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RETHINKING CHILD CUSTODY (*HADANAH*) IN MODERN MUSLIM FAMILIES: BETWEEN MATERNAL PREFERENCE AND CHILD-CENTERED JUSTICE

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ABSTRACT

This study reexamines the concept of *Hadanah* in Islamic family law by highlighting the dominance of maternal preference amid changes in the structure of contemporary Muslim families. The study employs a normative-interdisciplinary approach that combines an analysis of classical fiqh, attachment theory in developmental psychology, and the framework of *maqasid al-shari'ah*. The findings indicate that the primacy of the mother in child-rearing reflects a socio-historical construction rather than an absolute normative principle. Modern psychological studies confirm that the quality of emotional bonds and the stability of care play a more decisive role than the caregiver's gender identity. Meanwhile, the *maqasid* approach opens up a more flexible space for reinterpretation by prioritizing the child's best interests as the primary orientation. This study offers a conceptual formulation of *Hadanah* based on child-centered justice, which places the child's best interests as the primary basis for determining custody. This model is expected to enrich the discourse on Islamic family law reform, making it more responsive, contextual, and oriented toward substantive justice.

Keywords : *Hadanah*; child custody; child-centered justice; *maqasid al-shari'ah*

ABSTRAK

Penelitian ini mengkaji ulang konsep *Hadanah* dalam hukum keluarga Islam dengan menyoroti dominasi *maternal preference* di tengah perubahan struktur keluarga Muslim kontemporer. Studi ini menggunakan pendekatan normatif-interdisipliner yang menggabungkan analisis fikih klasik, teori *attachment* dalam psikologi perkembangan, serta kerangka *maqasid al-shari'ah*. Temuan penelitian menunjukkan bahwa keutamaan ibu dalam pengasuhan anak lebih mencerminkan konstruksi sosial-historis daripada prinsip normatif yang bersifat absolut. Kajian psikologi modern menegaskan bahwa kualitas relasi emosional dan stabilitas pengasuhan memiliki peran yang lebih menentukan dibandingkan identitas gender pengasuh. Sementara itu, pendekatan *maqasid* membuka ruang reinterpretasi yang lebih fleksibel dengan menempatkan kemaslahatan anak sebagai orientasi utama. Penelitian ini menawarkan formulasi konseptual *Hadanah* berbasis child-centered justice, yang menempatkan kepentingan terbaik anak sebagai dasar utama dalam penentuan hak asuh. Model ini diharapkan dapat memperkaya diskursus reformasi hukum keluarga Islam yang lebih responsif, kontekstual, dan berorientasi pada keadilan substantif.

Kata kunci : *Hadanah*; hak asuh anak; keadilan yang berpusat pada anak; *maqasid al-shari'ah*

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INTRODUCTION

Social transformation in contemporary Muslim societies has shifted family structures from traditional models toward more egalitarian and dynamic configurations. Globalization, urbanization, and the increasing participation of women in the public sphere have given rise to the phenomenon of dual-income families, in which the role of caregiving is no longer exclusively attributed to the mother. This shift not only impacts gender relations within the family but also challenges normative constructions in Islamic family law, particularly regarding the concept of *Hadanah*.

On the other hand, rising divorce rates, including in Indonesia, indicate that child custody disputes have become increasingly complex and multidimensional issues. Data from Badilag indicates that the majority of divorce cases result in child custody conflicts (Effendy & MESy, 2020). This underscores that *Hadanah* can no longer be understood solely as a classical fiqh norm but rather as an interdisciplinary problem involving legal, psychological, and social justice aspects (Mahmudah, n.d.)

Normatively, classical fiqh tends to give preference to the mother in the care of young children, based on arguments of emotional closeness and nurturing capacity (al-Ghazali, 2020). However, in the modern context, this assumption is beginning to be questioned. Reality shows that parenting capacity is not always determined by gender, but rather by psychological readiness, economic stability, and the quality of the relationship with the child. This is where the tension between maternal preference and the child-centered justice approach arises.

Studies on *Hadanah* can be categorized into three major streams. *First*, classical-normative studies emphasizing the mother's superiority in child-rearing. Research such as Firdausia (2020) confirms that the Compilation of Islamic Law still reflects a bias toward maternal preference in judicial practice. However, this approach tends to be doctrinal and fails to account for contemporary social dynamics.

Second, comparative studies and family law reforms in Muslim countries. Ramadan (2002) demonstrates a shift in Sharia court rulings toward prioritizing the best interests of the child. The study by Adil & Saidon (2017) also confirms that in Malaysian practice, considerations of child welfare often override the rigidity of classical fiqh norms. Recent research has even begun to promote the concept of shared parenting as an alternative (Sudirman L., IAIN Parepare, 2023; Turnip et al., 2024)

Third, an interdisciplinary approach integrating developmental psychology and contemporary Islamic studies. Attachment theory (Ainsworth et al., 2015; Bowlby, 1980) highlights the importance of emotional bonding in child development, though it does not exclusively limit this to the mother figure. In progressive Islamic studies, Mernissi (1991) critiques gender-biased textual readings, while Al-Qaradhawi (2001)) and Muhammad (2019) emphasize the principle of *maslahah al-mahdhūn* as the primary foundation.

Nevertheless, recent literature indicates a paradigm shift toward child-centered justice, which positions the child as the primary subject, not an object of parental rights. International legal studies also reinforce this principle through the doctrine of the best interests of the child, which is now adopted in various modern legal systems.

Although the literature on *Hadanah* is quite extensive, there are several significant gaps: Dominance of the normative approach: Most research remains trapped in textual justifications for maternal preference, without testing its relevance in the context of modern families; Lack of interdisciplinary integration: Fiqh studies and psychological studies proceed in parallel but are rarely synthesized within a comprehensive analytical framework; Minimal critique of maternal preference: The literature tends to accept the mother's superiority as a normative assumption rather than as a hypothesis requiring empirical and contextual testing; The absence of a conceptual formulation of child-centered justice from an Islamic perspective: Although the concept of the best interests of the child is frequently mentioned, few studies have systematically articulated it within the framework of *maqasid al-shari'ah*.; and Limitations regarding the context of the modern Muslim family: Dynamics such as dual-earner families, co-parenting, and changing gender roles have not been adequately accommodated in studies of *Hadanah*. These gaps indicate that a conceptual reconstruction is needed that is not only normative but also contextual and grounded in the best interests of the child.

This article presents a conceptual reformulation of *Hadanah* grounded in child-centered justice within the framework of *maqasid al-shari'ah* and developmental psychology.

The novelty of this research lies in: Systematically critiquing the assumption of maternal preference in classical fiqh, rather than merely reproducing it. Integrating attachment theory with the principle of maslahah al-mahdhūn as a new normative basis; Developing a concept of *Hadanah* based on child-centered justice (child-centered *Hadanah*) that transcends the mother vs. father dichotomy; Offering a synthesis between Islamic law, psychology, and modern legal practices (co-parenting, shared custody); Thus, this article is

not merely descriptive but also offers a theoretical contribution to the renewal of Islamic family law.

Based on the above discussion, this study focuses on the following questions: How is the concept of maternal preference constructed within the concept of *Hadanah* in classical fiqh and contemporary Islamic family law practice? To what extent is developmental psychology, particularly attachment theory, relevant in evaluating this assumption?; How can the principle of maslahah al-mahdhūn be reconstructed into a child-centered justice framework within *Hadanah*?; and How can a more adaptive conceptual model of *Hadanah*, tailored to the dynamics of modern Muslim families, be formulated?

RESEARCH METHOD

This study employs a normative legal research design with an interdisciplinary orientation. The normative legal approach is used to examine the doctrinal foundation, conceptual structure, and legal reasoning underlying the notion of *Hadanah* in classical Islamic jurisprudence and contemporary Muslim family law. Rather than treating *Hadanah* merely as a fixed doctrinal rule, this study positions it as a legal concept that requires contextual reinterpretation in response to changing family structures, children's developmental needs, and contemporary standards of justice. Accordingly, the research does not rely on empirical field data, but on a systematic analysis of legal norms, scholarly interpretations, and interdisciplinary literature relevant to child custody in Muslim family contexts.

The study combines several analytical approaches. First, the conceptual approach is applied to clarify the meanings of *Hadanah*, maternal preference, *maslahah al-mahdhūn*, and child-centered justice. This approach is important for identifying the conceptual tension between the classical fiqh tendency to prioritize maternal custody and the modern legal emphasis on the best interests of the child. Second, the statutory approach is used to examine positive legal provisions governing child custody, particularly the Compilation of Islamic Law in Indonesia, national family law regulations, and child protection laws. Third, the comparative approach is employed to compare the regulation and practice of child custody in selected Muslim jurisdictions, particularly Indonesia, Malaysia, and Pakistan. These jurisdictions are selected because they represent different models of interaction between Islamic legal doctrine, statutory reform, and judicial consideration of children's welfare.

In addition, this study adopts the *maqasid al-shari'ah* approach to assess whether the concept and practice of *Hadanah* have fulfilled the higher objectives of Islamic law, especially the protection of life (*hifẓ al-nafs*), lineage (*hifẓ al-nasl*), dignity, and welfare of the child. Through this approach, *Hadanah* is not understood only as a parental right, but also as a legal and moral responsibility directed toward the realization of the child's benefit. The psychological approach is also used, particularly through attachment theory, to critically evaluate the assumption that mothers are inherently and universally the most suitable caregivers. This interdisciplinary perspective enables the study to examine maternal preference not as an absolute rule, but as a presumptive principle that must be assessed in light of the child's emotional security, developmental stability, and relational environment.

The data used in this study consist entirely of secondary data. Primary legal materials include Qur'anic verses and hadith related to child care, parental responsibility, and family protection; classical Islamic jurisprudential texts discussing *Hadanah*; statutory instruments such as the Compilation of Islamic Law, marriage law, and child protection legislation; as well as relevant court-oriented legal norms. Secondary legal materials include contemporary books, journal articles, and academic studies on Islamic family law, child custody, the best interests of the child, legal reform in Muslim countries, and developmental psychology. Tertiary materials, such as legal dictionaries, encyclopedias, and other supporting references, are used to clarify key terms and strengthen conceptual accuracy.

Data were collected through library research. The process began with the identification of relevant legal texts, classical fiqh sources, statutory regulations, and scholarly literature related to *Hadanah* and child custody. Academic sources were traced through reputable databases and indexing platforms, including Scopus, Web of Science, and Google Scholar. The literature was selected based on several criteria: its relevance to Islamic family law and child custody, its academic credibility, its contribution to conceptual or empirical debates, and its recency, particularly for contemporary studies published within the last five to ten years. Classical sources were used not for historical description alone, but as doctrinal foundations to be critically examined in relation to modern legal and psychological perspectives.

The data were analyzed qualitatively through descriptive, comparative, critical, integrative, and *maqasid*-based analysis. The descriptive-analytical stage was conducted by systematically explaining the concept of *Hadanah* in classical fiqh and modern legal frameworks. The comparative stage examined the similarities and differences between

maternal preference in classical jurisprudence and the best-interests-of-the-child principle in contemporary family law. The critical stage evaluated the normative assumption that the mother is always the most ideal caregiver by considering transformations in modern Muslim families, including changes in parental roles, divorce patterns, employment structures, and children's psychosocial needs. The integrative stage synthesized Islamic legal reasoning, attachment theory, and child-centered justice to formulate a more contextual understanding of *Hadanah*. Finally, the *maqasid al-shari'ah* analysis was used to assess whether existing custody concepts and legal practices are aligned with the fundamental objectives of Islamic law, especially the protection and welfare of the child.

The analytical framework of this study is built on the assumption that classical *Hadanah* doctrine tends to be structured around maternal preference, while contemporary family realities demand a more child-centered model of justice. The tension between inherited legal norms and modern social conditions requires a reconstruction of *Hadanah* that does not abandon Islamic legal tradition, but reorients it toward the substantive protection of the child. Therefore, this study proposes a conceptual movement from maternal preference in classical fiqh, toward psychological evaluation through attachment theory, and finally toward normative reconstruction based on *maqasid al-shari'ah*. This framework forms the basis for developing a child-centered model of *Hadanah* that is more responsive to the welfare, rights, and developmental interests of children in modern Muslim families.

Therefore, this study constructs the following framework:

Maternal preference (fikih klasik)



Evaluasi Psikolgis (Attachment Theory)



Rekontruksi Normatif (Maqasid al-Shariah)



New Model: Chil- Centered *Hadanah*

FINDINGS AND DISCUSSION

A Paradigm Shift in *Hadanah*: The Tension Between Parental Rights and the Best Interests of the Child

The concept of *Hadanah* in classical Islamic family law is understood as the obligation to care for children who are not yet capable of caring for themselves, a duty that is normatively attached to the parental structure of responsibility as the party holding authority over the child (Safii, 2025). In this framework, the mother is often positioned as the primary caregiver due to biological and emotional considerations deemed inherent in the mother child relationship (Anisa, 2025; Zuhayli, 1989). Therefore, within the classical framework, custody tends to be positioned as a right of the parents particularly the mother rather than as a right of the child themselves ((Putri et al., 2026).

This approach results in a parent-centered paradigm, where legal debates focus more on who is more entitled to the child, rather than on who is best able to meet the child's needs (Kadarisman et al., 2025). In this paradigm, the child is implicitly positioned as a passive object of protection, not as a legal subject with independent interests ((De Sanctis et al., 2025). This indicates that the classical construction of *Hadanah* is more oriented toward the stability of the family structure than toward the individual well-being of the child ((Auda, 2008).

However, in the development of modern family law, this approach has begun to face significant criticism, particularly with the emergence of the principle of the best interests of the child as the primary standard in determining custody (Putri et al., 2026). This principle asserts that all decisions concerning a child must be oriented toward the child's overall well-being, encompassing physical, psychological, social, and emotional aspects (De Sanctis et al., 2025). Thus, custody is no longer understood as an inherent right of parents, but rather as a mechanism to protect the child's interests (Hamrany & Rusydi, 2026)).

From this perspective, the child is no longer treated as an object but as a subject with the right to a nurturing environment for their growth and development (Baharudin & Nasih, 2026). This shift indicates a paradigm shift from parent-centered custody toward child-centered justice, which fundamentally changes the perspective on the legal relationship between parents and children ((Kadarisman et al., 2025)

However, this shift has not occurred without resistance. In Islamic legal studies, there is concern that a child-centered approach risks disregarding the well-established normative structures of fiqh that have been in place for centuries (De Sanctis et al., 2025). This is where

an epistemological tension arises between text-based normativity and context-based reasoning ((Auda, 2008)). Classical fiqh emphasizes legal certainty through relatively stable rules, while modern approaches emphasize flexibility to adapt to changing social conditions (Kadarisman et al., 2025)

This tension becomes even more complex when judicial practice shows that judges often deviate from the norm of maternal preference in the best interests of the child ((Nazah et al., 2025) This indicates that, in practice, the child-centered principle has begun to shift the dominance of classical norms, although it has not yet been fully formalized in Islamic legal theory (Harid & Ashufa, 2025)). In other words, there is a gap between normative doctrine and evolving judicial practice.

In this context, the *maqasid al-shari'ah* approach becomes crucial as an epistemological bridge between these two paradigms. *Maqasid* asserts that the primary purpose of Islamic law is to realize human welfare, including the child as a subject deserving of protection (Auda, 2008). Therefore, an orientation toward the best interests of the child is not a foreign concept in Islamic law, but rather an integral part of the substantive objectives of the Sharia itself (Kadarisman et al., 2025)

The *maqasid* approach also allows for the reinterpretation of classical norms without having to reject them entirely. Within this framework, maternal preference is not understood as an absolute rule, but as an instrument that can be adapted to concrete circumstances to achieve the child's best interests ((Turnip et al., 2024)). Thus, Islamic law maintains its normative legitimacy while opening space for adaptation to social change.

Furthermore, the integration of *maqasid* and the principle of the best interests of the child yields a model of justice that is substantive, not merely formal (De Sanctis et al., 2025)). Justice is no longer measured by conformity to the text alone, but by the extent to which legal decisions can provide tangible benefits for the child (Baharudin & Nasih, 2026)). This indicates that Islamic family law has the potential to evolve into a more responsive and humanistic system.

Thus, the transformation from parent-centered custody toward child-centered justice is not a form of deconstruction of Islamic law, but rather a normative reinterpretation that

Maternal Preference in Classical Islamic Jurisprudence: Legitimacy, Issues, and Feminist Criticism

In classical Islamic jurisprudence, maternal preference is a principle that gives priority to the mother in child-rearing, particularly during early childhood, based on biological,

psychological, and social considerations deemed inherent in women as mothers (Qudamah et al., 1997; Safii, 2025). This principle developed within the framework of classical Islamic law, which views the mother's physical and emotional closeness as the primary factor in ensuring the child's survival and early development (Bowlby, 1973; Kadarisman et al., 2025). Within this framework, the mother is positioned as the primary caregiver because she is deemed to possess a natural capacity to meet the child's emotional needs, particularly during the pre-mumayyiz stage (Ainsworth et al., 2015; Nazah & Muslimin, 2024). Therefore, in many contemporary Islamic family law systems, including in Indonesia, maternal preference remains upheld as a general norm that grants automatic priority to the mother in custody cases (Anisa, 2025).

However, the normative legitimacy of maternal preference cannot be separated from the historical and social context in which classical fiqh was constructed, which tends to reflect a patriarchal social structure with rigid gender role divisions between men and women ((Anisa, 2025; Mernissi, 1991). In classical society, women were placed in the domestic sphere as the primary caregivers, while men were in the public sphere as breadwinners; thus, the preference for the mother is more a reflection of that social structure than a universal theological principle (Anisa, 2025; Auda, 2008)). Thus, maternal preference can be understood as a contextual historical product, not as an absolute norm applicable across space and time (Safii & Kaur, 2025; Turnip et al., 2024a).

From a legal sociology perspective, the maternal preference approach reveals a structural bias that assumes women are inherently more competent in child-rearing than men, without accounting for individual variability and social change (Anisa, 2025; Bornatici & Heers, 2020). This assumption becomes problematic in the context of modern families, where gender role divisions are no longer static and women are not always confined to domestic roles (Bornatici & Heers, 2020; Safii, 2025)). Therefore, maintaining an absolute maternal preference risk ignoring the evolving social reality and hindering the law's adaptation to such changes (Kadarisman et al., 2025; Nazah & Muslimin, 2024)).

In feminist scholarship, maternal preference presents significant ambivalence because, on the one hand, it legitimizes women's roles in caregiving, but on the other hand, it reinforces gender stereotypes that limit women's mobility in the public sphere (Mernissi, 1991; Wadud, 1999). Feminist legal theory critiques that the positioning of women as primary caregivers is often not a form of recognition, but rather a form of domestication that reinforces women's subordination within the social structure (Mernissi, 1991; Wadud, 1999)).

Thus, maternal preference is not merely a family law issue but also part of a broader discourse on power relations and gender construction in society (Anisa, 2025; Bornatici & Heers, 2020).

Furthermore, feminist critiques highlight that maternal preference indirectly places an disproportionate burden of caregiving on women, thereby creating the phenomenon of the "double burden" between domestic and professional work (Bornatici & Heers, 2020; Turnip et al., 2024). In this context, maternal preference actually contributes to the reproduction of gender inequality by disregarding the potential and role of fathers in child-rearing (Pleck & Hofferth, 2008; Turnip et al., 2024)). This critique suggests that an approach overly focused on mothers can hinder the creation of a more egalitarian and collaborative parenting model in modern families (Kadarisman et al., 2025).

From an empirical perspective, recent research in developmental psychology indicates that the quality of caregiving is not determined by the caregiver's gender, but rather by factors such as emotional stability, sensitivity, and consistency in responding to a child's needs over time (Zhao et al., 2026). Family-based studies and social dynamics also confirm that emotional support and the quality of interactions within the family environment play a more significant role in children's development than the caregiver's gender identity ((Corral et al., 2026; Zhao et al., 2026). In this context, these empirical findings indicate that normative assumptions regarding the superiority of mothers in child-rearing do not have a fully robust scientific basis in contemporary research.

Furthermore, recent research indicates that children are capable of forming secure attachments with various caregivers, including fathers, provided there is responsive, consistent, and ongoing interaction (Honey et al., 2026; Zhao et al., 2026). Studies on parental alienation behavior also indicate that the quality of the relationship and emotional involvement are more decisive factors than formal caregiving structures or the caregiver's gender (Hine et al., 2026; Honey et al., 2026). This reinforces the argument that a maternal preference approach based on gender assumptions is no longer sufficient to explain the complexities of parenting in modern families (Corral et al., 2026)

Furthermore, research on children's adaptation in divorce situations indicates that the primary factors influencing children's well-being are the level of conflict between parents and the quality of interpersonal relationships within the family (Hamrany & Rusydi, 2026)). Studies within the context of family law also indicate that the "best interests of the child" approach is more effective when considering relational and psychosocial variables compared

to a gender-based approach alone (Noria, 2025)). Thus, the maternal preference approach risks overlooking empirical factors that are demonstrably more determinative of child well-being (Hine et al., 2026)).

However, completely rejecting maternal preference also presents its own challenges, as research continues to demonstrate the presence of strong emotional and relational dimensions in the mother-child relationship, particularly during the early stages of (Zhao et al., 2026). In this context, the intensity of early interactions and high emotional closeness often serve as critical factors in the development of a child's psychological stability (Corral et al., 2026). Therefore, the complete elimination of maternal preference risks overlooking early developmental dimensions that retain empirical relevance (Hine et al., 2026)).

Within this framework, a more moderate approach emerges through a condition-based evaluative model, in which preference for the mother is not absolute but can be assessed based on actual capacity to meet the child's needs (Noria, 2025)). This approach aligns with modern family law developments that emphasize flexibility and contextual assessment in custody determinations (Hamrany & Rusydi, 2026). Thus, maternal preference is not eliminated but reformulated within a more adaptive and evidence-based framework (Hine et al., 2026).

A synthesis of these various findings indicates that maternal preference cannot be maintained as a sole principle in child custody, but must be situated within a multidimensional evaluation framework that simultaneously considers psychological, social, and relational factors (Corral et al., 2026; Honey et al., 2026). In this context, the child-centered justice approach becomes more relevant as it is capable of integrating various empirical variables in determining the best interests of the child (Noria, 2025)). Therefore, the resulting position is a hybrid approach that acknowledges the mother's role but does not make it the sole standard in child-rearing (Hine et al., 2026; Zhao et al., 2026)).

Ultimately, the reconstruction of maternal preference from an empirical perspective reflects a paradigm shift from a gender-based approach toward an approach grounded in the child's capacity and well-being (Corral et al., 2026). This shift strengthens the legitimacy of the child-centered approach in family law and opens space for the development of a legal system that is more responsive to the dynamics of modern families (Hamrany & Rusydi, 2026)).

Attachment Theory: Between Justification and Deconstruction of Maternal Dominance

Classical attachment theory is often used as a psychological basis to support the argument for maternal preference, particularly through the idea that the mother serves as the primary attachment figure for the child from the earliest stages of life (Bowlby, 1980).

In its original formulation, this theory asserts that secure emotional attachment between the child and the primary caregiver serves as a crucial foundation for the child's psychosocial development, including emotional regulation and the formation of self-identity (Bowlby, 1973)).

This argument was subsequently adopted in various studies of Islamic family law as scientific justification for prioritizing the mother in child-rearing (Safii, 2025)).

In religious court practice, this justification is even frequently used as an implicit consideration in awarding custody to the mother without a thorough evaluation of her actual parenting capacity (Nazah & Muslimin, 2024)).

However, developments in contemporary psychological research indicate that this interpretation tends to be reductionist because it assumes that attachment is formed solely through the mother-child relationship (Cassidy & Shaver, 1999)).

Recent research based on systematic reviews indicates that the attachment figure need not be the mother, but rather anyone capable of providing consistent and responsive care ((Honey et al., 2026)).

Empirical studies also confirm that children can form secure attachments with their fathers when there is intense and high-quality interaction (Lamb, 2010). Furthermore, research on children's adaptation following divorce indicates that the quality of the parent-child relationship is more determinative than the caregiver's identity (Corral et al., 2026). This finding directly deconstructs the assumption that mothers are inherently superior in fostering emotional attachment (Pleck & Hofferth, 2008)).

At this point, an epistemological contradiction emerges between classical fiqh and modern psychology, where fiqh employs a gender-based normative approach, while psychology adopts a relationship-based empirical approach (Anisa, 2025)).

This contradiction highlights the tension between tradition-based legal constructs and evidence-based scientific findings ((Kadarisman et al., 2025)).

From a critical perspective, the use of attachment theory to support maternal preference can be categorized as a form of epistemic reduction of the theory's complexity ((Auda, 2008)

This approach tends to selectively adopt parts of the theory that support fiqh norms without considering subsequent developments in the field of psychology (Turnip et al., 2024)

From a feminist perspective, the construction of maternal dominance supported by psychological narratives actually reinforces the stereotype that women are natural caregivers (Mernissi, 1991)). Meanwhile, men are indirectly positioned as secondary parties in parenting, which contributes to the marginalization of the father's role (Bornatici & Heers, 2020))
In fact, contemporary research indicates that fathers' involvement in caregiving has a significant impact on children's social and emotional development (Sarkadi et al., 2008). This suggests that attachment theory can be reinterpreted as a foundation for supporting more egalitarian parenting ((Lamb, 2010)).

Thus, there has been a shift from a mother-centered attachment approach toward a caregiver-centered attachment approach. However, completely dismissing the mother's role within the attachment framework is also inappropriate, as biological factors such as pregnancy and breastfeeding continue to influence early bonding (Hrdy, 2011)).

Child development research also indicates that the early relationship with the mother retains special significance in the formation of a sense of security. Therefore, the mother's advantage must be understood as a situational advantage that cannot be universally generalized (Kadarisman et al., 2025).

This approach opens the door to reconciling classical Islamic jurisprudence (fiqh) and modern psychology through the concept of conditional priority (Nazah et al., 2025).

Within this framework, the mother remains the primary caregiver as long as she meets the indicators of optimal caregiving quality (Turnip et al., 2024)). Conversely, if the father or another party is better able to meet the child's emotional needs, then the principle of the child's best interests must take precedence (Noria, 2025)).

Thus, attachment theory no longer functions as the sole justification for maternal preference, but rather as an evaluative tool in determining the most suitable caregiver (Corral et al., 2026)

A synthesis of this dialogue yields a new paradigm in *Hadanah* grounded in the quality of the relationship and parenting capacity, rather than gender identity (Safii, 2025)). This

approach emphasizes that justice in child custody must be substantive and contextual, not merely formalistic and normative ((Auda, 2008)).

The Role of Fathers in Modern Parenting: A Correction to Fiqh Bias

Changes in contemporary family structures indicate that fathers' involvement in child-rearing has increased significantly alongside global social and economic transformations (Bornatici & Heers, 2020). The phenomenon of dual-earner families has blurred the boundaries between the domestic and public spheres, so that fathers no longer function solely as breadwinners but also as key actors in child-rearing (Pleck & Hofferth, 2008). Cross-national research indicates that fathers' involvement positively contributes to children's cognitive, emotional, and social development (Arianti et al., 2025)). Recent psychological studies also confirm that a responsive father's presence can enhance a child's emotional stability and reduce the risk of maladaptation in families experiencing conflict (Corral et al., 2026)). However, Islamic family law frameworks, still influenced by the principle of maternal preference, tend to position fathers as secondary parties in child-rearing (Anisa, 2025). In religious court practice, this tendency is evident in the dominance of awarding custody to the mother even when the father possesses equivalent parenting capacity (Nazah et al., 2025)). This situation highlights a tension between a society that is becoming increasingly egalitarian and legal norms still rooted in traditional role division (Safii, 2025).

From a feminist perspective, increased fatherly involvement in child-rearing is viewed as a strategic step toward deconstructing gender-based division of labor within the family (Mernissi, 1991). A more equitable distribution of child-rearing responsibilities has proven effective in reducing the domestic burden on women, a burden long legitimized by patriarchal social structures (Bornatici & Heers, 2020). Furthermore, fathers' involvement contributes to the formation of more egalitarian and participatory family relationships between both parents and children (Lamb, 2010)). In this context, parenting is no longer understood as an exclusive domain of women but as a collective responsibility based on cooperation (Pleck & Hofferth, 2008)). However, feminist critiques also highlight that classical Islamic jurisprudence historically limited the father's role to the domestic sphere, thereby creating structural biases in custody determinations (Anisa, 2025). Therefore, a reinterpretation of the concept of *Hadanah* is essential to accommodate changing gender relations within modern Muslim families (Safii, 2025)).

Nevertheless, affirming the father's role cannot be generalized, as parenting capacity remains individual and contextual (Arianti et al., 2025)). Psychological research indicates that

the quality of parenting is more determined by emotional stability, consistency in interaction, and responsiveness to the child's needs than by gender identity alone (Bowlby, 1980). In some cases, a father's lack of emotional or social readiness can actually have a negative impact on a child's development (Corral et al., 2026)). Therefore, a capacity-based approach is more relevant in determining custody than a gender-based approach (Kadarisman et al., 2025). This approach emphasizes that both fathers and mothers have equal opportunities as long as they are able to optimally meet the child's physical, emotional, and social needs (Auda, 2008). Thus, the role of the father in modern parenting is not only a correction to classical fiqh biases but also part of a paradigm shift toward child-centered justice (Noria, 2025)).

***Maqasid al-shari'ah*: A Normative Resolution to Paradigmatic Tensions**

The *maqasid al-shari'ah* approach is understood as a normative framework capable of bridging the tension between the rigidity of classical fiqh and the contextual demands of modern law through an orientation toward the teleological objectives of Islamic law (Auda et al., 2008). From this perspective, law is no longer positioned merely as a collection of normative rules, but as an instrument to realize human welfare, including the protection of children as a vulnerable group (Aljurjani et al., 2025)). A number of contemporary studies indicate that *maqasid* provide methodological flexibility that allows for the reinterpretation of Islamic family law without losing its normative legitimacy (Safii, 2025). Thus, *maqasid* function not only as philosophical principles but also as operational tools in responding to modern social dynamics (Auda, 2008)).

The integration of *maqasid al-shari'ah* and the principle of the best interests of the child demonstrates a convergence between Islamic law and international law in prioritizing the child's well-being (Kadarisman et al., 2025)). Recent research confirms that this approach can produce a more comprehensive model for determining custody because it simultaneously integrates normative, psychological, and social dimensions (Nazah et al., 2025)). In judicial practice, the application of this principle allows judges to avoid being confined to the literal text of the rules but to consider the child's concrete circumstances holistically (Hamrany & Rusydi, 2026)). Thus, *maqasid* serves as an epistemological bridge that integrates traditional values with contemporary needs in Islamic family law (Turnip et al., 2024)).

Furthermore, *maqasid al-shari'ah* acts as a synthetic mechanism that harmonizes classical fiqh norms, findings from developmental psychology, and demands for social justice within a unified analytical framework (Auda et al., 2008). This approach emphasizes that the primary indicator in determining *Hadanah* is no longer based on gender or normative

hierarchy, but rather on the actual ability to ensure the child's overall well-being (Corral et al., 2026). Thus, justice in *Hadanah* cannot be understood as formal justice oriented toward compliance with texts, but as substantive justice focused on tangible outcomes for the child (Noria, 2025)). At this point, *maqasid* becomes the conceptual foundation for the emergence of a child-centered justice paradigm in contemporary Islamic family law that is more adaptive and just (Kadarisman et al., 2025)).

The maqasid al-shari'ah approach provides a crucial normative framework for resolving the paradigmatic tension between classical fiqh and contemporary child custody discourse. In classical Islamic jurisprudence, *Hadanah* is often formulated through relatively stable legal categories, including the prioritization of the mother as the primary caregiver during the early stages of childhood. This formulation reflects the socio-legal context in which classical fiqh was developed, where gender roles were more clearly divided between domestic caregiving and public economic responsibility. However, contemporary Muslim families are marked by more fluid parental roles, increased paternal involvement, dual-income households, and changing social expectations regarding parenting. These transformations create a need for a legal framework that is normatively rooted in Islamic tradition while remaining responsive to the concrete realities of children's lives.

Within this context, maqasid al-shari'ah enables Islamic family law to move beyond a purely formalistic understanding of custody. The purpose of Islamic law is not merely to preserve legal forms, but to realize benefit, prevent harm, and protect essential human interests. In the case of *Hadanah*, this means that the central concern of the law should not be limited to determining which parent has a stronger legal claim, but rather identifying which caregiving arrangement most effectively secures the child's physical safety, emotional stability, moral development, and long-term welfare. Therefore, the child's best interests can be understood as part of the broader maqasid orientation, especially in relation to *hifẓ al-nafs* or the protection of life, *hifẓ al-nasl* or the protection of lineage and family continuity, and the preservation of dignity and psychological well-being.

The maqasid framework also provides a methodological bridge between inherited fiqh norms and contemporary legal reasoning. It does not require the rejection of classical fiqh, but invites a re-reading of classical rules in light of their underlying purposes. Maternal preference, for example, may be understood as a legal presumption grounded in the belief that the mother is often better positioned to provide care during early childhood. However, from a maqasid perspective, such preference cannot be treated as an absolute and

unchangeable rule when concrete circumstances show that another caregiving arrangement would better serve the child's welfare. In this sense, maqasid transforms maternal preference from a rigid rule into a conditional and evaluative principle.

This approach is particularly important because the classical mother-centered construction of *Hadanah* may, in some cases, no longer correspond to the actual needs of children in contemporary families. Modern psychological studies emphasize that children's well-being is strongly shaped by the quality of emotional attachment, consistency of care, parental responsiveness, and a stable relational environment. These factors are not inherently attached to one gender. A mother may indeed be the most suitable caregiver in many cases, especially when she provides emotional security, stability, and continuous care. However, a father, grandparent, or another responsible caregiver may also fulfill these conditions when they demonstrate the ability to protect the child's welfare. Maqasid allows these empirical realities to be considered without detaching custody law from Islamic normative foundations.

The integration between maqasid al-shari'ah and the principle of the best interests of the child therefore produces a more comprehensive framework for *Hadanah*. It combines three important dimensions: the doctrinal legitimacy of Islamic law, the empirical insights of developmental psychology, and the ethical demand for substantive justice. Through this integration, *Hadanah* is no longer understood merely as a dispute over parental entitlement, but as a legal mechanism for safeguarding the child's future. The question is no longer simply whether the mother or father has priority, but whether the chosen custody arrangement can best protect the child from harm, provide emotional security, maintain meaningful family relationships, and support healthy development.

In this regard, maqasid al-shari'ah functions as a synthesizing mechanism. It integrates classical fiqh norms by preserving the moral seriousness of parental responsibility; it accommodates psychological findings by recognizing the importance of attachment, stability, and relational quality; and it responds to social justice concerns by rejecting gender-based assumptions that may produce inequality or overlook the child's actual condition. This synthesis demonstrates that Islamic family law possesses internal resources for renewal. Its adaptability does not emerge from abandoning tradition, but from recovering the purposive logic embedded within the tradition itself.

The maqasid-based approach also clarifies that justice in *Hadanah* should not be reduced to formal justice. Formal justice is concerned mainly with conformity to established legal categories, such as whether a child is below a certain age or whether the mother has a

presumptive right to custody. While such categories may provide legal certainty, they are insufficient when applied mechanically to complex family situations. Substantive justice, by contrast, evaluates whether a legal decision produces real benefit for the child. It asks whether the decision protects the child's body, emotions, education, religious upbringing, dignity, and social future. In child custody cases, substantive justice is therefore more consistent with the maqasid orientation because it prioritizes the lived welfare of the child over formal parental hierarchy.

Accordingly, maqasid al-shari'ah offers a normative resolution to the tension between maternal preference and child-centered justice. It affirms that the mother's role remains highly significant, especially when she provides the most stable and nurturing environment. At the same time, it prevents this preference from becoming a gender-based absolutism that neglects the father's role or ignores the actual circumstances of the child. This balanced position enables Islamic family law to remain faithful to its normative identity while becoming more responsive to contemporary social realities.

Theoretical Synthesis: Toward a Child-Centered Model of *Hadanah*

Based on the preceding analysis, this study proposes a child-centered model of *Hadanah* as a conceptual reconstruction of Islamic child custody law. This model is built upon the assumption that the child must be positioned as the primary legal and moral subject in custody determination. In classical fiqh, the discourse of *Hadanah* often revolves around the question of who is more entitled to custody. In the proposed model, the central question shifts toward who is most capable of ensuring the child's well-being. This shift does not eliminate parental rights, but places those rights within the broader framework of parental responsibility and child protection.

The *first* element of this model is the reformulation of maternal preference. Maternal preference should not be rejected entirely, because it contains important historical, emotional, and developmental considerations. In many cases, mothers may still represent the most stable source of early care, particularly when emotional attachment and daily caregiving have been strongly established. However, this preference must be understood as conditional rather than absolute. It should operate as an initial presumption that remains open to evaluation. When the mother demonstrates adequate caregiving capacity, emotional stability, and commitment to the child's welfare, her priority may be maintained. Conversely, when

the father or another caregiver can better secure the child's welfare, the principle of child-centered justice requires that the custody decision be adjusted accordingly.

The *second* element is the recognition of the father as a key actor in child-rearing. Classical fiqh often associates the father with guardianship, financial responsibility, and authority, while caregiving is more closely associated with the mother. Contemporary family realities challenge this rigid separation. Fathers may now participate directly in emotional care, educational support, religious formation, and daily nurturing. Therefore, a child-centered *Hadanah* model must acknowledge that fatherhood is not limited to economic provision. The father's involvement may become a vital factor in ensuring the child's psychological security and social development. However, this recognition must also remain evaluative: the father's role is not affirmed merely because he is the father, but because he demonstrates concrete parenting capacity.

The *third* element is the use of developmental psychology as an evaluative tool. Attachment theory, when properly understood, does not support an automatic preference for one gender. Rather, it emphasizes the importance of secure emotional bonds between the child and the caregiver. The most relevant indicators are responsiveness, consistency, sensitivity, emotional availability, and the ability to provide a stable environment. In the context of *Hadanah*, attachment theory can help judges, scholars, and policymakers evaluate the real quality of the child-caregiver relationship. This makes custody determination more evidence-sensitive and prevents the law from relying solely on abstract assumptions about gender.

The *fourth* element is maqasid al-shari'ah as the normative justification of the model. Psychology may explain what children need for healthy development, but maqasid provides the Islamic legal foundation for why those needs must be prioritized. Through maqasid, the child's best interests are not treated as an external concept borrowed from modern legal discourse, but as an expression of Islamic law's own commitment to welfare, protection, and justice. In this framework, *maslahah al-mahdhūn* becomes the central criterion for determining custody. The best custody arrangement is the one that most effectively protects the child's life, lineage, dignity, emotional security, moral formation, and future well-being.

The proposed model may therefore be described as a movement from gender-based custody toward capacity-based and welfare-oriented custody. Its conceptual structure can be summarized as follows:

Component	Classical Orientation	Reconstructed Orientation

Maternal preference	Mother as presumptive primary caregiver	Mother's priority is conditional and evaluative
Father's role	Father as guardian and provider	Father as possible active caregiver
Attachment theory	Used to justify maternal dominance	Used to assess quality of caregiving relationships
Maqasid al-shari'ah	General normative principle	Legal foundation for child-centered justice
Child's position	Object of parental rights	Subject of welfare, protection, and justice
Custody standard	Gender-based priority	Best interests and caregiving capacity

This model does not aim to secularize Islamic family law or replace fiqh with modern psychology. Instead, it proposes an integrative model in which fiqh, psychology, and maqasid interact critically. Classical fiqh provides the normative heritage, psychology provides empirical insight into child development, and maqasid supplies the teleological framework that connects legal rules with their ethical purposes. Through this synthesis, Islamic family law can respond to social change without losing its doctrinal identity.

The child-centered *Hadanah* model also has practical implications for judicial reasoning. Judges should not merely ask whether the child is below a certain age or whether the mother has presumptive priority. They should also examine the child's emotional attachment, the caregiving history of each parent, the stability of the living environment, the ability of each parent to support education and religious development, the risk of parental conflict, and the child's overall psychosocial condition. Such an approach enables custody decisions to be more contextual, humane, and aligned with the maqasid orientation of protecting vulnerable individuals.

Ultimately, the theoretical synthesis developed in this study demonstrates that the reformulation of *Hadanah* is not a departure from Islamic law, but a deepening of its ethical objectives. Maternal preference remains meaningful, but it must be subordinated to the child's welfare. The father's role must be recognized, but only insofar as it contributes to the child's best interests. Psychology must be used not as a replacement for fiqh, but as an evaluative instrument. Maqasid must function not only as abstract theory, but as a normative guide for producing substantive justice. Through this framework, *Hadanah* can be reconstructed as a child-centered legal concept that is adaptive, integrative, and faithful to the higher purposes of Islamic law.

The reconstruction of *Hadanah* through a child-centered maqasid framework confirms that Islamic family law has the capacity to respond to contemporary transformations without losing its normative foundation. The tension between maternal preference and child-centered justice should not be understood as a contradiction between tradition and modernity, but as an invitation to reinterpret legal norms in light of their higher objectives. In this sense, the best interests of the child are not external to Islamic law; rather, they represent the substantive expression of *maslahah al-mahdhūn*. Therefore, a maqasid-based child-centered *Hadanah* model offers a more balanced framework: it respects classical fiqh, incorporates psychological evidence, recognizes the changing roles of mothers and fathers, and places the child's welfare as the ultimate criterion of justice.

CONCLUSION

This study confirms that the main problem with the concept of *Hadanah* does not lie in the absence of norms, but rather in how it is understood and applied within an ever-changing social context. Maternal preference, as a pillar of classical fiqh, cannot be upheld as an absolute principle, as it reflects historical social constructs rather than definitive theological rulings. In the dynamics of the modern Muslim family, characterized by shifting gender roles and increased paternal involvement, a gender-based approach becomes inadequate for ensuring the best interests of the child.

A dialogue between classical fiqh, developmental psychology, and contemporary theories of justice reveals an epistemological tension. Attachment theory emphasizes the quality of the relationship, not gender, while feminist critiques reveal that maternal preference has the potential to reproduce gender inequality. This tension underscores the need for a more contextual conceptual reconstruction.

In this regard, *maqasid al-shari'ah* offers a normative framework capable of bridging these contradictions. By prioritizing public interest as the primary goal, *maqasid* facilitates a shift from a formalistic approach toward child-centered justice. This study contributes by formulating a *maqasid*-based, child-centered *Hadanah* as a model that is more adaptive, integrative, and oriented toward the child's actual well-being.

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