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## Reconstructing Child Custody Law in Indonesian Religious Courts: Integrating Islamic Law, Child Rights, and Substantive Justice

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### ABSTRACT

This study aims to propose a comprehensive model for reconstructing child-custody law in Indonesia's religious courts by integrating Islamic family law, children's rights, and substantive justice. Utilising a hermeneutic and descriptive-analytical approach to library research, the study analyses legal texts, court decisions, and relevant literature. The results reveal significant gaps between legal norms and actual judicial practices, particularly regarding the prioritisation of gender biases and legal formalities over child welfare. The study identifies that child custody decisions often overlook universal child protection principles and fail to consider substantive justice. The proposed model advocates for legal reforms, including enhancing judicial capacity, integrating psychological assessments, and promoting restorative justice in dispute resolution. This research contributes to family law reform by providing a comprehensive framework that centres child welfare in custody decisions, aiming for a more responsive and just legal system. Furthermore, it offers both conceptual and practical guidance to improve child protection in Indonesia's family courts, address contemporary societal needs, and advance an inclusive, child-centred family law that balances progressive values with cultural sensitivity. The findings emphasise the importance of cross-sector collaboration in implementing these reforms, urging policymakers, judges, and child protection agencies to work together for the betterment of child welfare in legal proceedings.

**Keywords:** Child Custody; Islamic Family Law; Substantive Justice; Religious Court Practice; Child Rights Protection

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## A. INTRODUCTION

Child custody in the judicial practice in Indonesia is a complex issue involving the interaction between Islamic family law, state law, and child protection principles. In the context of divorce, child custody disputes are not only normative in nature but also encompass social and cultural dynamics and the evolving, plural nature of society. Social changes in Indonesia influence the perspectives of both the public and legal authorities on child custody. The existence of Islamic family law within Indonesia's religious court system enriches the discourse but also poses challenges, particularly when confronted with demands for child protection in accordance with the best interests of the child principle, as mandated by international conventions and by more progressive national regulations.<sup>1</sup> This becomes even more complex when this principle must be implemented alongside religious norms that offer differing interpretations on child custody. In practice, court decisions reflect a variety of approaches, sometimes prioritising legal formalities and normative interpretations of religious texts over the child's best interests.<sup>2</sup> This phenomenon signals a disjunction between legal theory and practice, underscoring the need to reconstruct a child-custody legal model that is more responsive to children's rights and substantive justice.

Social shifts, globalisation, technological advancements, and changes in family dynamics also impact child-rearing paradigms. These factors not only alter how families interact but also introduce new challenges in determining who is best positioned to provide optimal care for the child. Islamic family law offers a normative framework for hadhanah, yet its implementation continues to overlap with state-law norms and may overlook more universal child-protection principles.<sup>3</sup> Despite clear rules governing who is entitled to custody, courts often prioritise traditional norms, resulting in decisions less favourable to the child's interests. Some court rulings have incorporated the best interests of the child principle, but they are often hindered by normative interpretations of religious texts and a tendency to emphasise legal

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<sup>1</sup> Iwan Satria, "Rekonstruksi Perlindungan Hak Anak dalam Sengketa Hak Asuh di Pengadilan Agama," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 2 (2022): 202, <https://journal.walisongo.ac.id/index.php/ahwal/article/view/10848>; Abdul Hafid, "Implementasi Perlindungan Hak Anak dalam Sengketa Hak Asuh di Pengadilan Agama," *Al-Mawarid: Jurnal Syari'ah dan Hukum* 21, no. 2 (2021): 508–517, <https://journal.unisla.ac.id/index.php/al-mawarid/article/view/3622>.

<sup>2</sup> Dani Muhtada, "Formulasi Hukum Hak Asuh Anak dalam Perspektif Hukum Islam dan Perlindungan Anak," *Al-Ahkam: Jurnal Ilmu Syariah* 33, no. 1 (2023): 55, <https://journal.iainkudus.ac.id/index.php/ahkam/article/view/14134>.

<sup>3</sup> Abdul Fahmi, *Hukum Keluarga Islam di Indonesia* (Jakarta: Prenadamedia Group, 2022), 13, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1355098>; Hasan Tarmizi, "Hadhanah: Studi Komparatif antara Hukum Islam dan Hukum Nasional," *Jurnal Al-Hukama: The Indonesian Journal of Islamic Family Law* 9, no. 1 (2019): 30, <https://doi.org/https://journal.iaingorontalo.ac.id/index.php/alhukama/article/view/1950>.

formalities.<sup>4</sup> The increasing number of child-related complaints further emphasises this issue: in 2023, the Komisi Perlindungan Anak Indonesia (KPAI) recorded 3,883 complaints concerning children's rights and protection, of which 1,569 fell under the 'family environment and alternative care' cluster — a category that includes problematic parenting, visitation/access issues, and disputes over custody and care.<sup>5</sup>

Previous studies have generally focused on normative analyses or comparisons between Islamic family law and state law, but often overlook the need to integrate the principle of substantive justice in child protection contexts. These studies tend to focus more on theoretical aspects, comparing existing norms, without thoroughly exploring how the law can accommodate children's actual needs. Empirical research shows the disharmony between the ideal child protection principles outlined in the law and the reality of judicial practices still influenced by patriarchal culture and conservative interpretations of Islamic law.<sup>6</sup> This imbalance further reveals that court decisions often prioritise established legal interpretations and are less responsive to the evolving social and changing needs of children. Research by Mubarok and others has highlighted the importance of normative comparisons, but there remains a lack of critical studies that integrate substantive child-protection considerations into judges' decisions.<sup>7</sup> Studies also indicate that the traditional paradigms in *ḥadānah* and guardianship jurisprudence continue to privilege established norms over child welfare considerations.<sup>8</sup>

Analyses from a *maqashid al-shari‘ah* perspective further show that the formalistic application of Islamic legal principles, without integrating substantive welfare concerns, can

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<sup>4</sup> Ahmad Abdullah, "Best Interest of the Child dalam Putusan Hakim Peradilan Agama," *Jurnal Ilmiah Al-Syir'ah* 18, no. 1 (2020): 15, <https://ejournal.iainulungagung.ac.id/index.php/syirah/article/view/2676>.

<sup>5</sup> Detik News, "KPAI Catat 3.883 Aduan Pelanggaran Hak-Perlindungan Anak Selama 2023," Detik News, 2023; Indonesian National Police, "3.883 Cases of Children Rights Violations in 2023: KPAI," Indonesian National Police, 2024, <https://inp.polri.go.id/artikel/3883-cases-of-children-rights-violations-in-2023-kpai>.

<sup>6</sup> Alwi Aziz, "Patriarki dalam Praktik Hukum Hak Asuh Anak di Indonesia," *Jurnal Sosio Legal* 7, no. 2 (2020): 255, <https://ejournal.undip.ac.id/index.php/sociolegal/article/view/33620>; S. H. A. Azis, M. Mery, L., & Basuki, "Children's Rights in Family Law: Comparative Insights into Best Interests Principles," *Journal of Law Review* 3, no. 3 (2025): 130, <https://doi.org/10.61978/legalis.v3i3.812>.

<sup>7</sup> Jamil Mubarok, "Analisis Putusan Hakim dalam Sengketa Hak Asuh Anak: Perspektif Perlindungan Anak," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial* 6, no. 2 (2018): 198–212, <https://ejournal.uinib.ac.id/jurnal/index.php/almashlahah/article/view/1033>; Ahmad Mawardi, "Keadilan Substantif dalam Putusan Sengketa Hak Asuh Anak," *Jurnal Ilmu Hukum* 11, no. 1 (2021): 80–90, <https://jurnal.unigal.ac.id/index.php/ih/article/view/7465>.

<sup>8</sup> B. N. Ramadhan, M. U. C. Rohman, T. Hayati, F., & Azizah, "Comparative Normative Study on Child Custody and Guardianship in Islamic Family Law: Lessons from ASEAN and Europe," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 2 (2025): 160, <https://doi.org/10.62976/ajisc.v2i2.1421>.

compromise the protection of children in judicial practice.<sup>9</sup> Moreover, research examining gender constructions within Islamic family law highlights how entrenched social norms and patriarchal interpretations shape judicial reasoning, often at the expense of substantive child protection.<sup>10</sup> Normative reconstruction efforts that seek to harmonise classical fiqh with modern child protection principles underscore the need for a child-centred approach that meaningfully incorporates *best interests* criteria into law and practice.<sup>11</sup> Based on these data, it is essential to develop a legal model that is more responsive to social dynamics and that prioritises the child's best interests in every judicial decision. This would reduce the gap between legal theory and practice and underscore the role of substantive justice in handling child custody disputes.

This study aims to offer a model for reconstructing child custody law that integrates the perspectives of Islamic family law, child rights, and substantive justice. The novelty of this research lies in its effort to incorporate these three elements into a single model that addresses the disparities between legal theory and practice in the context of child custody in Indonesia. This model is expected to bridge existing gaps by emphasising children's rights as the primary consideration in every court decision. The study will also analyse the influence of juridical, social, and cultural factors on judges' preferences in child custody disputes, as well as the extent to which substantive justice is accommodated in contemporary Indonesian judicial practices. This is crucial to understanding how judges' perspectives on child custody cases are shaped by broader external factors, including evolving social norms and cultural influences. Through a more holistic approach, this research aims to propose more adaptive solutions for resolving child custody disputes.

The main goal of this research is to formulate a child-custody legal model that is more responsive to the needs of child protection and substantive justice, while taking into account socio-cultural development and applicable Islamic family law in Indonesia. In this regard, an interdisciplinary approach is employed to integrate perspectives relevant to the issues under study, including Islamic family law, children's rights, and substantive justice. This approach is expected to produce a legal model that is not only relevant to Indonesia's social and cultural conditions but also in line with international developments in child protection law. With this

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<sup>9</sup> Andi Intan Cahyani Nasaruddin Mera, Marzuki Marzuki, M. Taufan B., Sapruddin Sapruddin, "Child Custody Rights for Mothers of Different Religions: Maqāṣid Al-Shari'ah Perspective on Islamic Family Law in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 3 (2024): 1645.

<sup>10</sup> Lina Nur Anisa, "The Social Gender Construction and Its Influence on Child Custody Determination in Religious Courts in Indonesia," *Mukaddimah: Jurnal Studi Islam* 10, no. 2 (2025): 295, <https://doi.org/10.14421/mjsi.v10i2.4463>.

<sup>11</sup> Hidayat Darussalam, Siti Nurjanah, Ahmad Syarifudin, Muhammad Mujib Baidhow, Elva Mahmudi, "Children's Rights in Islamic Law: A Contemporary Study of Family Practices," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 940. <https://e-journal.metrouniv.ac.id/milrev/article/view/10077>

interdisciplinary approach, this research is expected to enrich the study of Islamic family law and children's rights and to make a significant contribution to the reform of judicial practices in handling child-custody disputes. It is also hoped that this research will provide a stronger foundation for judges and policymakers to develop more child-centred policies aligned with the evolving social dynamics of the present and future.

Theoretically, this research will enrich the literature on family law and child protection in Indonesia by integrating perspectives from Islamic family law with more progressive substantive justice principles. This research adopts an interdisciplinary approach that brings together diverse perspectives, thereby providing a stronger evidentiary basis for developing the substantive justice concept in religious court practices. The integration of Islamic family law theory and child rights protection will demonstrate how the law can be more responsive to societal change while maintaining the fundamental values inherent in the Islamic legal system. Therefore, this research is expected to serve as a reference for family law reforms in Indonesia, particularly related to child custody issues. This is crucial to ensure that Islamic family law is not merely a static normative foundation but can evolve in response to the demands of a rapidly changing society.

## B. RESEARCH METHODS

The research method employed in this study is library research, systematically designed to trace, analyse, and interpret relevant literature on the reconstruction of child custody law in Indonesian judicial practice. Library research is highly effective in exploring theories, doctrines, and legal practices from both primary and secondary legal sources. Primary sources include laws, legal compilations, and court rulings on child custody and Islamic family law in Indonesia. Additionally, secondary sources such as books, accredited national academic journals, and current international journals are also essential in this research.<sup>12</sup> Literature selection is conducted using purposive sampling to identify genuinely relevant sources and to contribute scientifically to the topic under study. Once relevant literature is collected, thematic classification is performed to group various perspectives and concepts emerging from the sources.

Data analysis in this study uses two main approaches. First, the descriptive-analytical approach is used to present facts and arguments systematically and to

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<sup>12</sup> John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, 4th ed. (California: Sage Publications, 2016), 59, <https://us.sagepub.com/en-us/nam/research-design/book246125>; Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D* (Bandung: Alfabeta, 2017), 44, <https://alfabeta.co.id/metode-penelitian-kuantitatif-kualitatif-r-d>.

analyse the dynamics and changes in legal practices related to child custody within Indonesia's judicial system. This approach aims to provide a detailed explanation of the process of reconstructing child custody law in Indonesia.<sup>13</sup> Second, the hermeneutic approach is used to interpret the literature, which may contain implicit or contextual meanings, both in theory and in jurisprudential rulings. This approach focuses on developing a deeper understanding of the values embedded in legal texts and the evolving legal perspectives on child custody within Islamic family law and child protection.<sup>14</sup> The data analysis process also involves source triangulation, in which findings from various literatures are compared to develop more objective and in-depth arguments regarding the practices and legal reforms in child custody law in Indonesia.<sup>15</sup>

The theoretical approach in this research encompasses three main aspects relevant to the topic under study. First, Islamic family law is the normative basis concerning *hadhanah* (child custody) in religious courts. Second, child protection, focusing on the *best interest of the child* principle mandated by international conventions and more progressive national regulations in the context of child protection. Third, substantive justice, which is used to analyse the extent to which court decisions in child custody disputes substantively accommodate the child's interests, going beyond mere legal formalities.<sup>16</sup> In this research, the selection of literature is based on validity and scientific contribution; therefore, only works that provide new insights and are relevant to the study are included. The knowledge synthesis derived from various bodies of literature aims to provide reflective and argumentative analysis and to remain responsive to the evolving dynamics of Islamic family law and child protection

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<sup>13</sup> Rizal Fauzi, "Analisis Putusan Hakim Pengadilan Agama terhadap Sengketa Hak Asuh Anak," *Jurnal Hukum dan Peradilan* 9, no. 1 (2020): 85, <https://jurnalhukumdanperadilan.org/index.php/jhp/article/view/562>; Eka Suryani, "Integrasi Perlindungan Anak dalam Praktik Hukum Keluarga Islam," *Jurnal Ilmiah Syariah* 20, no. 1 (2021): 58, <https://jurnal.stainmajene.ac.id/index.php/isy/article/view/226>.

<sup>14</sup> Ahmad Maulana, "Metodologi Penelitian Hukum: Studi Literatur pada Putusan Hak Asuh Anak," *Jurnal Hukum Islam Nusantara* 2, no. 1 (2023): 111, <https://ejournal.insuriponorogo.ac.id/index.php/jhin/article/view/149>; Ade Nuraida, "Hermeneutika dalam Penelitian Kepustakaan Hukum Islam," *Al-Adalah: Jurnal Hukum dan Politik Islam* 18, no. 2 (2021): 278, <https://e-journal.iainkendari.ac.id/index.php/al-adalah/article/view/5720>.

<sup>15</sup> Intan Sari, "Urgensi Perlindungan Hak Anak dalam Putusan Pengadilan Agama," *Mashlahah: Jurnal Hukum Islam dan Pranata Sosial* 9, no. 2 (2021): 188, <https://ejournal.uinib.ac.id/jurnal/index.php/almashlahah/article/view/1746>; Nining Putri, "Analisis Yuridis Penetapan Hak Asuh Anak dalam Putusan Pengadilan Agama," *Mazahib: Jurnal Pemikiran Hukum Islam* 19, no. 1 (2022): 23, <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/2384>.

<sup>16</sup> Hamid Darmadi, *Metode Penelitian Pendidikan* (Bandung: Alfabeta, 2018), 164, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1137097>; Awaluddin Usman, "Perlindungan Hak Anak dalam Sengketa Hak Asuh: Studi Literatur Hukum Islam dan Nasional," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (2021): 227, <https://ejournal.iainkendari.ac.id/al-manhij/article/view/4095>.

in Indonesia.<sup>17</sup> Thus, this research not only produces theoretical insights but also provides an analysis that can serve as a foundation for the reform and strengthening of child protection in Indonesia's religious courts.

## C. RESULTS AND DISCUSSION

### 1. Conceptual Foundation and Theoretical Framework

Child custody in Indonesia is positioned as a parental responsibility and right, which must be carried out proportionally for the sake of the child's growth and development. This is regulated in Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law. This concept emphasises not only the fulfilment of children's physical and material needs but also focuses on education, affection, and psychological and moral protection. In the context of divorce, custody often becomes a critical point, frequently leading to conflicts between the rights of the mother, father, and the child's best interests.<sup>18</sup> Custody disputes require transparent and fair regulations that prioritise the child's welfare over adult interests, rather than just biological relations.<sup>19</sup> The Compilation of Islamic Law regulates child custody after divorce, with a focus on the child's interests and the parents' suitability.<sup>20</sup> However, in practice, disparities still exist, often due to gender biases and limited understanding by law enforcement of the psychological and social dynamics of children in conflicted families.<sup>21</sup> Mubarok's study highlights that despite the explicit legal norms, uneven implementation remains a significant challenge in resolving child custody disputes in Indonesia.<sup>22</sup>

Child protection has attracted increasing attention, both nationally and internationally, particularly since Indonesia ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990. The principle of the *best*

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<sup>17</sup> Yuli Nurhasanah, "Reformulasi Hukum Hak Asuh Anak: Kajian Putusan Pengadilan Agama," *Jurnal Hukum Lex Generalis* 4, no. 1 (2022): 163, <https://jurnal.unigal.ac.id/index.php/jhlg/article/view/9602>.

<sup>18</sup> Winda Yunita, "Konstruksi Hukum Hak Asuh Anak dalam Praktik Peradilan Agama," *Jurnal Hukum dan Keluarga Islam* 5, no. 1 (2022): 84, <https://jurnal.ar-raniry.ac.id/index.php/jhki/article/view/13895>.

<sup>19</sup> Amalia Ramadani, "Perspektif Hak Asuh Anak dalam UU Perkawinan," *Jurnal Mazahib* 19, no. 1 (2021): 43, <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/2389>.

<sup>20</sup> Rima Andini, "Analisis Putusan Hakim dalam Penetapan Hak Asuh Anak," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (2023): 137, <https://journal.walisongo.ac.id/index.php/ahwal/article/view/1396013960>.

<sup>21</sup> Alwi Syamsuddin, "Dinamika Hak Asuh Anak Pasca Perceraian di Indonesia," *Jurnal Ilmiah Al-Muqaddimah* 13, no. 1 (2023): 17, <https://ejournal.unibba.ac.id/index.php/al-muqaddimah/article/view/325>.

<sup>22</sup> Mubarok, "Analisis Putusan Hakim dalam Sengketa Hak Asuh Anak: Perspektif Perlindungan Anak," 204.

*interests of the child* has become the primary foundation for decisions concerning children, including custody disputes.<sup>23</sup> This principle is articulated in Law No. 35 of 2014 on Child Protection, which emphasises the responsibility of the state, parents, and society to ensure the child's rights to life, growth, development, and protection from all forms of violence and discrimination.<sup>24</sup> Despite this, the implementation of this principle faces significant challenges on the ground, such as patriarchal cultural bias, weak law enforcement, and limited understanding by authorities of progressive child rights.<sup>25</sup> Research by Putri indicates that despite progress in recognising child rights, the gap between theory and practice in child protection within custody disputes remains an unresolved issue.<sup>26</sup> This highlights the need for a reconstruction of child custody law that is more responsive to children's actual needs and more attentive to family and social ecosystems.

Substantive justice theory is increasingly crucial in addressing child custody disputes in religious courts, as formal justice approaches grounded in legal positivism often fail to accommodate the concrete conditions and needs of children. Substantive justice demands that judges consider the social, psychological, and economic contexts of the child and their family, ensuring that court decisions genuinely serve the child's well-being and future.<sup>27</sup> Research by Mubarok notes that substantive justice emphasises situational analysis, thereby enabling court decisions to be more focused on the child's best interests.<sup>28</sup> Judicial discretion grounded in substantive justice is increasingly adopted in progressive rulings, particularly when there is a mismatch between formal norms and the realities faced by children.<sup>29</sup> Therefore, substantive justice theory is highly relevant as a foundational consideration in reconstructing child custody law in Indonesia, focusing not only on legality but also on the long-term impact on the child and

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<sup>23</sup> Siti Fauziah, "Prinsip Best Interests of the Child dalam Putusan Hak Asuh," *Jurnal Mazahib* 19, no. 2 (2021): 108, <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/2623>.

<sup>24</sup> Leni Novianti, "Implementasi Perlindungan Anak dalam Perspektif Nasional dan Internasional," *Jurnal Hukum Lex Generalis* 4, no. 1 (2022): 71, <https://jurnal.unigal.ac.id/index.php/jhlg/article/view/9607>.

<sup>25</sup> Aditya Prasetyo, "Tantangan Perlindungan Anak di Tengah Budaya Patriarkal," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial* 9, no. 2 (2023): 115, <https://ejournal.uinib.ac.id/jurnal/index.php/almashlahah/article/view/2101>.

<sup>26</sup> Mutiara Putri, "Diskresi Hakim dan Keadilan Substantif dalam Putusan Hak Asuh Anak," *Jurnal Hukum dan Peradilan* 10, no. 2 (2022): 128, <https://jurnalhukumdanperadilan.org/index.php/jhp/article/view/615>.

<sup>27</sup> Eka Suryani, "Keadilan Substantif dalam Putusan Hakim Peradilan Agama," *Jurnal Ilmiah Syariah* 21, no. 1 (2021): 66, <https://jurnal.stainmajene.ac.id/index.php/isy/article/view/240>.

<sup>28</sup> Mubarok, "Analisis Putusan Hakim dalam Sengketa Hak Asuh Anak: Perspektif Perlindungan Anak," 205.

<sup>29</sup> Nurhasanah, "Reformulasi Hukum Hak Asuh Anak: Kajian Putusan Pengadilan Agama," 170.

family.<sup>30</sup> Research by Mawardi underscores the importance of substantive justice, demonstrating that this approach enhances the relevance of legal decisions in addressing complex social realities.<sup>31</sup>

The concept of *hadhanah* in Islamic family law provides a distinctive character in the practice of child custody in Indonesia. In Islamic jurisprudence, *hadhanah* denotes the right to care for, educate, and raise a child, traditionally vested in the mother, unless there is a compelling religious reason to transfer it to the father or other family members.<sup>32</sup> The Compilation of Islamic Law adapts the principle of *hadhanah* to be more compatible with national law and universal children's rights principles. However, it is still often influenced by judges' textual interpretations.<sup>33</sup> The dynamics of child custody disputes in religious courts indicate that the implementation of *hadhanah* requires reinterpretation responsive to contemporary developments and the child's needs, ensuring that it does not remain confined to formal dimensions but instead addresses the child's psychological well-being.<sup>34</sup> Reinterpreting *hadhanah* in light of the best interests of the child and substantive justice will significantly shape the future reconstruction of child custody law in Indonesia.<sup>35</sup> Aziz's research indicates that decisions that consider *hadhanah* in light of the principle of substantive justice have a more positive impact on children's development following divorce.<sup>36</sup>

The reconstruction of child custody law in Indonesia requires a more holistic approach that integrates the principles of Islamic family law, child protection, and substantive justice. The current legal model needs to be more responsive to evolving social realities, placing the child's welfare as the primary priority in every legal decision. By adapting findings from Fauzi's study, which highlights the importance of situational analysis in child custody disputes, this reconstruction will also address evolving social dynamics, ensuring that every decision creates an

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<sup>30</sup> Danu Herlambang, "Teori Keadilan Substantif dalam Sengketa Hak Asuh Anak," *Jurnal Al-Mashlahah* 9, no. 1 (2023): 54, <https://ejournal.uinib.ac.id/jurnal/index.php/almashlahah/article/view/2156>.

<sup>31</sup> Mawardi, "Keadilan Substantif dalam Putusan Sengketa Hak Asuh Anak," 88.

<sup>32</sup> M. Hasbi Amin, *Hukum Hadhanah dalam Fikih dan Perundang-Undangan di Indonesia* (Jakarta: Kencana, 2021), 37, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1330543>.

<sup>33</sup> Nunik Handayani, "Problematika Implementasi Hadhanah dalam Perspektif KHI dan Hukum Nasional," *Jurnal Ilmiah Syariah* 20, no. 2 (2021): 62, <https://jurnal.stainmajene.ac.id/index.php/isy/article/view/233>.

<sup>34</sup> Ahmad Fahmi, "Reinterpretasi Hadhanah dalam Kompilasi Hukum Islam," *Jurnal Hukum Lex Generalis* 4, no. 2 (2022): 99, <https://jurnal.unigal.ac.id/index.php/jhlg/article/view/9801>.

<sup>35</sup> Dian Saputra, "Urgensi Reinterpretasi Hadhanah dalam Sistem Hukum Indonesia," *Jurnal Hukum dan Keluarga Islam* 4, no. 2 (2022): 111, <https://jurnal.ar-raniry.ac.id/index.php/jhki/article/view/12039>.

<sup>36</sup> Aziz, "Patriarki dalam Praktik Hukum Hak Asuh Anak di Indonesia," 249-250.

environment that optimally supports the child's growth and development.<sup>37</sup> Therefore, this study emphasises that revising the current legal model, both in Islamic family law and national law, will strengthen child protection in Indonesia. This is also supported by Suryani's findings, which show that reconstructing child custody law on substantive justice principles can yield more just decisions that prioritise the child's best interests.<sup>38</sup>

## 2. The Practice of Child Custody Adjudication in Indonesia

The interpretation of the Compilation of Islamic Law and the Marriage Law influences the determination of child custody in Indonesia's religious courts. In many cases, custody of children who are not yet capable of distinguishing (*mumayyiz*) or are still young is typically granted to the mother, unless there are strong religious reasons to transfer custody to the father, such as the mother's inability to meet the child's basic needs.<sup>39</sup> However, as understanding of custody evolves, some judges are beginning to exercise progressive discretion that considers psychological factors, the quality of emotional relationships, and psychosocial support from related parties.<sup>40</sup> Research by Mulyadi shows that the court's focus is now not only on biological relations but also on the welfare of the child after divorce.<sup>41</sup> This is further evidenced by innovative rulings that incorporate psychological assessments into the decision-making process.<sup>42</sup> This shift reflects an increasing understanding that child custody is a more complex issue than merely biological relationships and requires a more holistic consideration. In this regard, substantive justice theory, which emphasises in-depth analysis of the social, psychological, and economic conditions of the child and their family, is key to creating decisions that genuinely prioritise the child.<sup>43</sup>

Although the Child Protection Law and the Compilation of Islamic Law afford judges discretion to prioritize the *best interests of the child*, in practice, legal considerations are often still dominated by textual and formalistic approaches.<sup>44</sup>

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<sup>37</sup> Fauzi, "Analisis Putusan Hakim Pengadilan Agama terhadap Sengketa Hak Asuh Anak," 85.

<sup>38</sup> Suryani, "Integrasi Perlindungan Anak dalam Praktik Hukum Keluarga Islam," 58.

<sup>39</sup> Mira Febriani, "Putusan Hak Asuh Anak dalam Perspektif Kompilasi Hukum Islam," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 122, <https://journal.walisongo.ac.id/index.php/ahwal/article/view/13971>.

<sup>40</sup> Zulfikar Rasyid, "Pendekatan Emosional dalam Penetapan Hak Asuh Anak," *Jurnal Hukum dan Keluarga Islam* 5, no. 1 (2022): 57, <https://jurnal.ar-raniry.ac.id/index.php/jhki/article/view/13901>.

<sup>41</sup> Anwar Mulyadi, *Hukum Acara Peradilan Agama di Indonesia* (Jakarta: Kencana, 2021), 177, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1306610>.

<sup>42</sup> Agus Rachman, "Asesmen Psikologis dalam Penetapan Hak Asuh Anak," *Jurnal Ilmiah Syariah* 21, no. 2 (2022): 98, <https://jurnal.stainmajene.ac.id/index.php/isy/article/view/251>.

<sup>43</sup> Suryani, "Keadilan Substantif dalam Putusan Hakim Peradilan Agama," 66.

<sup>44</sup> Nisa Jannah, "Implementasi Prinsip Perlindungan Anak dalam Putusan Hak Asuh," *Jurnal Hukum Lex Generalis* 4, no. 2 (2023): 218, <https://jurnal.unigal.ac.id/index.php/jhlg/article/view/9819>.

The gap between the ideal principles in regulations and the reality on the ground results in many decisions that still prioritize procedural aspects or biological relations without considering the psychological dimensions or the need for post-divorce rehabilitation of the child.<sup>45</sup> This reveals disparities in the implementation of substantive law, often neglecting the child's right to participate and the psychological impacts of court decisions.<sup>46</sup> Research by Nurhasanah highlights how this inconsistency usually leads to decisions that are less favorable to children, focusing more on legal formalities than on substantive justice that emphasizes the child's welfare. Therefore, a legal reconstruction is needed that not only focuses on legality but also considers the long-term impact on the child, oriented more toward fulfilling the *best interests of the child*.<sup>47</sup>

Social, cultural, and gender barriers remain major factors influencing child custody decisions in Indonesia's religious courts. The entrenched patriarchal culture tends to lead judges to favor fathers in decisions, especially when economic considerations and social status are more dominant.<sup>48</sup> Stereotypes against women, especially widows or mothers with low economic status, also influence custody decisions. Although a child's psychological welfare is not always linked to material sufficiency, women are often confronted with social stigma that limits their opportunities to obtain custody.<sup>49</sup> Research by Salsabila shows that bias against single mothers worsens the disparity in custody decisions. On the other hand, these social limitations also hinder the application of substantive justice in judicial practice because decisions are often more influenced by social and gender norms than by the child's welfare itself. Therefore, to achieve substantive justice in custody disputes, courts need to address the social and cultural factors that often impede optimal child protection.<sup>50</sup>

Case studies and recent rulings demonstrate variations in innovation and barriers in the practice of child custody in Indonesia's religious courts. For instance, the Surabaya Religious Court's ruling successfully integrated psychological

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<sup>45</sup> Rina Kurniawati, "Pertimbangan Yuridis Hakim dalam Sengketa Hak Asuh Anak," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial* 9, no. 7 (2023): 89, <https://ejournal.uinib.ac.id/jurnal/index.php/almashlahah/article/view/2109>.

<sup>46</sup> Ahmad Wahyudi, *Hukum Perlindungan Anak di Indonesia* (Bandung: Refika Aditama, 2021), 302, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1229478>.

<sup>47</sup> Nurhasanah, "Reformulasi Hukum Hak Asuh Anak: Kajian Putusan Pengadilan Agama," 170.

<sup>48</sup> Taufik Rosadi, "Budaya Patriarkal dan Hak Asuh Anak di Indonesia," *Jurnal Mazahib* 20, no. 2 (2023): 277, <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/2776>.

<sup>49</sup> Latifah Rahim, "Single Parent dan Tantangan Hak Asuh di Pengadilan Agama," *Jurnal Al-Adalah* 19, no. 1 (2022): 53, <https://e-journal.iainkendari.ac.id/index.php/al-adalah/article/view/6833>.

<sup>50</sup> Rania Salsabila, "Peran Gender dalam Penetapan Hak Asuh Anak," *Al-Ahkam: Jurnal Ilmu Syariah* 32, no. 1 (2022): 212, <https://journal.iainkudus.ac.id/index.php/ahkam/article/view/13741>.

examinations, social assessments, and child protection agency recommendations to determine custody more proportionally.<sup>51</sup> On the other hand, in some courts in Sumatra and Kalimantan, the intervention of extended families or local communities is still dominant, which often reduces the effectiveness of child protection.<sup>52</sup> Research by Fitria emphasizes that intensive support and mediation are crucial in de-escalating conflicts and ensuring that court decisions prioritize the *best interests of the child*. This shows that cross-sector collaboration and strengthening judges' capacities to handle child custody disputes are essential steps in ensuring fairer decisions that prioritize the child's welfare. Therefore, the development of technical guidelines and training for law enforcement officers and policymakers is urgently needed to reinforce the application of child protection principles in every ruling.<sup>53</sup>

The reconstruction of child custody law in Indonesia must focus on integrating the principles of Islamic family law, child protection, and substantive justice. Currently, the implementation of the law is often constrained by formalistic and procedural approaches that do not always account for the child's actual needs. Research by Fauzi shows that by integrating psychological and social assessments into each custody decision, courts can be more responsive to the specific conditions of the child and family.<sup>54</sup> This indicates that substantive justice theory can provide a more progressive basis for handling child custody disputes, considering not only legality but also the social and psychological impacts on the child.<sup>55</sup> Additionally, improved cross-sector collaboration and the development of technical guidelines for handling child custody cases are urgently needed to strengthen child protection within the judicial system.<sup>56</sup> Therefore, the reconstruction of child custody law must focus on producing decisions that are more just and holistic, that prioritize the child's best interests, and that respond to social dynamics and changing times.

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<sup>51</sup> Galih Sulisty, "Integrasi Pendekatan Psikologis dalam Penetapan Hak Asuh Anak," *Jurnal Hukum dan Peradilan* 10, no. 2 (2022): 134, <https://jurnalhukumdanperadilan.org/index.php/jhp/article/view/614>.

<sup>52</sup> Dadan Suparman, "Intervensi Sosial dalam Penyelesaian Sengketa Hak Asuh Anak," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial* 9, no. 2 (2023): 290, <https://ejurnal.uinib.ac.id/jurnal/index.php/almashlahah/article/view/2111>.

<sup>53</sup> Endah Fitriawati, "Teknologi dan Perlindungan Anak Pasca Perceraian," *Jurnal Sosial Humaniora* 8, no. 1 (2023): 59, <https://jurnal.ugm.ac.id/jurnalhumaniora/article/view/8025>.

<sup>54</sup> Fauzi, "Analisis Putusan Hakim Pengadilan Agama terhadap Sengketa Hak Asuh Anak," 85.

<sup>55</sup> Suryani, "Keadilan Substantif dalam Putusan Hakim Peradilan Agama," 66.

<sup>56</sup> Evi Sari, "Penguatan Perlindungan Anak dalam Penetapan Hak Asuh di Pengadilan Agama," *Jurnal Hukum Lex Generalis* 4, no. 2 (2022): 174, <https://jurnal.unigal.ac.id/index.php/jhlg/article/view/9803>.

### 3. Challenges and the Need for Legal Reconstruction

The dissonance between Islamic family law and positive law in Indonesia poses a significant challenge to the reconstruction of child-custody law. The dualism of the legal system, arising from the application of the Compilation of Islamic Law and Law No. 1 of 1974 on Marriage, often leads to interpretative confusion and inconsistencies in religious court rulings.<sup>57</sup> When religious norms conflict with the secular principles of national law, particularly in cases of post-divorce child custody, judges are forced to choose between adhering to classical fiqh doctrines or aligning with modern values that prioritise the *best interests of the child*.<sup>58</sup> This conflict creates legal uncertainty, as the determination of custody often depends on the judge's assessment of the child's age, gender, and social circumstances.<sup>59</sup> Studies have shown that interpretational differences in custody cases contribute to inconsistent judicial outcomes, which can impede the fulfilment of children's rights. For example, research examining child custody disputes in Indonesia highlights how judges sometimes prioritise formal legal norms over responsive and child-centred considerations, leading to uncertainty in court decisions and gaps in protection for the child's best interests.<sup>60</sup> Likewise, studies adopting a *maqasid al-shari'ah* perspective reveal that when judges diverge in interpreting Islamic and national legal provisions in the absence of clear guidance, the result can be decisions that are less attuned to the child's welfare.<sup>61</sup> To achieve a more just legal reconstruction, it is necessary to reconcile Islamic principles, positive law, and international conventions that strengthen children's rights, ensuring more consistent and child-friendly decisions.

Legal gaps and substantive issues are key factors hindering child protection in custody disputes in Indonesia. Although the Compilation of Islamic Law and child protection laws are in place, many grey areas in practice create multiple

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<sup>57</sup> Ahmad Mukhlis, "Ketidakharmonisan Regulasi dalam Sengketa Hak Asuh Anak," *Jurnal Hukum dan Keluarga Islam* 5, no. 2 (2022): 241, <https://jurnal.ar-raniry.ac.id/index.php/jhki/article/view/14015>.

<sup>58</sup> Aulia Hakim, *Hukum Keluarga Indonesia: Problematika dan Rekonstruksi* (Yogyakarta: Laksbang Pressindo, 2023), 129, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1351921>.

<sup>59</sup> Hana Azzahra, "Ketidakharmonisan Hukum Keluarga Islam dan Hukum Nasional," *Jurnal Ilmiah Al-Muqaddimah* 14, no. 2 (2022): 97, <https://ejournal.unibba.ac.id/index.php/al-muqaddimah/article/view/367>.

<sup>60</sup> Alivia Nabilla, Setia Putra, dan Rahmat G. M. Manik, "Interpretasi Hakim dalam Pemberian Hak Asuh Anak di Bawah Umur 12 Tahun Kepada Ayah di Pengadilan Agama Pekanbaru," *Jurnal Ilmiah Wahana Pendidikan* 11, no. 5.D (2025): 37, <https://jurnal.peneliti.net/index.php/JIWP/article/view/10434>.

<sup>61</sup> Andi Intan Cahyani Nasaruddin Mera, Marzuki Marzuki, M. Taufan B., Sapruddin Sapruddin, "Child Custody Rights for Mothers of Different Religions: Maqāṣid Al-Shari'ah Perspective on Islamic Family Law in Indonesia," 1658.

interpretations.<sup>62</sup> The unclear criteria for custody suitability and the lack of post-decision monitoring mechanisms worsen this situation.<sup>63</sup> A common issue is the conflict among parents, extended family members, or third parties seeking to influence court decisions.<sup>64</sup> The lack of regulations on child participation in court processes and the insufficient technical guidelines for psychological assessments make child protection more procedural than substantive.<sup>65</sup> Research by Kurniawati shows that the imperfection of these regulations often leads to custody decisions based solely on legality, without considering the child's psychological condition.<sup>66</sup> Research shows that substantive justice in child custody decisions requires judges to pay serious attention to psychological evidence and assessments of the child's welfare in addition to legal norms. For instance, a study on the use of child psychology test results as evidentiary material in divorce proceedings argues that results of psychological tests can provide vital information about a child's emotional state and potential trauma. Yet, these findings are often underutilised or ignored by judges in custody decisions.<sup>67</sup> Therefore, identifying and addressing legal gaps and substantive issues, including the integration of psychological factors and genuine involvement of children in the judicial process, is crucial to improving the child protection system in custody disputes.

Social dynamics and societal developments have significant implications for children's rights and child-custody practices in Indonesia. Urbanisation, technological advancements, and shifting family structures have created new challenges for the interpretation and implementation of family law.<sup>68</sup> Children are now more vulnerable to psychological pressures from divorce, digital violence, and limited access to social rehabilitation services.<sup>69</sup> Globalisation has also influenced societal views and the judicial system's perspective on the best interests of the child,

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<sup>62</sup> Siti Maesaroh, "Problem Substantif dalam Penetapan Hak Asuh Anak," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 33, <https://journal.walisongo.ac.id/index.php/ahwal/article/view/13981>.

<sup>63</sup> Reza Rizki, "Kekosongan Hukum Pengawasan Hak Asuh Anak Pasca Perceraian," *Jurnal Hukum Lex Generalis* 4, no. 1 (2022): 213, <https://jurnal.unigal.ac.id/index.php/jhlg/article/view/9612>.

<sup>64</sup> Lukman Fathoni, "Kekosongan Hukum dalam Sengketa Hak Asuh Anak," *Jurnal Hukum dan Peradilan* 11, no. 1 (2023): 69, <https://jurnalhukumdanperadilan.org/index.php/jhp/article/view/679>.

<sup>65</sup> Winda Salsabila, "Partisipasi Anak dalam Proses Persidangan Hak Asuh," *Jurnal Ilmiah Syariah* 21, no. 2 (2023): 190, <https://jurnal.stainmajene.ac.id/index.php/isy/article/view/254>.

<sup>66</sup> Kurniawati, "Pertimbangan Yuridis Hakim dalam Sengketa Hak Asuh Anak," 89.

<sup>67</sup> Zulfah, I., I. A. Sembiring, and Rosmalinda, "Kedudukan Hukum Hasil Tes Psikologi Anak Sebagai Alat Bukti dalam Persidangan Perceraian Untuk Menetapkan Hak Asuh Anak (Studi Putusan Nomor 57/Pdt.G/2022/PTA.Mdn)," *Unes Journal of Swara Justisia* 9, no. 1 (2025): 88, <https://doi.org/10.31933/5eqemg83>.

<sup>68</sup> Teguh Rizal, "Perubahan Sosial dan Perlindungan Anak di Pengadilan Agama," *Jurnal Al-Adalah* 19, no. 2 (2022): 1444, <https://e-journal.iainkendari.ac.id/index.php/al-adalah/article/view/6919>.

<sup>69</sup> Fitriawati, "Teknologi dan Perlindungan Anak Pasca Perceraian," 56.

which was previously more rigid and limited to local perspectives.<sup>70</sup> Research shows that courts must increasingly adopt an interdisciplinary approach that incorporates social, psychological, and economic perspectives in determining child custody to protect children's welfare better. Afriyani explains that custody determinations should not rely solely on the age of the child but must include assessments from psychology and economics to ensure proper development and emotional stability.<sup>71</sup> She further emphasises that psychological and economic evaluations are essential to prevent adverse effects on children and to provide care arrangements that support their development amid contemporary societal challenges.<sup>72</sup> Therefore, updating legal frameworks, enhancing judges' interdisciplinary capacity, and strengthening social services are crucial for improving the child protection system in custody disputes.

Social, cultural, and gender barriers remain significant factors influencing child custody decisions in Indonesia's religious courts. The deeply rooted patriarchal culture causes judges to tend to favour fathers in decisions, especially when economic considerations and social status are more dominant.<sup>73</sup> Stereotypes against women, particularly widows or mothers with low financial status, also affect custody decisions.<sup>74</sup> Research shows that gender bias significantly contributes to injustice in court decisions. Studies indicate that patriarchal norms often lead courts to view mothers—especially single mothers lacking family or community support—as less capable of providing custody, even when evidence demonstrates strong emotional bonds and caregiving competence.<sup>75</sup> Stereotypes that portray mothers as economically incapable also tend to overshadow their crucial role in supporting the child's psychological and emotional well-being.<sup>76</sup> Moreover, social and cultural biases embedded in judicial reasoning impede the realisation of

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<sup>70</sup> Putri Dewi, *Perubahan Sosial dan Perlindungan Hak Anak di Indonesia: Perspektif Hukum dan Sosial* (Yogyakarta: Gema Press, 2021), 76, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1354568>.

<sup>71</sup> Silfa Afriyani, "Interdisciplinary Approach in the Study of Marital Law (Study of the Determination of Child Custody)," *Nurani: Jurnal Ilmiah* 21, no. 2 (2021): 219-220, <https://jurnal.radenfatah.ac.id/index.php/Nurani/article/download/9738/4234>.

<sup>72</sup> Afriyani, 228.

<sup>73</sup> Rosadi, "Budaya Patriarkal dan Hak Asuh Anak di Indonesia," 277.

<sup>74</sup> Rahim, "Single Parent dan Tantangan Hak Asuh di Pengadilan Agama," 53.

<sup>75</sup> Mohammad Fathurrahman, "Hak Asuh Anak dan Ketimpangan Gender dalam Perspektif Hukum Islam," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (2022): 440-441, 444, <https://jurnal.araniry.ac.id/index.php/samarah/article/view/19786>.

<sup>76</sup> Ainiyah Wardatun, "Perempuan, Ketidakadilan Gender, dan Sengketa Hadhanah," *Al-Ihkam: Jurnal Hukum Keluarga Islam* 18, no. 1 (2023): 33-36, <https://ejournal.iainmadura.ac.id/index.php/alihkam/article/view/7870>.

substantive justice, ultimately harming the child.<sup>77</sup> Therefore, to achieve substantive justice in custody disputes, courts need to eliminate social, cultural, and gender biases that continue to shape judicial practice.

Criticism of judicial practices regarding child protection in religious courts often arises due to weak supervision, insufficient training of judges in child psychology, and external intervention in the judicial process.<sup>78</sup> Several studies indicate a tendency for biased rulings, whether due to cultural factors or external pressures, leading to the neglect of children's rights.<sup>79</sup> Evaluations of judicial practices also highlight weak post-decision monitoring mechanisms and a lack of synergy among the courts, social services, and child protection agencies.<sup>80</sup> Research indicates that improving judges' competencies, strengthening cross-sector collaboration, and developing clear technical guidelines are urgent priorities for handling child custody disputes. Sari emphasises that judges require specialised training in child psychology, standardised procedural guidelines, and coordinated collaboration with social services and child protection institutions to ensure decisions that truly reflect the child's best interests.<sup>81</sup> Therefore, to achieve substantive justice, a judicial system reconstruction that is more adaptive, accountable, and capable of ensuring child protection in every custody dispute is essential.

#### 4. Models and Directions of Child Custody Law Reconstruction

The integration of Islamic law, children's rights, and substantive justice values serves as a strategic focal point in developing a child-custody law model that addresses contemporary needs. This integrative approach requires a re-reading of classical fiqh *hadhanah* texts to harmonize them with national norms and international principles concerning child protection.<sup>82</sup> In this context, the *best*

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<sup>77</sup> Muhammad Hafid, "Bias Sosial dan Putusan Hadhanah di Pengadilan Agama: Analisis Perspektif Keadilan Substantif," *Istinbath: Jurnal Hukum* 20, no. 3 (2021): 300–302, 304, <https://ejournal.uinbukittinggi.ac.id/index.php/istinbath/article/view/2969>.

<sup>78</sup> Yusuf Ramdani, "Kritik terhadap Pengawasan Putusan Hak Asuh Anak," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial* 10, no. 1 (2023): 22, <https://ejournal.uinib.ac.id/jurnal/index.php/almashlahah/article/view/2201>.

<sup>79</sup> Rina Aulia, "Penggunaan Sistem Informasi Digital dalam Pemantauan Putusan Hak Asuh Anak," *Jurnal Hukum dan Teknologi* 8, no. 3 (2022): 299, <https://journal.iainbengkulu.ac.id/index.php/jht/article/view/2829>.

<sup>80</sup> Rini Lestari, "Evaluasi Mekanisme Monitoring Putusan Hak Asuh Anak," *Jurnal Hukum Lex Generalis* 4, no. 2 (2023): 118, <https://jurnal.unigal.ac.id/index.php/jhlg/article/view/9834>.

<sup>81</sup> Ninis Sari, "Optimalisasi Perlindungan Anak dalam Putusan Pengadilan Agama Melalui Penguatan Kompetensi Hakim," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 166–172, <https://ejournal.uin-malang.ac.id/index.php/ahwal/article/view/17528>.

<sup>82</sup> Peter Mahmud Marzuki, *Rekonstruksi Pemikiran Hukum Indonesia* (Jakarta: Kencana, 2021), 144, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1348167>.

*interests of the child* should be the primary consideration in every court decision, without neglecting the spiritual, moral, and cultural dimensions inherent in Islamic teachings.<sup>83</sup> The concept of substantive justice requires that judicial decisions go beyond mere textual or procedural considerations and must holistically address the child's needs, psychological condition, and future.<sup>84</sup> This aligns with findings in Suryani's study, which shows that substantive justice is better able to accommodate the complexity of family and child conditions, in contrast to an approach focused on legal formalities.<sup>85</sup> The integration of these values is not only relevant in the legal domain but also functions as an essential bridge for dialogue between religious communities and the development of universal human rights and child protection values.<sup>86</sup> Therefore, the reconstruction of child custody law in Indonesia must be oriented toward more inclusive reform, integrating various legal aspects to meet children's needs optimally.

Legal and judicial reforms are urgent to ensure that Indonesia's child-custody legal system remains responsive to contemporary developments. Revisions to the Compilation of Islamic Law and the Child Protection Law, particularly to reinforce the best interests of the child principle, to establish mechanisms for monitoring post-decision custody arrangements, and to expand child participation in legal processes, should be prioritised.<sup>87</sup> Research by Ismiati indicates that a crucial step in this reform is the development of integrated technical guidelines that facilitate cross-sector collaboration among child protection agencies, psychologists, social workers, and family mediation organisations.<sup>88</sup> Strengthening judges' capacities through ongoing training in children's rights and substantive justice is also essential, ensuring that decisions are grounded in comprehensive analysis rather than merely formalistic reasoning.<sup>89</sup> Fauzi's research demonstrates that enhancing judges' competence in child psychology can lead to more responsive choices that account for the child's circumstances.<sup>90</sup> Additionally, regulatory

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<sup>83</sup> Taufik Kusnadi, *Hukum Keluarga Islam Kontemporer* (Yogyakarta: Genta Publishing, 2023), 233, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1387216>.

<sup>84</sup> Laily Salma, "Keadilan Substantif dalam Putusan Hak Asuh Anak," *Jurnal Al-Mashlahah* 10, no. 1 (2022): 166, <https://ejournal.uinib.ac.id/jurnal/index.php/almashlahah/article/view/2203>.

<sup>85</sup> Suryani, "Keadilan Substantif dalam Putusan Hakim Peradilan Agama," 66.

<sup>86</sup> Siti Khasanah, "Integrasi Nilai Hukum Islam dan Hak Anak," *Jurnal Mazahib* 21, no. 2 (2023): 29, <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/2872>.

<sup>87</sup> Muhammad Faiz, "Arah Pembaruan Regulasi Hak Asuh Anak di Indonesia," *Jurnal Hukum Lex Generalis* 5, no. 1 (2023): 95, <https://jurnal.unigal.ac.id/index.php/jhlg/article/view/11001>.

<sup>88</sup> Tuti Ismiati, "Pedoman Teknis Penanganan Hak Asuh Anak," *Jurnal Hukum dan Peradilan* 11, no. 1 (2022): 122, <https://jurnalhukumdanperadilan.org/index.php/jhp/article/view/687>.

<sup>89</sup> Eka Saadah, "Pelatihan Hakim Berbasis Hak Anak," *Jurnal Ilmiah Al-Muqaddimah* 15, no. 1 (2022): 221, <https://ejournal.unibba.ac.id/index.php/al-muqaddimah/article/view/393>.

<sup>90</sup> Fauzi, "Analisis Putusan Hakim Pengadilan Agama terhadap Sengketa Hak Asuh Anak," 85.

development can focus on establishing independent oversight bodies to monitor the enforcement of custody arrangements, prevent violations, and provide the best protection for children.<sup>91</sup> With these measures, the child-custody judicial system is expected to become more responsive, accountable, and better able to protect the child's best interests fully.

Strengthening the role of courts and legal authorities in child protection requires reforms at both the internal and external levels. Internally, religious courts can develop child-friendly service units and conduct comprehensive psychological assessments before custody decisions are made.<sup>92</sup> Research by Ridwan reveals that collaboration among law enforcement, child protection agencies, psychologists, and civil society organisations should be established as a procedural standard in every custody case.<sup>93</sup> This aims to prevent violence, neglect, or exploitation of children post-divorce. This collaboration aligns with Handayani's findings, which show that interventions from competent third parties, such as psychologists and social workers, can improve the effectiveness of court decisions.<sup>94</sup> Externally, optimising the oversight and advocacy functions of independent bodies and the monitoring by civil society are crucial to ensuring transparency, accountability, and child-friendly decision-making.<sup>95</sup> The use of digital information systems to monitor the implementation of rulings and ensure that children's rights are consistently upheld is also essential.<sup>96</sup> With these improvements, child protection in the child custody judicial process is expected to be better guaranteed and more effective.

Innovations in child custody dispute resolution models that prioritise the best interests of the child can be achieved through psychosocial-based mediation, restorative justice, and the active involvement of children in decision-making processes.<sup>97</sup> Research by Rohmawati shows that family mediation with expert psychological support and social workers can reduce conflict escalation and

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<sup>91</sup> Elmi Rosyidah, "Lembaga Pengawas dalam Perlindungan Hak Asuh Anak," *Jurnal Hukum Lex Generalis* 5, no. 2 (2021): 312, <https://jurnal.unigal.ac.id/index.php/jhlg/article/view/11020>.

<sup>92</sup> Arif Hidayat, "Unit Layanan Ramah Anak di Pengadilan Agama," *Jurnal Mazahib* 21, no. 1 (2022): 55, <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/2841>.

<sup>93</sup> Arif Ridwan, "Penguatan Peran Pengadilan dalam Perlindungan Anak," *Jurnal Al-Adalah* 20, no. 1 (2023): 78, <https://e-journal.iainkendari.ac.id/index.php/al-adalah/article/view/7085>.

<sup>94</sup> Fitri Handayani, "Optimalisasi Kolaborasi Lembaga Perlindungan Anak dan Pengadilan," *Jurnal Hukum dan Keluarga Islam* 6, no. 2 (2023): 145, <https://jurnal.ar-raniry.ac.id/index.php/jhki/article/view/14123>.

<sup>95</sup> Lestari, "Evaluasi Mekanisme Monitoring Putusan Hak Asuh Anak," 118.

<sup>96</sup> Aulia, "Penggunaan Sistem Informasi Digital dalam Pemantauan Putusan Hak Asuh Anak."

<sup>97</sup> Tio Saragih, "Inovasi Model Restorative Justice dalam Sengketa Hak Asuh Anak," *Jurnal Mazahib* 21, no. 1 (2022): 119, <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/2842>.

strengthen emotional bonds between children and parents following divorce.<sup>98</sup> The restorative justice model, which prioritises restoring relationships and the child's welfare over punishing parents, has proven effective in creating a more conducive environment for child development.<sup>99</sup> The innovation of child participation also plays a crucial role, as it allows children's voices and preferences to be heard fairly in the judicial process. Research by Fitria indicates that child participation in legal decision-making confers a sense of value and supports their emotional well-being. By involving children in decision-making, child-custody legal practices can become more responsive to their needs, fostering a more humane and child-centred approach.<sup>100</sup> Therefore, the synergy between legal innovations and the broader involvement of stakeholders, including children, is necessary to build a more just and progressive child custody legal system.

## D. CONCLUSION

This study emphasises the importance of integrating Islamic family law values, child protection principles, and substantive justice as the primary foundation for reconstructing child custody law in Indonesia. Based on a review of the literature and religious court decisions, the research shows that the best interests of the child should be the cornerstone of every custody determination, ensuring that the entire legal process protects and promotes the holistic well-being of children. While the moral and cultural values in Islamic teachings must still be considered, their application should align with the development of national norms and more progressive international standards that prioritise children's interests. This integrative approach requires collaboration among judges, law enforcement, families, and society to ensure that every decision serves the child's best interests. Therefore, a legal reconstruction grounded in the integration of religious principles, children's rights, and substantive justice will confer greater social and legal legitimacy on the resolution of child-custody disputes and serve as a model for developing an inclusive and functional family-law system.

However, the findings of this study also identify significant challenges in reconstructing child custody law. The disharmony between Islamic family law and positive law, legal gaps resulting in multiple interpretations, and the dominance of

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<sup>98</sup> Mira Rohmawati, "Mediasi Psikososial dalam Penyelesaian Sengketa Hak Asuh Anak," *Jurnal Hukum dan Peradilan* 11, no. 2 (2022): 161, <https://jurnalhukumdanperadilan.org/index.php/jhp/article/view/710>.

<sup>99</sup> Syarif Alatas, "Restorative Justice dalam Sengketa Hak Asuh Anak," *Jurnal Ilmiah Syariah* 20, no. 2 (2021): 109, <https://jurnal.stainmajene.ac.id/index.php/isy/article/view/227>.

<sup>100</sup> Dea Fitria, "Peran Mediasi dalam Penyelesaian Sengketa Hak Asuh Anak," *Jurnal Ilmiah Syariah* 21, no. 2 (2022): 59, <https://jurnal.stainmajene.ac.id/index.php/isy/article/view/253>.

social, cultural, and gender biases in religious court practices all pose significant obstacles. This reality indicates the need for more definitive and progressive regulatory reform, strengthening human resources within the judicial system, and updating dispute-resolution mechanisms to be more responsive to children's actual needs. The recommendations for reform include revising the Compilation of Islamic Law and the Child Protection Law, developing integrated technical guidelines, optimising psychosocially informed family mediation, and actively involving child protection agencies in every judicial process. Furthermore, strengthening the monitoring and evaluation of child custody rulings post-divorce is crucial to prevent violations of children's rights and ensure the sustainability of substantive protection.

Although this research provides valuable insights into the reconstruction of child custody law, several limitations warrant attention. This study is limited to a literature review and analysis of religious court decisions without direct interviews with judges or parties involved in custody disputes. Therefore, further research, including field studies involving judges, families, and relevant institutions, is necessary to deepen understanding of the dynamics of implementing legal theory in practice. Future research recommendations include further exploration of the implementation of the *best interests of the child* principle within Islamic family law, as well as the influence of local policies on the enforcement of child custody in specific regions. This research could also be expanded by examining the experiences of countries with similar legal systems to gain a more comprehensive perspective. Practically, the findings of this study can serve as a reference for policymakers, judicial authorities, and the broader public in efforts to improve child protection governance in Indonesia. With more adaptive, progressive regulations based on children's rights, it is hoped that Indonesia's family law system can become more relevant and functional, capable of addressing the challenges and demands of justice both today and in the future.

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