



Variations in Judicial *Ratio Decidendi* in Awarding *Hadhanah* of Non-Mumayyiz Children to the Father

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Abstract: Custody (*hadhanah*) of a child who has not yet reached the *mumayyiz* stage is generally awarded to the mother. Judicial practice, however, demonstrates that courts may award *hadhanah* to the father based on the particular circumstances of the case and the interests of the child. This divergence raises questions concerning variations in judicial *ratio decidendi* in awarding *hadhanah* of non-*mumayyiz* children to fathers and the compatibility of such decisions with Islamic law and the principle of the best interests of the child. This study aims to analyze and compare the judicial reasoning in Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., Decision No. 2346/Pdt.G/2023/PA.JS, and Decision No. 11/PDT/2020/PT SMR, and to examine their conformity with Islamic legal provisions governing *hadhanah* and the principle of the best interests of the child. The theoretical framework encompasses the theory of *hadhanah*, the theory of legal protection for children, and the principle of the best interests of the child as analytical foundations for assessing judicial considerations in determining the holder of child custody. This study employs normative legal research using statutory, case, and conceptual approaches. Legal materials were collected through a literature review encompassing primary, secondary, and tertiary legal materials and were analyzed qualitatively. The findings demonstrate that, although all three decisions awarded *hadhanah* of non-*mumayyiz* children to their fathers, the courts relied on different legal considerations. Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. was based on an agreement reached by the parties through mediation, whereas Decision No. 2346/Pdt.G/2023/PA.JS and Decision No. 11/PDT/2020/PT SMR were based on facts established during the proceedings indicating that the fathers were considered better able to ensure the fulfilment of the children's needs, protection, and interests. These differences demonstrate variations in the application of the law arising from the particular legal and factual circumstances of each case. Nevertheless, all three decisions are fundamentally oriented toward the welfare and best interests of the children and may be justified insofar as the determination of *hadhanah* is based on the concrete circumstances of each case and remains consistent with the principles of child protection.

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1. Introduction

Under Islamic law, *hadhanah* refers to the responsibility to raise, guide, care for, educate, and protect a child until the child is capable of living independently and managing his or her own affairs. The rules governing *hadhanah* have been incorporated into the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), which serves as a legal reference for resolving family law disputes involving Muslims in Indonesia. Pursuant to Article 105(a) of the KHI, custody of a child who has not yet reached the *mumayyiz* stage, or who is under the age of twelve, is in principle entrusted to the mother. This provision reflects the legal preference for the mother as the primary caregiver of a child who remains at an early stage of development. This preference is based on the view that children at this stage require continuous care, attention, and affection to support their growth and development (Suyani et al., 2025). Moreover, mothers are generally considered to have a closer emotional bond with their children and are therefore regarded as better positioned to provide comprehensive care. Accordingly, awarding custody to the mother is viewed as a means of better ensuring the fulfilment of the physical, emotional, and psychological needs of a child who has not yet developed the capacity to make choices or decisions independently (Sari, 2025).

In resolving child custody disputes following divorce, Article 105 of the Compilation of Islamic Law frequently serves as a legal basis for judicial panels in determining which parent is entitled to exercise *hadhanah*. Nevertheless, the application of this provision is not absolute. Judicial practice demonstrates that, in certain cases, courts have awarded *hadhanah* of non-*mumayyiz* children to their fathers despite the normative priority accorded to mothers (Dewi, 2025). Such decisions arise from judicial assessments of the facts established during the proceedings, particularly those concerning the circumstances and needs of the child. Accordingly, the principle of the best interests of the child may assume greater significance than a strictly textual application of the relevant provision (Trihastuti et al., 2023). Where the evidence presented before the court demonstrates that the father is better able to ensure the child's safety, welfare, development, and protection of rights, awarding *hadhanah* to the father may be regarded as more consistent with the objectives of the law (Darna, 2021).

In judicial practice, several decisions have awarded *hadhanah* of non-*mumayyiz* children to their fathers. This phenomenon warrants examination because it demonstrates variations in the legal reasoning employed by judges in cases with similar characteristics. One of the principal decisions examined in this study is Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., rendered by the Kediri Regency Religious Court. The case originated from a divorce petition filed by the wife on the grounds of continuous disputes and marital conflict. The marriage

produced two children, aged ten and seven, respectively, both of whom were therefore classified as non-*mumayyiz* children under the Compilation of Islamic Law. The distinctive feature of this decision lies in the award of *hadhanah* of both children to the father on the basis of an agreement reached by the parties during mediation, which was subsequently approved by the judicial panel and incorporated into the operative part of the judgment.

To provide a more comprehensive analysis, this study compares that decision with Decision No. 2346/Pdt.G/2023/PA.JS of the South Jakarta Religious Court and Decision No. 11/PDT/2020/PT SMR of the East Kalimantan High Court. Both decisions similarly awarded *hadhanah* of non-*mumayyiz* children to their fathers, but were based on different factual circumstances, evidence, and legal considerations. The variation in the reasoning adopted by the respective judicial panels demonstrates that child custody disputes are not necessarily resolved through a uniform pattern of judicial reasoning, even where the subject matter of the disputes is similar.

Based on a comparison of the three decisions, this study aims to analyze the similarities and differences in the judicial reasoning underlying the award of *hadhanah* of non-*mumayyiz* children to their fathers. Accordingly, the study examines whether such judicial considerations are consistent with the provisions of the Compilation of Islamic Law, applicable laws and regulations, and the principle of the best interests of the child as a fundamental guideline for child protection. The findings are expected to provide a more comprehensive understanding of the patterns of legal reasoning employed by judges in *hadhanah* cases, while also identifying the factors that contribute to divergent decisions in cases involving similar issues ([Karima, 2022](#)).

The application of legal provisions governing *hadhanah* within the Religious Courts has continued to evolve as the cases brought before judges have become increasingly complex. In examining and adjudicating child custody disputes, judges do not rely exclusively on the norms prescribed by applicable laws and regulations but also assess the entirety of the facts established through the evidentiary process before the court. This approach reflects the pursuit of substantive justice, whereby judicial decisions are oriented not only toward legal certainty but also toward achieving beneficial outcomes and ensuring the protection of children as the parties most directly affected by the dissolution of their parents' marriage. Accordingly, the principle of the best interests of the child has assumed an increasingly significant role in judicial practice, both as part of the national legal framework and as a principle recognized in various international child protection instruments.

This study primarily focuses on Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., in which the court awarded *hadhanah* of non-*mumayyiz* children to the father on the

basis of an agreement reached by the parties through mediation, notwithstanding the normative priority accorded to the mother under the Compilation of Islamic Law. This decision is subsequently compared with Decision No. 2346/Pdt.G/2023/PAJS and Decision No. 11/PDT/2020/PT SMR, both of which similarly awarded *hadhanah* to the father but were based on judicial assessments of facts established during the proceedings concerning the father's ability to safeguard the best interests of the child. These differences in the bases of judicial assessment demonstrate variations in legal reasoning. Accordingly, the three decisions are analyzed comparatively to examine the application of the legal provisions governing *hadhanah* and the principle of the best interests of the child.

Previous studies demonstrate that awarding *hadhanah* of non-*mumayyiz* children to fathers is generally based on considerations concerning the best interests of the child. Abdan Naafi Pasaribu, concluded that custody was awarded to the father because the mother was considered not to satisfy the requirements for exercising *hadhanah*, while the child's emotional attachment to the father, psychological considerations, and Supreme Court jurisprudence also informed the decision. Meanwhile, Levi Winanda Putri and Anis Hidayatul Imtihanah, found that the transfer of *hadhanah* to the father could be justified under the concept of *maslahah mursalah* because the mother worked abroad and the father was considered better able to meet the child's needs. Ubaidillah Ibnu Mas'ud, demonstrated that *hadhanah* was transferred to the father on the grounds of the mother's remarriage, her psychological condition, and considerations under Article 156(c) of the Compilation of Islamic Law concerning the protection of the child's safety and development. These three studies share with the present study a common focus on the award of *hadhanah* to fathers but differ in terms of the cases examined and the approaches employed. The present study specifically conducts a normative analysis of three judicial decisions to examine variations in judicial reasoning concerning the award of *hadhanah* of non-*mumayyiz* children to fathers.

When considered alongside previous studies, a research gap remains that has not been comprehensively examined, particularly with respect to variations in judicial *ratio decidendi* in awarding *hadhanah* of non-*mumayyiz* children to fathers. The study by Levi Winanda Putri and Anis Hidayatul Imtihanah focuses primarily on child-rearing practices within society from the perspective of Islamic law and therefore does not provide an in-depth examination of the juridical reasoning employed by judges when departing from the general rule that accords priority to mothers in exercising *hadhanah* of non-*mumayyiz* children. Meanwhile, the study by Ubaidillah Ibnu Mas'ud focuses primarily on the conformity of judicial decisions with the provisions of the Compilation of Islamic Law, particularly those governing *hadhanah*, but does not specifically examine how the outcome of mediation and the agreement reached by the parties are incorporated into the judicial reasoning for

determining the holder of *hadhanah*. Accordingly, previous studies have not fully addressed the juridical and doctrinal grounds on which judges may award *hadhanah* of non-*mumayyiz* children to fathers, notwithstanding that Article 105(a) of the Compilation of Islamic Law generally accords priority to mothers.

Building on these limitations, this study does not treat differences among judicial decisions merely as disparities in case outcomes, but rather as variations in judicial *ratio decidendi* in constructing the legal basis for awarding *hadhanah* of non-*mumayyiz* children to fathers. The central issue examined is how judges construct the relationship among Article 105 of the Compilation of Islamic Law, which accords priority to mothers in matters of child custody; agreements reached through mediation; and the principle of the best interests of the child, particularly where these three considerations may lead to different lines of judicial reasoning. In this context, Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. serves as the principal object of analysis for examining how a mediated agreement awarding *hadhanah* to the father may be accepted and judicially approved in relation to non-*mumayyiz* children. The analysis is then extended comparatively to Decision No. 2346/Pdt.G/2023/PA.JS and Decision No. 11/PDT/2020/PT SMR to identify common patterns and variations in judicial *ratio decidendi* across similar cases.

The novelty of this study lies in its attempt to construct a doctrinal relationship among Article 105 of the Compilation of Islamic Law (KHI), the outcome of mediation, and the principle of the best interests of the child as legal bases for determining *hadhanah*. This study does not treat Article 105 of the KHI as an absolute and self-contained provision; rather, it analyzes how the provision is applied in conjunction with the child's concrete circumstances, parental agreements, and considerations concerning the child's interests and welfare. The outcome of mediation is positioned as an important element in the formation of judicial reasoning, but it does not automatically override the judge's obligation to ensure that the agreement is genuinely consistent with the best interests of the child. Accordingly, this study makes a doctrinal contribution by explaining that the award of *hadhanah* of non-*mumayyiz* children to fathers may be understood through a legal construction that connects the priority accorded to maternal custody under Article 105 of the KHI with the parties' autonomy to reach an agreement through mediation and the principle of the best interests of the child. Through a comparative analysis of the three decisions, this study seeks to demonstrate not merely variations in judicial outcomes, but, more importantly, variations in the manner in which judges reason, weigh relevant considerations, and provide juridical justification for the determination of *hadhanah* where normative provisions, parental agreements, and the interests of the child converge within the same case.

This study has two objectives: (1) to analyze and examine variations in judicial

ratio decidendi in awarding *hadhanah* of non-*mumayyiz* children to fathers, particularly in Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., with particular attention to the relationship among Article 105(a) of the Compilation of Islamic Law, the outcome of mediation, and the principle of the best interests of the child; and (2) to comparatively analyze the similarities and differences in judicial *ratio decidendi* in Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., Decision No. 2346/Pdt.G/2023/PA.JS, and Decision No. 11/PDT/2020/PT SMR in awarding *hadhanah* of non-*mumayyiz* children to fathers, as well as to formulate a doctrinal contribution concerning the legal significance of mediation outcomes and the principle of the best interests of the child in the application of Article 105 of the KHI.

2. Methods

This study employs normative legal research to analyze legal norms and judicial *ratio decidendi* in awarding *hadhanah* of non-*mumayyiz* children to fathers. The study adopts statutory, case, and conceptual approaches. The statutory approach is employed to examine the legal provisions governing *hadhanah*, particularly Articles 105 and 156 of the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), as well as provisions concerning child protection and the best interests of the child. The case approach is used to analyze Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., Decision No. 2346/Pdt.G/2023/PA.JS, and Decision No. 11/PDT/2020/PT SMR. The comparative parameters encompass the legally relevant facts, claims concerning *hadhanah*, evidence, applicable normative bases, judicial considerations or *ratio decidendi*, considerations concerning the interests of the child, and the operative part of each judgment. Meanwhile, the conceptual approach is employed to examine the concepts of *hadhanah*, the legal position of parents in child custody, mediation outcomes, the best interests of the child, and the relationship between legal norms and judicial reasoning in resolving child custody disputes.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and judicial decisions constituting the objects of this study, particularly the Compilation of Islamic Law, specifically Articles 105 and 156, legal provisions concerning child protection, Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., Decision No. 2346/Pdt.G/2023/PA.JS, and Decision No. 11/PDT/2020/PT SMR. Secondary legal materials comprise legal textbooks, scholarly journal articles, previous research, academic publications, and expert opinions relating to Islamic family law, *hadhanah*, mediation, *ratio decidendi*, and child protection. Tertiary legal materials consist of legal dictionaries, legal encyclopedias, and other reference sources used to clarify relevant legal terms and concepts. Legal materials were collected through a literature review by identifying, inventorying, classifying, and examining relevant

materials obtained from official legal sources, academic literature, and judicial decision databases.

The study employs qualitative juridical analysis of a descriptive-analytical and comparative nature. The analysis first examines the legally relevant facts and the structure of judicial reasoning in each decision and subsequently compares them on the basis of the predetermined parameters to identify similarities, differences, and variations in judicial *ratio decidendi* concerning the award of *hadhanah* of non-*mumayyiz* children to fathers. The three decisions are then analyzed with reference to Article 105 of the KHI as the normative basis governing the priority of custody of non-*mumayyiz* children and Article 156 of the KHI as the normative basis governing *hadhanah* in the context of divorce, while taking into account the principles of child protection and the best interests of the child. Accordingly, the analysis does not merely assess whether the operative part of each judgment conforms to the applicable normative provisions, but also examines how judges construct the relationship among Articles 105 and 156 of the KHI, mediation outcomes or agreements reached by the parties, evidence, the child's concrete circumstances, and the best interests of the child in formulating the *ratio decidendi* underlying the award of *hadhanah* to the father.

3. Results

The dispute in Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. arose from a legally valid marriage between the Plaintiff and the Defendant, from which two children, aged ten and seven, were born. Over time, the marital relationship deteriorated due to disputes concerning financial support and an increasingly disharmonious relationship, ultimately resulting in the parties living separately from February 2023. These circumstances prompted the Plaintiff to file for divorce before the Kediri Regency Religious Court.

During the proceedings, mediation did not succeed in reconciling the parties with respect to the divorce. It did, however, result in an agreement concerning *hadhanah*, under which the two non-*mumayyiz* children would remain in the father's (the Defendant's) care, as well as an agreement concerning the allocation of responsibility for the parties' joint debts. The judicial panel subsequently granted the divorce petition and approved the mediation agreement, thereby legally awarding *hadhanah* of the children to the father. This determination was not based on the deprivation or revocation of the mother's custodial rights; rather, it resulted from an agreement reached by the parties that acquired legal effect through its incorporation into the court's judgment.

4. Discussion

4.1 Analysis of Variations in Decisions Awarding *Hadhanah* of Non-*Mumayyiz* Children to Fathers from the Perspective of the Qur'an

Surah Al-Baqarah verse 233, for instance, provides guidance concerning parental responsibilities toward children, particularly with regard to care, financial support, and the respective responsibilities of fathers and mothers. The verse does not expressly establish an absolute rule that a young child must, under all circumstances, remain in the mother's custody. Accordingly, the verse may be more appropriately understood as providing a normative foundation for parental responsibility for the child's welfare rather than as an absolute rule determining which parent must be awarded *hadhanah*. This principle allows scope for the development of legal reasoning through *ijtihad* where particular issues are not specifically addressed in the Qur'an.

In Islamic jurisprudential literature (*fiqh*), *hadhanah* essentially concerns the care of a child who is not yet capable of managing his or her own affairs independently. Under ordinary circumstances, certain juristic views accord priority to the mother, particularly on the basis of her emotional closeness to the child and her capacity to meet the child's caregiving needs during early childhood. However, such priority is not absolute and must be considered in light of the child's circumstances. Where particular circumstances indicate that maternal care would no longer be consistent with the child's interests, considerations of the child's welfare (*maslahah*) may provide a basis for determining a more appropriate caregiver. Accordingly, awarding *hadhanah* of a non-*mumayyiz* child to the father may be understood as the result of contextual legal reasoning that takes into account the particular circumstances and welfare of the child.

Meanwhile, under Indonesian positive law, more explicit provisions concerning non-*mumayyiz* children are set forth in Article 105(a) of the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI). This provision stipulates, in principle, that the care of a child who has not yet reached the *mumayyiz* stage or is under twelve years of age is the right of the mother. It therefore reflects a normative legal preference for the mother in matters concerning *hadhanah* of non-*mumayyiz* children. Nevertheless, Article 105(a) cannot be considered in isolation from the broader framework of Islamic family law, which also recognizes the interests and welfare of the child as important considerations in resolving child custody disputes. Consequently, the application of Article 105 of the KHI in judicial practice does not necessarily produce the same outcome in every case.

It is within this context that disparities among judicial decisions may arise. Such disparities may occur where two cases share relatively similar characteristics, particularly where both concern non-*mumayyiz* children, yet result in different

determinations as to which parent is awarded *hadhanah*. In one case, a court may award *hadhanah* to the mother by relying on Article 105 of the KHI. In another, however, the court may award *hadhanah* to the father where the facts established during the proceedings demonstrate that paternal care would better ensure the child's protection, stability, safety, education, and welfare.

These considerations demonstrate the exercise of judicial discretion. Judges do not merely consider the normative provisions governing which parent is generally entitled to exercise *hadhanah*, but also examine the concrete facts established during the proceedings. For example, judges may consider the parents' moral conduct and behavior, their ability to meet the child's needs, the child's living environment, the child's relationship with each parent, the child's psychological condition, each parent's ability to provide education and affection, and other circumstances that may affect the child's growth and development. Accordingly, a decision to award *hadhanah* to the father should not necessarily be understood merely as a departure from Article 105 of the KHI; rather, it may constitute a consequence of applying the principle of the best interests of the child to the particular facts of the case.

Accordingly, disparities among decisions awarding *hadhanah* of non-*mumayyiz* children to fathers may be understood as arising from the interaction between the norm according priority to maternal custody and the judicial obligation to ensure that the resulting decision genuinely promotes the child's welfare. Article 105 of the KHI provides a general normative guideline, while the child's concrete circumstances may require judges to adopt a more contextual approach to interpretation and judicial reasoning. This demonstrates that the law governing *hadhanah* is oriented not only toward parental rights but also toward the protection of the rights and interests of the child. Judicial disparities in *hadhanah* cases therefore warrant further examination because they may reveal how judges construct the relationship among the provisions of the KHI, the principle of *maslahah*, judicial *ijtihad*, and the principle of the best interests of the child.

4.2 Analysis of Disparities in Decisions Awarding *hadhanah* of Non-*mumayyiz* Children to Fathers

The basis for determining *hadhanah* in this case did not arise solely from the court's assessment of the suitability of either parent as the child's caregiver; rather, it reflected judicial approval of an agreement reached through mediation ([Sari, 2023](#)). The court's role in this case was primarily to confer legal effect on the mediated agreement reached by the parties, insofar as its terms were not contrary to applicable law or the interests of the children. This is reflected in the operative part of the judgment, which required the Plaintiff and the Defendant to comply with the terms of the mediation agreement, including the provision awarding *hadhanah*

of both children to the Defendant, their biological father. Accordingly, this decision demonstrates that the outcome of mediation may constitute an important consideration in determining *hadhanah*, provided that the agreement reached continues to safeguard the best interests of the child ([Fikri, 2023](#)).

Although Article 105(a) of the Compilation of Islamic Law accords priority to the mother in exercising *hadhanah* of a non-*mumayyiz* child, this provision cannot be applied rigidly without considering the particular circumstances underlying the case. In judicial practice, judges are authorized to assess the facts established during the proceedings, including agreements reached through mediation, provided that such agreements do not conflict with applicable law or the interests of the child. Accordingly, the resolution of *hadhanah* disputes does not rest solely on a textual application of legal norms but also requires consideration of the concrete circumstances faced by the parties and the potential implications of those circumstances for the child's future welfare ([Pertiwi & Sa'adah, 2022](#)).

Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. reflects this approach. In this case, the judicial panel did not rely solely on the normative provisions of the Compilation of Islamic Law but also accorded legal recognition to the outcome of mediation voluntarily agreed upon by the parties. This approach indicates that the application of Islamic family law in Indonesia may accommodate a degree of flexibility while remaining oriented toward the objectives of law, including the pursuit of justice, legal utility, and legal certainty. Accordingly, this decision may be viewed as an example of how the resolution of *hadhanah* disputes is not confined exclusively to the textual formulation of legal norms but may also accommodate considerations of substantive justice, with the best interests of the child serving as a central consideration in determining custody ([Ardian & Anwar, 2025](#)).

The principle of the best interests of the child constitutes an important basis for analyzing Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. Although the judicial panel did not explicitly elaborate on the reasons for awarding *hadhanah* to the father, the content of the decision indicates that the agreement reached by both parents may reflect their shared assessment that paternal care was more appropriate to the children's needs following the divorce. Moreover, the facts established during the proceedings indicate that, prior to the judgment, both children had already been living with and cared for by their father. Transferring their care to the mother could potentially have affected the continuity and stability of their living arrangements, their process of adaptation, and their psychological condition. In this context, the mother's agreement that *hadhanah* be exercised by the father may be understood as reflecting a consideration that prioritized continuity in the children's care and development over the exercise of the custodial priority normatively accorded to her. Such an approach is consistent with the concept of child protection, which places the welfare and development of the child

among the central considerations in resolving family disputes.

The decision also demonstrates the judicial panel's effort to accommodate three legal objectives simultaneously: legal certainty, justice, and legal utility. Legal certainty is reflected in compliance with the applicable procedural requirements, including providing the parties with an opportunity to resolve their dispute through mediation and incorporating the resulting agreement into the operative part of the judgment. From the perspective of justice, the court respected the parties' autonomous wishes, as they consciously and voluntarily reached an agreement concerning their post-divorce rights and obligations, including the care of their children. Legal utility, meanwhile, is reflected in the effort to prevent further disputes that could adversely affect the children's emotional and psychological well-being. Accordingly, the judicial function in this case was not limited to the formal application of legal norms but also encompassed ensuring that the resolution of the dispute produced tangible benefits for all parties, particularly the children as those requiring the greatest protection.

Based on the examination of Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., the award of *hadhanah* of non-*mumayyiz* children to the father should not necessarily be regarded as a departure from Article 105(a) of the Compilation of Islamic Law. The determination arose from an agreement voluntarily reached by both parties through mediation and subsequently acquired legal effect through the court's judgment. The case did not disclose facts indicating that the mother had lost her custodial rights because of incapacity, neglect, or other legal grounds that would result in the loss of her entitlement to exercise *hadhanah*. Rather, *hadhanah* was transferred to the father on the basis of the parties' voluntary agreement as part of the resolution of their family dispute. This demonstrates that the application of the law governing *hadhanah* within the Religious Courts may accommodate a degree of flexibility, provided that such application remains consistent with applicable law and continues to prioritize the best interests of the child.

These findings also indicate a development in the approach to resolving family law disputes in Indonesia. Rather than relying exclusively on a textual application of legal norms, judges also consider the concrete circumstances underlying the dispute, agreements reached by the parties, and the potential implications of the judgment for the child's life following divorce. In this respect, Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. reflects a more context-sensitive approach to the application of Islamic family law. The determination of *hadhanah* is not based solely on which parent is accorded normative priority but also on which parent, in light of the facts established during the proceedings and the agreement reached by the parties, is considered better able to ensure the continuity of the child's protection, welfare, and optimal development. Accordingly, the decision demonstrates that the

application of Article 105 of the Compilation of Islamic Law need not be understood as absolute but may be adapted to the concrete circumstances of the case, provided that such application continues to reflect justice, legal utility, and the protection of the child's rights.

The findings from the examination of Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. reveal several similarities with Decision No. 2346/Pdt.G/2023/PA.JS of the South Jakarta Religious Court. In both cases, the judicial panels awarded *hadhanah* of non-*mumayyiz* children to their fathers, notwithstanding that Article 105(a) of the Compilation of Islamic Law normatively accords priority to the mother in caring for children at this stage. This similarity demonstrates that, in the practice of the Religious Courts, the normative priority accorded to the mother is not invariably applied as an absolute rule. Instead, judges may place greater emphasis on the child's concrete circumstances and assess which parent is better positioned to ensure the child's protection, welfare, and optimal development following divorce.

Another similarity lies in the orientation of both decisions toward the principle of the best interests of the child as a primary consideration in resolving *hadhanah* disputes. In Decision No. 2346/Pdt.G/2023/PA.JS, although *hadhanah* was awarded to the father, the judicial panel continued to safeguard the mother's right to maintain a relationship with her children through communication, personal contact, and the provision of affection. Accordingly, awarding *hadhanah* to the father did not eliminate the mother's legal status as a biological parent or sever the civil legal relationship between the mother and her children. This approach is consistent with Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., which did not treat the transfer of *hadhanah* as a revocation of the mother's parental rights, but rather as a determination of which parent would exercise day-to-day caregiving responsibilities in the interests of the children.

Despite their shared orientation, the legal bases underlying the judicial reasoning in the two cases differ in a significant respect. In Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., the award of *hadhanah* to the father was primarily based on an agreement reached by the parties through mediation and subsequently approved by the court. In other words, the judicial panel conferred legal effect on an agreement voluntarily reached by the Plaintiff and the Defendant. By contrast, Decision No. 2346/Pdt.G/2023/PA.JS placed greater emphasis on the judicial panel's assessment of the evidence established during the proceedings. In that case, the court considered the father better able to meet the children's needs and therefore determined that awarding *hadhanah* to him would provide greater assurance of the protection of the children's interests.

This distinction demonstrates that more than one legal basis may be employed

in determining *hadhanah* of non-*mumayyiz* children. The transfer of *hadhanah* to the father may be based on an agreement reached by the parties through mediation, as illustrated by Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. Alternatively, *hadhanah* may be awarded to the father on the basis of the court's independent assessment of the facts and evidence established during the proceedings, where such assessment indicates that paternal care would better safeguard the child's interests, as reflected in Decision No. 2346/Pdt.G/2023/PA.JS. Accordingly, these two decisions demonstrate that the application of the law governing *hadhanah* does not depend on a single pattern of judicial reasoning but may be adapted to the particular characteristics of each case and the concrete circumstances of the children and their parents.

The findings of this study also reveal a close connection with Decision No. 11/PDT/2020/PT SMR of the East Kalimantan High Court. Although that case was adjudicated within the general court system, the pattern of judicial reasoning employed reflects a similar orientation, namely, treating the principle of the best interests of the child as a primary consideration in determining which parent should exercise custody. Accordingly, the judicial approach is not confined solely to normative provisions concerning the priority accorded to either parent but is instead directed toward protecting the child's interests and welfare as a central objective in resolving custody disputes.

In Decision No. 11/PDT/2020/PT SMR, the judicial panel concluded that the father was better positioned to exercise custody because he was considered more capable of safeguarding the child's safety, health, education, and future. This consideration was reinforced by the fact that one of the children had a brain tumor and therefore required continuous supervision and medical care. In addition, the court considered that the mother's actions in taking the child on several occasions without the father's knowledge could potentially compromise the child's safety and interests. In light of these circumstances, the court considered the award of custody to the father to be the arrangement most capable of protecting the child's interests.

These circumstances differ from those established in Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. In that case, no significant evidence was identified indicating that the mother had lost her entitlement to exercise *hadhanah* because of neglect, incapacity, or conduct that endangered the children. Rather, the determination of the father as the holder of *hadhanah* originated from an agreement reached by both parents through mediation and subsequently approved by the court. Accordingly, the legal bases underlying the two decisions differ. Decision No. 11/PDT/2020/PT SMR of the East Kalimantan High Court was based primarily on the court's assessment of factual circumstances concerning the child's safety and particular needs, whereas Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. of the Kediri

Regency Religious Court placed greater emphasis on respecting the parties' agreement insofar as it remained consistent with the best interests of the child (Fricilia et al., 2025).

Despite relying on different grounds of judicial reasoning, the two decisions reflect a similar legal orientation toward prioritizing child protection over a strictly textual application of legal norms. The courts did not treat the normative priority accorded to the mother in matters of custody as a rule to be applied without exception, but instead assessed the circumstances arising in each case. Accordingly, the award of *hadhanah* to the father may be legally justified where it is supported by appropriate legal grounds, substantiated by the relevant facts and evidence, and considered conducive to the child's growth and development (Kusmardani & Khosyiah, 2022).

When considered comparatively as a whole, Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., Decision No. 2346/Pdt.G/2023/PA.JS, and Decision No. 11/PDT/2020/PT SMR demonstrate variations in judicial *ratio decidendi* concerning the award of *hadhanah* of non-*mumayyiz* children to fathers. Although all three decisions reached the same outcome—awarding *hadhanah* to the father—the juridical grounds relied upon by the respective judicial panels were not identical. In Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., the principal basis was the agreement reached by the parties through mediation. Decision No. 2346/Pdt.G/2023/PA.JS placed greater emphasis on the court's assessment of the father's ability to provide care that would better serve the child's needs and interests. Meanwhile, Decision No. 11/PDT/2020/PT SMR was primarily based on particular circumstances concerning the child's health, safety, and protection, which led the court to consider paternal care better able to ensure that the child's needs were met (Purnama, 2023).

This comparison indicates an important development in the judicial resolution of *hadhanah* disputes in Indonesia. Article 105(a) of the Compilation of Islamic Law accords priority to the mother in exercising *hadhanah* of non-*mumayyiz* children; however, its application need not be understood as absolute. Judges have scope to interpret and apply the provision in light of the facts established during the proceedings, to consider agreements reached by the parties through mediation, and to assess each parent's ability to safeguard the child's interests. Accordingly, awarding *hadhanah* to the father may be legally justified where it is supported by objective legal grounds and is capable of ensuring the protection of the child (Triyanita & Prananingtyas, 2023).

The comparative analysis of the three decisions indicates a shift in the judicial approach to the application of the law governing *hadhanah*. The resolution of *hadhanah* disputes is not confined solely to determining which parent is formally

accorded priority under the applicable legal norms, but also involves assessing which parent is, in the particular circumstances of the case, better positioned to provide a safe and stable environment conducive to the child's development. In this context, *hadhanah* is not understood merely as an absolute parental entitlement belonging to either the mother or the father, but rather as a legal mechanism for ensuring the fulfilment and protection of the child's rights. Accordingly, the principle of the best interests of the child serves as a central consideration guiding judicial reasoning in child custody disputes, with the ultimate objective of safeguarding the child's protection, welfare, and optimal growth and development (Zaidah & Ilham, 2025).

The findings of this study contribute to the development of Islamic family law from theoretical, juridical, and practical perspectives, particularly in relation to the resolution of disputes concerning *hadhanah* of non-*mumayyiz* children. The findings indicate that Article 105(a) of the Compilation of Islamic Law, which in principle accords priority to the mother in matters of child custody, is not invariably applied rigidly in judicial practice. The analysis of Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr. demonstrates that *hadhanah* may be awarded to the father where such a determination is supported by an adequate legal basis. In this case, the determination was not based on the loss or revocation of the mother's entitlement to exercise *hadhanah*, but rather on an agreement voluntarily reached through mediation and subsequently approved by the court. This finding indicates a more adaptive approach to the application of the law governing *hadhanah* in Indonesia, whereby adjudication is not confined solely to normative provisions but also takes into account the concrete circumstances of each case while maintaining the best interests of the child as a central consideration (Fatahillah, 2021).

From a juridical perspective, the findings indicate that judicial panels may undertake a comprehensive legal assessment when adjudicating *hadhanah* disputes. Judicial reasoning is not confined to the textual formulation of Article 105 of the Compilation of Islamic Law but may also encompass other factors relevant to child protection, including agreements reached through mediation, the factual circumstances of the family, each parent's ability to perform caregiving responsibilities, and the conditions most conducive to the child's growth and development (Deshaini, 2022).

The comparative analysis of Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., Decision No. 2346/Pdt.G/2023/PA.JS, and Decision No. 11/PDT/2020/PT SMR further indicates a judicial orientation toward substantive justice in the adjudication of *hadhanah* disputes. The determination of which parent should exercise custody is not based solely on the normative status or priority accorded to the mother or the father, but also on an assessment of which parent, in light of the facts established

during the proceedings, is better positioned to safeguard the child's safety, welfare, health, education, and overall development. This orientation reflects the increasingly prominent role of child-protection principles in the resolution of *hadhanah* disputes, with the best interests of the child serving as a central consideration in judicial decision-making.

From a practical perspective, the findings also demonstrate that *hadhanah* disputes need not always be resolved exclusively through adversarial proceedings centered on evidentiary contestation. Mediation may provide an alternative mechanism through which both parents are given an opportunity to reach an agreement concerning post-divorce caregiving arrangements. An agreement voluntarily reached through mediation and subsequently incorporated into or approved by a court judgment may acquire binding legal effect. Such an approach may not only reduce the potential for prolonged disputes between former spouses but may also help protect children from the adverse psychological effects of continuing parental conflict.

Furthermore, the findings underscore that awarding *hadhanah* to the father does not, in itself, sever the legal relationship or emotional bond between the mother and the child. The mother may continue to maintain communication and personal contact with the child and to provide care and affection, insofar as the exercise of such involvement remains consistent with the best interests of the child.

The findings of this study also contribute to the development of family law policy in Indonesia. Based on the analysis, there is a need for more clearly defined guidelines concerning the criteria that judges may consider when awarding *hadhanah* of non-*mumayyiz* children to fathers. Such guidelines are expected to promote greater consistency in judicial reasoning without undermining judicial independence (Masyhadi & Mahmudi, 2024). In this manner, judicial decisions may continue to ensure legal certainty while also promoting justice and legal utility. Relevant parameters may include each parent's ability to perform caregiving responsibilities, the child's psychological condition and needs, continuity of education, health considerations, the living environment, agreements reached through mediation, and other circumstances directly related to the child's protection and welfare (Siregar et al., 2022). The establishment of such guidelines could strengthen the resolution of family law disputes by making judicial practice more responsive to societal developments while reinforcing its orientation toward the protection of children's rights (Yassir et al., 2023).

The comparative analysis of the three decisions further demonstrates variations in the legal considerations employed by the respective judicial panels when resolving disputes concerning *hadhanah* of non-*mumayyiz* children. These differences need not necessarily be understood as inconsistencies in the application

of the law; rather, they may arise as a logical consequence of differences in legally relevant facts, evidence, and the particular circumstances underlying each case. In Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., *hadhanah* was awarded to the father on the basis of an agreement reached by the parties through mediation and subsequently approved by the court. In Decision No. 2346/Pdt.G/2023/PA.JS, by contrast, the determination of the father as the holder of *hadhanah* was based on the court's assessment that he was better able to meet the child's needs, while the mother continued to be afforded opportunities to maintain her emotional relationship with the child through personal contact and communication. Decision No. 11/PDT/2020/PT SMR involved a different basis of judicial reasoning, with the child's health and safety constituting primary considerations and the father being considered by the court better positioned to ensure the continuity of the care and protection required by the child.

The differences in legal reasoning across the three decisions demonstrate that Article 105(a) of the Compilation of Islamic Law is not invariably applied in a purely textual or mechanical manner. Rather, each case is assessed in light of the evidence and facts established during the proceedings, allowing judicial reasoning to be adapted to the particular needs and interests of the child in each case. Accordingly, the resulting disparities need not necessarily be regarded as deviations in the application of the law but may instead reflect an approach to substantive justice that places the best interests of the child at the center of determining which parent should exercise *hadhanah* (Shirotol et al., 2024). Thus, although all three decisions awarded *hadhanah* to the father, the juridical grounds underlying each decision differed according to the particular characteristics of the case. These differences demonstrate that the respective decisions were grounded in legal considerations responsive to the concrete circumstances presented in each case.

From a doctrinal perspective, the variations in judicial *ratio decidendi* across the three decisions may be understood through three interrelated legal constructions that nevertheless occupy distinct positions. First, the mother's priority under Article 105(a) of the Compilation of Islamic Law constitutes the normative starting point for determining *hadhanah* of non-*mumayyiz* children. The provision accords priority to the mother, but such priority need not be understood as an absolute entitlement irrespective of the child's concrete circumstances. Second, the principle of the best interests of the child functions as a guiding principle that directs the court in assessing whether the application of maternal priority remains consistent with the child's needs, safety, welfare, and development. Within this framework, where the circumstances or facts established in a particular case indicate that paternal care would better safeguard the child's interests, the court may have grounds not to apply maternal priority mechanically.

Third, an agreement reached by the parents through mediation constitutes a dispute-resolution mechanism rather than a legal norm that automatically determines which parent should exercise *hadhanah*. Such an agreement may form an important part of the judicial *ratio decidendi*, particularly where it is reached voluntarily and incorporated into a mediated settlement agreement; nevertheless, it remains subject to judicial scrutiny. Accordingly, the outcome of mediation cannot independently and automatically displace Article 105 of the Compilation of Islamic Law. The court remains required to assess whether the substance of the agreement is consistent with applicable law and, most importantly, whether it does not prejudice the best interests of the child. In this context, Article 156 of the Compilation of Islamic Law further reinforces the relevance of the capacity to ensure the child's maintenance and care in matters of *hadhanah*. Parental agreements must therefore be considered in conjunction with the factual circumstances of the case and the particular needs of the child.

Within this doctrinal framework, mediation does not displace the court's judicial function in determining *hadhanah*. Rather, it provides an additional consideration that may inform the court in formulating a decision oriented toward both dispute resolution and child protection. This framework also explains the methodological rationale for comparing decisions of the Religious Courts with a decision from the general court system. The Religious Court decisions were selected because they directly concern the application of Islamic family law and the provisions governing *hadhanah* under the Compilation of Islamic Law (KHI), whereas Decision No. 11/PDT/2020/PT SMR from the general court system was employed as a comparator to examine whether the principles of child protection and the best interests of the child also shape judicial *ratio decidendi* outside the framework of the KHI.

This cross-jurisdictional comparison is not intended to equate the legal bases applicable to the respective cases. Rather, it seeks to identify broader patterns of legal reasoning, particularly in relation to how courts balance rules concerning parental rights with the concrete needs and interests of the child. The comparison therefore enables the study to examine whether the best interests of the child operates only as a consideration in *hadhanah* cases governed by Islamic family law or whether it has also developed as a broader child-protection principle influencing the construction of judicial *ratio decidendi* beyond that framework.

This approach further strengthens the analysis that variations in judicial *ratio decidendi* do not merely reflect differences in the outcomes of the decisions. More importantly, they reveal differences in the manner in which courts construct the relationship among the normative priority established under Article 105 of the KHI, the provisions of Article 156 of the KHI, parental agreements, facts established during the proceedings, and the best interests of the child in determining *hadhanah*.

5. Conclusion

Based on the analysis of Decision No. 3688/Pdt.G/2023/PA.Kab.Kdr., this study concludes that awarding *hadhanah* to the father may remain consistent with the principles of Islamic family law and the best interests of the child. Although Article 105(a) of the Compilation of Islamic Law accords priority to the mother in exercising *hadhanah* of a non-*mumayyiz* child, such priority need not be understood as absolute, as the court may take into account the child's concrete circumstances and interests. In this case, *hadhanah* was awarded to the father on the basis of an agreement reached by the parties through mediation and subsequently approved by the court. This outcome is comparable to Decision No. 2346/Pdt.G/2023/PA.JS and Decision No. 11/PDT/2020/PT SMR, both of which also awarded custody to the father, although on different grounds of judicial reasoning, namely, the father's capacity to provide care that would better serve the child's needs and particular considerations relating to the child's safety, health, and need for continuing care, respectively. The comparison of the three decisions demonstrates that the determination of *hadhanah* in the cases examined is not based solely on the normative priority accorded to either parent, but is also oriented toward *maslahah*, child protection, welfare, and the best interests of the child.

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