary material in the form of literature *uṣUhl* fiqh, *Squirtṣid*, and journal articles, while tertiary materials are in the form of dictionaries and encyclopedias of fiqh. All materials are collected through documentation studies that include inventory, selection, and classification. The analysis is carried out qualitatively. With the help of a uniform analysis sheet, the decision considerations are examined through content analysis (*Content Analysis*) to draw valid and replicable inferences from the text into context.[11] This study is combined with legal interpretation, comparative analysis, and analysis *Squirtṣid* systemic. Analysis *Squirtṣid* done by determining *'Illah*

[10] P D M Marzuki, "Legal Research: A Revised Edition," in *Medium Pregnancy*, 2017, https://books.google.co.id/books?id=CKZADwAAQBAJ.

[11] K Krippendorff, "Content Analysis: An Introduction to Its Methodology," in *SAGE Publications*, 2013, https://books.google.co.id/books?id=s_yqFXnGgjQC.

and *maqṣAd*, separate the purpose from the means, assess the effectiveness of the means, and then reformulate the ineffective means with tests *ḍawābiṭ Al-MaṣTheḥah* al-BūṭThe validity of the findings is maintained through triangulation of sources and triangulation of theories.[12]

RESULTS AND DISCUSSION

The Construction of Norms *of Ḥaḍānah* in the Fiqh of the Madhhab and Positive Law of Indonesia

The Qur'an does not mention the term *ḥaḍAnd now* explicitly. However, the Qur'an lays the foundation for the division of parenting responsibilities between fathers and mothers through the following words of Allah.

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ ۖ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ ۚ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ ۚ وَعَلَى الْوَارِثِ مِثْلُ ذَٰلِكَ ۗ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا

> *"Mothers should breastfeed their children for two full years, for those who want to complete breastfeeding. It is the duty of the father to bear their food and clothing in a proper manner. A person is not burdened except according to his ability. A mother should not suffer for her child, nor should a father suffer for his child. The heir is also obligated. If both of them want to wean with the will and deliberation between the two, then there is no sin against them."* (QS. al-Baqarah [2]: 233)

The verse contains four principles that are the axis of post-divorce parenting. First, mothers play a major role in the physical care of children in the early days of their lives. Second, the father's financial responsibility is not lost by divorce. Third, both parents are prohibited from using children as tools to hurt other parties. Fourth, decisions about children are made through willingness and deliberation (*Tasyāwur*). Thus, this verse describes a collaborative parenting model, not a model of ownership of children.

The Sunnah then provides a more operational reference. Hadith 'Abdullāh ibn 'Amr with the phrase *anti aḥAqqu bihi by lam tankiḥī* is the basis of the mother's priorities, while the hadith of Abū Hurairah is the basis for *takhyīr*. Shape *ism tafḍīl* on the word *aḥaqq* shows a relative priority, not an exclusive right. The loss of the rights of mothers who remarry is only withdrawn through *Mafhūm al-Mukhālafah* whose arguments are disputed. The four schools only agree on the mother's priorities and basic eligibility requirements. Father's position, age limit, acceptance *takhyīr*, religious requirements, and the consequences of remarriage remain areas of difference. The

[12] N K Denzin, "The Research Act: A Theoretical Introduction to Sociological Methods," in *Routledge*, Methodological Perspectives, 2017, https://books.google.co.id/books?id=UjcpxFE0T4cC.

absence of an age limit *ḥaḍAnd now* universal in classical jurisprudence affirms the character of *ijtihādī* provisions.[13]

Indonesia's positive law contains two logics that are not completely compatible. Article 41 letter a of the Marriage Law, the Human Rights Law, and the Child Protection Law adhere to the logic of the interests of children and parental equality. On the other hand, Article 105 of the KHI adheres to the logic of status by stipulating children under 12 years old as the right of the mother. However, a careful reading shows that the KHI does not list religious differences or remarriage as the cause of automatic miscarriage. Article 156 letter c of the KHI even makes the guarantee of the physical and spiritual safety of children as the basis for the transfer of rights. The requirements of religion are actually entered into practice through Jurisprudence Number 210 K/AG/1996. On the other hand, the KHI leaves a void regarding the right of access, opinions of children under 12 years old, joint parenting, and the implementation of decisions.

Comparison with other Muslim countries shows a broad spectrum of reforms. Morocco, through *Mudawwanah al-Usrah* 2004, placing the father directly after the mother, retaining the rights of the remarried mother as long as the child is not yet seven years old, and detailing visitation rights. Pakistan places *welfare of the minor* in Section 17 *Guardians and Wards Act* 1890 on the father's guardianship rights under personal law.[14] Pakistan's Supreme Court also affirmed that a mother's remarriage does not automatically abort her rights, citing the Convention on the Rights of the Child along with Islamic law.[15] In contrast, Jordan extended *ḥaḍAnd now* mother until 15 years old, but still automatically assigns guardianship to the father. Jordan's experience shows that extension of life alone is inadequate without a balanced division of authority.[16] Malaysia treats maternal priority as a presumption that can be

[13] Ahmad Syairi et al., "From Classical Fiqh to Legal Codification: The Legal Transformation of Child Custody Age Limits in Indonesia and Egypt," *Istinbath: Jurnal Hukum* 23, no. 01 (2026): 153–84, https://doi.org/10.32332/istinbath.v23i01.13331.

[14] T Ahmad, "Pakistan: International Child Custody," *The Law Library of Congress, Global Legal Research Directorate*, 2022.

[15] R Tahir, "Supreme Court of Pakistan Rules That a Mother's Remarriage Cannot Become a Reason to Disqualify Her Right to the Custody of Her Children," *Oxford Human Rights Hub*, 2022, https://ohrh.law.ox.ac.uk/supreme-court-of-pakistan-rules-that-a-mothers-remarriage-cannot-become-a-reason-to-disqualify-her-right-to-the-custody-of-her-children/.

[16] L Bellone d'Altavilla, "Custody Laws in Jordan Maintain a Sexist Status Quo," *OpenGlobalRights*, 2022, https://www.openglobalrights.org/custody-laws-in-jordan-maintain-a-sexist-status-quo/.

refuted and links custody orders to enforcement tools, so that their protection does not stop at the declarative level.[17]

Meeting Points, Tensions, and Reflections in Court Decisions

Fiqh norms and the principle of children's rights meet in six ways, namely orientation to child welfare, continuity of parenting, child participation, joint responsibility of both parents, protection from harm, and recognition of children's religious identity. *AndṣTheḥand al-Walad* and *best interests of the child* in essence talking about the same thing with a different language. A new tension arises at the level of means. The priority of the mother is read as an automatic right, and the age limit of 12 years closes the space of being heard for the younger child. Religious requirements are treated absolutely, the rights of the mother are lost because of remarriage while those provisions do not apply to fathers, and the right of access is not regulated. All these tensions have a gender dimension, since classical norms place women as nurses and men as guardians.

The shift in judicial practice has been seen since the Supreme Court *ḥaḍAnd now* children who are not yet seven years old to the father because the mother often travels abroad. In the ruling, the Supreme Court emphasized the welfare of the child as the main consideration. The series of Parigi decisions to the cassation level stipulate that babies who are still breastfeeding remain with their mothers who have left Islam until the age of seven, then switch to the father, with the right to meet the mother.[18] Meanwhile, the West Jakarta and Klaten cases produced opposite warnings on a similar issue, namely a mother who converted.[19] The Medan Religious Court transferred custody to the father due to the mother's negligence by relying on Article 156 letter c of the KHI.[20]

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[17] Viorizza Suciani Putri, Sonny Dewi Judiasih, and Hazar Kusmayanti, "The Best Interest of the Child in Islamic Family Law: Declarative and Enforceable Custody Protection in Indonesia and Malaysia," *International Journal of Nusantara Islam* 14, no. 1 (2026): 273–90, https://doi.org/10.15575/ijni.v14i1.54393.

[18] N Hasanuddin, "Child Custody of an Apostasy Wife After Divorce: Getting to Know Decision Number 0117/Pdt.G/2016/PA. Prgi in 500 Words," *Tenggarong Religious Court*, 2021, https://pa-tenggarong.go.id/artikel/732-hak-asuh-anak-pada-istri-murtad-pasca-terjadinya-perceraian-mengenal-putusan-nomor-0117-pdt-g-2016-pa-prgi-dalam-500-kata-oleh-nor-hasanuddin-lc-m-a-4-1-2021.

[19] Siti Ida Husniati, Kamarusdiana Kamarusdiana, and Yassardin Yassardin, "Disparity in Judges' Decisions in Granting Hadhanah to Apostasted Mothers from the Perspective of Maqāsīd Al-Syarīah (Study of Decision Number 2800/Pdt. G/2018/Pa. Jb and Decision Number 0679/Pdt. G/2020/Pa. Klt)," *Journal of Islamic Studies and Humanities* 9, no. 1 (2024): 39–63, https://doi.org/10.21580/jish.v9i1.20082.

[20] Fikri Al Muhaddits Dalimunthe and Faisar Ananda, "Revocation of Custody of Minors Due to Mother's Negligence in Taking Care of Children Reviewed from Maqashid Shari'ah (Analysis of the Decision of the Medan Religious Court No. 2568/Pdt. G/2020/PA. Mdn)," *Innovative: Journal Of Social Science Research* 4, no. 1 (2024): 11949–58, https://doi.org/10.31004/innovative.v4i1.9321.

The Supreme Court then established joint parenting with the division of time between school days and weekends.[21] The Surabaya Religious Court referred to the principle of the best interests of children in the Child Protection Law to deviate from Article 105 of the Civil Code, among other things, because the mother prevented the child from meeting his father.[22] The Tanjung Karang Religious Court removes *ḥaḍAnd now* to the father after the mother baptized the child without her consent and closed the access to the meeting.[23] The reasoning patterns of the ten decisions are summarized in Table 1 to show the shift from the logic of status to the logic of child welfare.

Table 1. Typology of Reasoning in the Decision *of Ḥaḍānah*

Yes	Verdict	Holder *of Ḥaḍānah*	Key Considerations	Typology
1	126 K/Pdt/2001	Mother	Mother's closeness	Presumption of proximity
2	110 K/AG/2007	Dad	Mother often goes abroad	*Maṣla ḥah*
3	0117/PA. Prgi jo. 96 K/Ag/2017	Mother up to 7 years old, then father	*Ḥifẓ al-nafs*, then *ḥifẓ al-dīn*	*Maṣlaḥah* gradual
4	2800/PA. Jb (2018)	Mother (different religions)	Dad is often not home	Mix
5	0679/PA. Klt (2020)	Dad	Mother forbids study	*Maṣlaḥah* (religious priority)
6	2568/PA. Mdn (2020)	Dad	Maternal negligence	*Maṣlaḥah* (Ps. 156 c)
7	17 PK/Ag/2022	Mother	Children develop well	Mix
8	171 PK/Ag/2022	Together	Both parents deserve it	The best interests of the child
9	5723/PA. Sby (2022)	Dad	Mother blocks access	The best interests of the child
10	948/PA. Tnk (2023)	Dad	Baptism without consent	Mix

Table 1 shows that only one decision rested solely on the presumption of maternal closeness. The other nine decisions assessed concrete facts about the eligibility of each parent. The disparity in four different religious cases can be explained consistently:

[21] Rifqi Qowiyul Iman, "Joint Custody for the Best Interests of Children," *MARINews Supreme Court of the Republic of Indonesia*, 2026, https://marinews.mahkamahagung.go.id/artikel/hak-asuh-bersama-demi-kepentingan-terbaik-anak-0bni.

[22] Sofia Hidayati, "Analysis of Maqashid Syariah on the Determination of Custody of Unmumayyiz Children Who Are Handed Over to Fathers After Divorce (Study of Decision Number: 5723/Pdt. G/2022/Pa. Sby)," in *IAIN Kediri*, 2025, https://etheses.iainkediri.ac.id/17277/.

[23] Yuniansa Rada, "Maqa Analysis"ṣid Sharia Against Child Custody Due to Apostasy Wives (Study of Decision Number 948/Pdt. G/2023/PA. Tnk)," in *UIN Raden Intan Lampung*, 2024, https://repository.radenintan.ac.id/36161/.

the Klaten and Tanjung Karang cases contained active actions that threatened the child's religion, while the West Jakarta and Parigi cases did not. The problem is thus not the inconsistency of the judges, but the absence of explicit measures of the real threat. The right of access is increasingly listed, and obstruction of access is beginning to be assessed as a factor that reduces the eligibility of caregivers. On the other hand, child participation is still weak because the child's opinion is only explicitly mentioned in children over the age of 12.[24]

Reconstruction *of Ḥaḍānah* Perspective *Maqāṣid al-Syarī'ah*: Model *Ḥaḍānah Maṣlaḥī*

The decomposition of the postulate shows that almost all technical provisions *ḥaḍAnd now* status *wasā'il* whose occurrence depends on its presence *'Illah*. Mothers' priorities rest on proximity and the role of real parenting for the sake of *ḥifẓ Al-nafs*. Age limit and *takhyīr* resting on the child's ability to choose for the sake of *ḥifẓ Al-Qamah*. The religious requirement rests on the fear that the child's religion will be turned away, while the loss of rights due to marriage rests on the new family environment that is unsafe. The six features of the Auda system require that the provision be distinguished from the sharia, read together with all the postulates, open to developmental psychology, weighed interrelatedly, applied according to the context, and measured by its purpose.

On that basis, a Children's Best Interests Matrix was prepared based on *Squirtṣid* that maps the elements *General Comment* Number 14 into six categories. *Ḥifẓ Al-nafs* measured from who the primary caregiver is on a daily basis, a history of violence, and home safety. *Ḥifẓ Al-Nasl* measured by the willingness to facilitate the child's relationship with other parents, and *ḥifẓ al-'aql* From the Educational Guarantee. *Ḥifẓ Al-Dīn* It is measured by whether there is a real effort to turn away the religion of children. *Ḥifẓ Al-Mál* measured from the father's ability to provide for the child, which is considered separate from the caregiver's eligibility, while *ḥifẓ Al-Qamah* measured by the opinion of the child who is heard without pressure.

The matrix underpins the Model *ḤaḍBy MaṣTheḥī* which consists of five components. The first component changes the priority of the mother to *qarīnah qābilah li al-naqḍ* for children under seven years of age and eliminates prejudice for older children. This component also affirms that financial ability should not determine custody. The second component makes the requirements of caregivers functional, so that religious differences and remarriage are only factors that are weighed based on

[24] Achmad Kadarisman, Alfarid Fedro, and Zainal Arifin, "Best Interest of the Child in Islamic Family Law: Integrating Maqāṣid Al-Sharī 'ah and Double Movement Theory in ḤaḍCasey," *Al-Dustur Journal* 8, no. 2 (2025): 155–74, https://doi.org/10.30863/aldustur.v8i2.10459.

real threats, with the possibility of leaving religious education to parents of the same religion as the child. The third component develops *takhyīr* be a right to be heard in stages according to the maturity of the child. The fourth component recognizes joint parenting and requires a detailed formulation of access rights. The fifth component organizes the implementation of child-friendly decisions through mediation, psychological assistance, and *penalty payment*.

The five components are operationalized through *muwāzanah maqāṣidiyyah* in five steps, namely identification of facts, application of presumptions, assessment of *maqṣAd*, weighing real threats and child development stages, as well as the formulation of amar. When tested on the analyzed verdict, this method produces an omar that is in line with the original verdict, but with more structured argumentation. This method also provides added value in the form of religious education arrangements, access rights, and the possibility of restoring rights. Its application requires strengthening the capacity of judges and supporting psychological assessments as institutional prerequisites.[25] Post-decision monitoring and multi-level sanctions are also required for the verdict to be *ḥaḍAnd now* It doesn't stop at protection on paper.[26]

CONCLUSION

This study concludes that the norm *ḥaḍAnd now* It is composed of two layers, namely the agreed goal layer and the means layer that is *ijtihādī*. Therefore, fiqh and the principle of children's rights actually meet at the level of goals and only differ at the level of means. Judicial practice has treated Article 105 of the Code of Civil Procedure as a presumption that can be refuted, but it has not been equipped with an explicit weighing framework. As a result, the verdict on cases of different religions appears to be inconsistent, even though the difference can be explained by whether or not there is a real threat to the child's religion. Model *ḤaḍBy MaṣTheḥī*, which contains the presumption of a refutable mother, the requirements of a functional caregiver, the child's right to be heard, shared parenting, and the right of detailed access, offers a harmonization from within the Islamic legal tradition. Theoretically, these findings correct the application of hierarchy *Squirtṣid* mechanical ones. Practically, these findings provide the basis for an argument. *Syar'i* for the judge. It is recommended

[25] Lina Nur Anisa, "Reconstructing Child Custody Law in Indonesian Religious Courts: Integrating Islamic Law, Child Rights, and Substantive Justice," *Inclusive (Journal of Sharia Research and Legal Studies)* 10, no. 2 (2025): 101–26, https://doi.org/10.24235/inklusif.v10i2.22023.

[26] Fatima Syamal, Fachri Fachrudin, and Muhammad Hidayat, "Hadanah's Responsibility in Child Neglect Cases: A Comparative Analysis of Islamic Law and Child Protection Law in Indonesia," *AHKAM* 5, no. 2 (April 28, 2026): 1387–99, https://doi.org/10.58578/ahkam.v5i2.9808.

that the Supreme Court issue guidelines for the examination of cases *ḥaḍAnd now*, lawmakers revised the KHI, and researchers subsequently tested this model empirically.

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