

RECONSTRUCTING JUDICIAL REASONING IN *HADHANAH* DISPUTES: A LEGAL-PHILOSOPHICAL EVALUATION MODEL BASED ON THE BEST INTEREST OF THE CHILD

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ABSTRACT

Hadhanah disputes require judges to reconcile Islamic family law, child protection norms, and the concrete interests of children. Existing studies predominantly examine custody rights, child protection, or gender justice, while insufficient attention has been given to evaluating the quality of judicial reasoning that constructs the best interests of the child. This study aims to develop a legal-philosophical model for evaluating judicial reasoning in *hadhanah* disputes. Employing normative legal research through statutory, conceptual, case, and legal-philosophical approaches, the study analyzes the Mempawah Religious Court Decision No. 354/Pdt.G/2024/PA.Mpw., Pontianak Religious High Court Decision No. 9/Pdt.G/2025/PTA.Ptk., and Supreme Court Decision No. 563 K/AG/2025. The findings show that judicial reasoning has a normative and philosophical basis, particularly in incorporating *ḥifẓ al-dīn* as an element of the child's best interests. However, its adequacy depends on whether religious considerations are connected to the child's concrete condition and proportionately weighed against psychological, educational, health, social, caregiving stability, and emotional interests. The study proposes a Judicial Reasoning Evaluation Model comprising five substantive parameters and five analytical stages. The model contributes an evaluative framework for assessing the quality of judicial argumentation and advancing substantive, child-centered justice in Islamic family law.

Keywords: *Judicial Reasoning; Hadhanah; Best Interests of the Child; Legal Philosophy; Substantive Justice; Islamic Family Law*

ABSTRACT

Sengketa *hadhanah* menuntut hakim untuk mengharmoniskan hukum keluarga Islam, norma perlindungan anak, dan kepentingan konkret anak. Kajian terdahulu lebih banyak membahas hak pengasuhan, perlindungan anak, atau keadilan gender, sementara perhatian terhadap evaluasi kualitas penalaran yudisial dalam mengonstruksi kepentingan terbaik anak masih terbatas. Penelitian ini bertujuan mengembangkan model filosofis-yuridis untuk mengevaluasi penalaran yudisial hakim dalam sengketa *hadhanah*. Penelitian menggunakan metode yuridis normatif melalui pendekatan perundang-undangan, konseptual, kasus, dan filsafat hukum dengan menganalisis Putusan Pengadilan Agama Mempawah Nomor 354/Pdt.G/2024/PA.Mpw., Putusan Pengadilan Tinggi Agama Pontianak Nomor 9/Pdt.G/2025/PTA.Ptk., dan Putusan Mahkamah Agung Nomor 563 K/AG/2025. Hasil penelitian menunjukkan bahwa penalaran yudisial hakim memiliki landasan normatif dan filosofis, khususnya dengan menempatkan *ḥifẓ al-dīn* sebagai salah satu unsur kepentingan terbaik anak. Namun, kecukupan penalaran tersebut bergantung pada kemampuan hakim menghubungkan pertimbangan keagamaan dengan kondisi konkret anak serta menimbangkannya secara proporsional dengan kepentingan psikologis, pendidikan, kesehatan, sosial, stabilitas pengasuhan, dan hubungan emosional anak. Penelitian ini menawarkan Model Evaluasi Penalaran Yudisial Berbasis Kepentingan Terbaik Anak yang terdiri atas lima parameter substantif dan lima tahapan analitis. Model tersebut memberikan kerangka evaluatif untuk menilai kualitas argumentasi yudisial sekaligus mendorong terwujudnya keadilan substantif dan berorientasi pada anak dalam hukum keluarga Islam.

Kata Kunci: *Penalaran Yudisial; Hadhanah; Kepentingan Terbaik Anak; Filsafat Hukum; Keadilan Substantif; Hukum Keluarga Islam.*

INTRODUCTION

Child custody disputes or *hadhanah* are one of the most complex family law issues in the practice of religious justice. The complexity lies not only in the conflict of interest between the father and mother after divorce, but also in the position of the child as a legal subject whose rights must be fully protected. In many divorce cases, custody struggles are often positioned as a continuation of marital conflict, even though philosophically, the law should not make children the object of a battle for parental interests. Children must be placed at the center of legal, moral, and humanitarian considerations.

Normatively, Islamic law recognizes the concept of *hadhanah* as the maintenance, nurturing, education, and protection of children who are not able to take care of themselves. In the Compilation of Islamic Law, the right to maintain a child who has not yet *mumayyiz* or under the age of 12 years is in principle held by his mother, while the child who has *mumayyiz* be given the opportunity to choose between his father or mother as the holder of the maintenance right; Maintenance costs remain the father's liability. This rule is often used as a preliminary reference by judges in child custody cases in the Religious Court. However, these norms should not be understood rigidly, because in judicial practice, moral, psychological, economic, social environment, and parenting experiences must also be considered. The Sengeti Religious Court article explains that Article 105 of the KHI contains the provision that children have not yet *mumayyiz* or under the age of 12 being in the custody of the mother, but there is debate about the limits *mumayyiz* and its application still leaves room for interpretation in legal practice. Korik Agustian, "An Analytical Review of Article 105 of the Compilation of Islamic Law on the Right of *Hadhanah* and the Age Limit of *Mumayyiz*," Sengeti's Religious Court, 2022, <https://pa-sengeti.go.id/artikel/2341-tinjauan-analisis-pasal-105-kompilasi-hukum-islam-tentang-hak-hadhanah-dan-batasan-umur-mumayyiz-korik-agustian-s-ag-m-ag>.

The main issue in *hadhanah disputes* is how the judge balances between the legal text, religious values, social reality, and children's rights. On the one hand, Islamic family law gives special priority to mothers, especially for children who are not *mumayyiz*. On the other hand, the development of child protection law requires that every decision related to the child is based on the principle of the best *interest of the child*. This principle requires judges to not only question "who has the most right to care for a child?", but "in whose hands is the right to life, growth and development, education, health, safety, and psychological well-being of the child most guaranteed?". This shift in question indicates that *hadhanah disputes* must be

understood through the paradigm of child protection, not the paradigm of victory of one parent.

Based on data from the Indonesian Child Protection Commission (KPAI), there were 2,031 cases of child rights violations with 2,063 children as victims during 2025. The data shows an increase compared to the previous year, around 2-3 percent. The data from KPAI shows that 9% of biological fathers and 8.2% of biological mothers are recorded as perpetrators of violations of children's rights. The most complained about types of violations come from the family environment and alternative parenting, this shows the weakness of the childcare system at the family level (*Data on Child Rights Violations Cases in 2025*, 2026).

Within the framework of international law, the principle of *the best interest of the child* (best interests for the child) is based on the Convention on the Rights of the Child. Article 3 paragraph (1) of the convention states that in every decision or action concerning children, whether made by social welfare institutions, courts, administrative officials, or legislative bodies, the best interests of children must be placed as the most important consideration. The UN Committee on the Rights of the Child also affirms that this principle has three dimensions, namely as a substantive right, an interpretive legal principle, and procedural rules in every decision that affects the child (Nations, 2013). Indonesia itself has ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990, so that this principle is part of the national legal commitment to child protection (Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, 2014).

In *badbanah disputes*, there is a conflict between legal certainty and substantive justice. Legal certainty can be seen in the formulation of Article 105 of the KHI which provides guidelines on the parenting of unmarried children. However, substantive justice requires judges to consider the specific circumstances of the child and the parent. For example, even if the child is not yet 12 years old, custody should not necessarily be handed over to the mother if it is proven that the mother cannot ensure the safety, education, or psychological development of the child. On the other hand, fathers cannot claim custody based on economic aspects, because childcare is related to more than material sustenance, but also affection, emotional closeness, environmental stability, and guarantees of protection from violence. From the perspective of legal philosophy, this issue can be linked to three basic values of law, namely justice, certainty, and utility. Legal certainty is needed so that the judge has a normative reference in deciding the case. Justice is needed so that the verdict is not mechanical and does not sacrifice the rights of children for the sake of normative formality.

This is where the principle *of the best interest of the child* plays a role as a link between positive law, Islamic values, and the reality of humanity.

Based on a review of previous literature (*state of the art*), there are a number of relevant studies. *First*, studies show that religious justice practices have a significant role in protecting the rights of women and children, especially in divorce and childcare cases. This study reveals that the Religious Court functions not only as a settlement of domestic disputes, but also as an institution that protects human rights in the family field. Therefore, the quality of the judge's consideration in the case *hadhanah* greatly affects whether the child is considered a protected subject or only as a legal consequence of his parents' divorce (Suadi, 2018). *Second*, other studies have shown that dispute resolution *hadhanah* does not always occur in formal litigation spaces, but is also influenced by customary law, Islamic law, and the social context of society. This study is about the customary law approach in disputes *hadhanah* in Aceh which shows that the success of dispute resolution is not only measured by the existence of a decision or agreement, but the extent to which children can maintain healthy emotional, social, and spiritual relationships with their parents (Nasution & Nasution, 2021). *Third*, studies on child custody from a gender justice perspective show that child custody provisions that are automatically given to mothers can be seen as problematic if they do not consider aspects of morality, health, educational ability, and the best interests of the child. This view is not intended to underestimate the crucial position of the mother in parenting, but to affirm that the main principle in *hadhanah* It is not the gender of the parents, but the quality of protection for the child.

Based on these various literatures, an important gap *of research* can be seen. Although various studies have addressed *hadhanah* disputes from the perspectives of Islamic law, child protection, and gender justice, most studies still focus on the normative aspects of who is entitled to post-divorce custody of children. There has been no research that systematically evaluates the quality of judicial reasoning of judges using the paradigm of legal philosophy. Therefore, this study seeks to fill this gap by developing a judicial reasoning evaluation model for judges based on the principle *of the best interest of the child*.

Hadhanah disputes are in essence not only a matter of the application of Islamic family law norms, but also a matter of legal philosophy. In judicial practice, judges do not always face cases that can be resolved only through the textual application of Article 105 of the Compilation of Islamic Law. Various facts of the trial, such as parental conversion, remarriage, violence, neglect, and the psychological condition of the child, often place the

judge in a situation when legal certainty must be met with demands for justice and utility. Therefore, the settlement of *badhanah* disputes is basically a process of judicial reasoning to determine the form of protection that is most in accordance with *the principle of the best interest of the child*. In this context, legal philosophy is not positioned as a purely conceptual foundation, but as an analytical paradigm to evaluate how judges balance the values of legal certainty, justice, and usefulness in their legal considerations.

Based on these arguments, this study does not focus on assessing the right or wrong of the judge's decision, but has the purpose of evaluating the quality of judicial reasoning of judges in applying the principle *of the best interest of the child*. Through the perspective of legal philosophy, this study analyzes whether the judge's consideration has reflected the balance between legal certainty, justice, and usefulness so as to be able to realize protection that is oriented towards the best interests of the child. By making children the main focus of justice, Islamic family law can develop more responsively, humanely, and in line with the law's core goal, which is to realize the benefits, justice, and protection of the most vulnerable.

As for the novelty (*novelty*) This research lies in the development of a Principles-Based Judge Judicial Reasoning Evaluation Model *The Best Interest of the hild* as an instrument of evaluation of the quality of judges' considerations in *badhanah* cases. In contrast to previous research that generally focused on normative aspects of *badhanah* rights, child protection, or gender justice, this study integrates the dimensions of ontology, epistemology, axiology, and juridical dimensions into a systematic evaluative framework. The model is used to assess the extent to which a judge's judicial reasoning truly reflects the principles *the best interest of the child* substantively through five substantive justice parameters resulting from this research. Thus, this study not only explains the application of the principle of the best interests of children, but also offers an evaluative instrument that can be used to assess the quality of *badhanah* decisions in the Religious Courts environment.

RESEARCH METHODS

This research is a normative legal research using a statute *approach*, a conceptual *approach*, a *case approach*, and a legal philosophy approach as an analysis paradigm. The source of research data consists of primary legal materials in the form of laws and regulations, court decisions related to *badhanah* disputes, especially Supreme Court Decision Number 563 K/AG/2025 along with decisions at the previous level, as well as secondary legal materials in the form of books, scientific articles, and literature that are relevant to *the principle of the best*

interest of the child and legal philosophy. The election of the Supreme Court Decision Number 563 K/AG/2025 was carried out purposively because the decision was a cassation level decision that explicitly brought together the norms of *hadhanah* in the Compilation of Islamic Law with the principle *of the best interest of the child* in child protection law. This decision was chosen because it contains considerations regarding the religious conversion of parents, the interests of children's religion, and the quality of parenting which are important issues in the development of contemporary Islamic family law. Therefore, the decision was chosen because it has relevant characteristics to test the application of the legal philosophy paradigm in evaluating judges' judicial reasoning.

Data analysis is carried out qualitatively through legal reasoning analysis which focuses on evaluating the judge's legal considerations (*ratio decidendi*) in each decision. The analysis is carried out through the stages of identifying legal facts, legal norms used, interpretation methods, and judges' arguments in connecting facts with norms to produce a verdict. Furthermore, the quality of judicial reasoning is evaluated using the paradigm of legal philosophy through ontological, epistemological, axiological, and juridical dimensions to assess the extent to which judges' considerations reflect the balance between legal certainty, justice, and usefulness in applying the principle *of the best interest of the child*. To improve the validity of the analysis, the results of the evaluation were compared with Islamic family law doctrines, child protection theory, child-centered justice concepts, and relevant legal philosophy literature.

RESULTS AND DISCUSSION

The Concept of Child Custody (*Hadhanah*) in Islamic Law

Etymologically, the word *hadhanah* comes from Arabic meaning "on the side" or "under the armpits." This term describes the act of holding a child in your lap, like a nursing mother while hugging and protecting her child (Ghazali, 2010). This linguistic meaning shows the relationship of closeness, protection, and affection between caregivers and children being cared for. Terminologically, *hadhanah* refers to the maintenance of children who are not able to take care of themselves, both because of their young age and because of their physical, intellectual, and intellectual inability to be independent. In Islamic law, *hadhanah* has a solid philosophical foundation because children are considered as entrusted by God who must be protected by their parents. Therefore, the principle of welfare cannot be separated from childcare in Islam (Rohman & Putri, 2022). In this way, *hadhanah* It not

only covers aspects of providing food and shelter, but also includes education, moral formation, fulfilling psychological needs, and protection from various things that can harm children.

In fikih, there is a term *Kafalah* which has a similar meaning to *badhanah*, namely post-divorce child care. Studies on *badhanah* It is very extensive in the jurisprudence literature, due to the high divorce rate that leaves children in the parenting phase, so that there is a need to determine the party who is most entitled to child custody (Syahrin & Munir, 2025). Referring to classical fikih, mothers are generally given priority in raising children who are still young or not yet *mumayyiz*. This is based on the assumption that mothers are socially and emotionally considered more intimate with children, especially in the early stages of development (Aulia et al., 2021). However, this priority is not a permanent and irreversible right. In Islamic law, the right to guardianship is always related to the capacity of the guardian to ensure the safety, health, education, and morals of the child. If the mother is not able to carry out parenting properly, then the right to *badhanah* may be considered to be transferred to another more competent party. Criteria for a caregiver in *badhanah* is also a crucial aspect of Islamic law. A caregiver must have physical, mental, ethical, and social skills to ensure the child's needs are served. Caregivers not only need to have a blood bond with the child, but they must also be able to create a safe, healthy, and supportive environment for the child's growth (Triyanita & Prananingtyas, 2023). In this context, Islamic law emphasizes the quality of parenting as an aspect that is considered. Therefore, even though mothers have priorities in raising children who have not yet *mumayyiz*, the priority can be canceled if there are strong reasons, such as the caregiver committing neglect, violence, or not being able to guarantee the physical and mental safety of the child.

Meanwhile, a study of Islamic legal literature, both classical and contemporary, shows that the concept of *badhanah* Basically, it is interpreted as a responsibility in caring for and caring for children. This responsibility focuses on meeting the child's basic needs, including physical care, early education, and emotional support and guidance, especially after divorce (Rohmah et al., 2023). In the study of classical literature, the concept of *badhanah* tend to be broader and limited which is only understood as a parenting obligation that prioritizes the basic needs of children. Related to this, the author argues that the obligation of caregivers in ensuring the survival and welfare of children who are not yet able to be independent has not been clearly expressed.

Therefore, the concept of *hadhanah* in Islamic law should not be understood in a limited way as a competition for custody between father and mother. *Hadhanah* is a concept of child protection that includes the values of compassion, responsibility, benefit, and justice. In the context of this study, *hadhanah* must be understood in line with the principle of *the best interest of the child*, which is that every decision related to childcare must make the best interest of the child the main consideration. This approach is crucial so that the practice of religious justice is not trapped in formalistic application, but capable of decisions that ensure substantive justice for children.

The Principle of *The Best Interest of The Child* In Matters Of *Hadhanah*

Principle *the best interest of the child* is a principle that emphasizes the interests of children, which is the main basis in every policy, action, decision, or process of resolving cases related to children (S, 2017). This principle places children not only as objects of legal protection, but also as subjects of rights that have dignity, developmental needs, voices, and interests that must be seriously considered. Therefore, every decision regarding custody must prioritize meeting the best needs for children, not just the interests or demands of parents (Cholifah et al., 2025).

In Indonesian national law, the principle of *the best interest of the child* gain legitimacy through various laws and regulations. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, the state emphasizes that child protection includes all actions to ensure and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, as well as protect from all forms of violence, discrimination, and abuse (Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, 2014).

Normatively, this principle is based on the Convention on the Rights of the Child. UNICEF revealed that the Convention on the Rights of the Child includes a state's obligation for every child to grow up healthy, to be educated, to be protected, to be heard, and to be treated fairly; Article 3 of the KHA (Convention on the Rights of the Child) affirms that every action and decision relating to children must consider the best interests of the child. (Convention on the Rights of the Child, 2018) Therefore, this principle is not only a moral principle, but also a principle of international law that binds the countries involved, including Indonesia, to make the best interests of the child the main consideration in any

affair related to children. So that the regulations and policies that are prepared are always based on the principle of *the best interest of the child*.

In the laws and regulations in Indonesia, it is not specifically explained about the criteria that are in the best interests of children. However, when referring to the rights that have been described earlier, it can be concluded that these rights actually play a role as a standard in determining the best interests of children. With the fulfillment of these rights, it can be concluded that indirectly the entirety of the best interests for the child has been realized.

After reviewing some of the literature on the principle *the best interest of the child*, so this should be the basis for determining custody. This condition arises because the tension between the two parents after divorce often continues in the form of custody disputes. Instead of offering a solution, the conflict actually adds psychological pressure to the child. Children face difficulties in managing emotions such as anger, confusion, or feeling unsure of their feelings, so they tend to isolate themselves and have difficulty socializing. Inconsistencies in parenting methods and restrictions on communication with either parent can also exacerbate this situation, which further affects the emotional and psychological instability of the child (Saleh et al., 2025).

Table 1: Indicators of the Application *of the Best Interest of the Child* Principle in *Hadhanah* Disputes

Dimension of Importance Best Kids	Assessment Indicators
Physical Protection	Safety, Health, and the fulfillment of children's basic needs
Psychological Protection	Emotional stability, comfort, and mental development of the child
Affective Relationships	The child's emotional closeness to the parent or caregiver
Education	Ensuring the sustainability of education and the development of children's potential
Social Environment	Living environment conditions that support children's growth and development
Moral Protection and Religious	Construction of children's morals, morals, and religious values
Children's Participation	Consideration of the child's opinions and desires according to his maturity

Based on these indicators, the application of *the principle of the best interest of the child* in *badhanah* cases cannot be measured only by the ability of one parent to meet material needs or provide religious education to children. This principle requires a comprehensive assessment of the physical, psychological, social, educational, and emotional aspects of children and parents. Therefore, these indicators are used as a conceptual basis in evaluating the quality of judges' considerations in the *badhanah* case that is the object of this study.

Paradigm of Legal Philosophy and Substantive Justice in *Hadhanah* Disputes

Disputes over *badhanah* or child custody rights after divorce are not only understood as a matter of who has the “right” to control the child, but as a matter of justice related to moral, humanitarian, child protection, and state responsibility through the judicial system. In the perspective of legal philosophy, law is not solely considered as a set of written norms that must be applied automatically, but also as an ethical tool for realizing justice in daily life. Therefore, in *badhanah* disputes, it is not enough for the judge to read the normative provisions in the Compilation of Islamic Law, but also to assess whether the application of these norms really brings benefits to the child.

From the perspective of legal philosophy, disputes *badhanah* shows the classic tension between legal certainty and substantive justice. Legal certainty requires judges to adhere to written norms, while substantive justice requires judges to consider the true impact of their verdict on children's lives. In this context, justice is not only understood as the alignment of the verdict with the content of the article, but also as an effort to protect the rights, dignity, safety, and future of children. This view is in line with the progressive legal concept that places law as a tool to liberate individuals from injustice, rather than as a rigid text that limits the space for moral consideration (Mera et al., 2024).

In this context, regarding dispute resolution *badhanah* According to the author, it needs to be studied through the three dimensions of legal philosophy (Halim et al., 2022). Paradigm analysis of legal philosophy can be carried out through three main dimensions, namely ontology, epistemology, and axiology. Ontologically, *badhanah* is understood as the responsibility of child care that is oriented towards the protection of the child's dignity and best interests. Epistemologically, judges are required to find substantive truth through the examination of legal, social, and psychological facts related to the child's condition. Meanwhile, axiologically, the main purpose of the *badhanah* decision is to realize the benefit and best interests of the child as a form of substantive justice. These three dimensions are

the framework of analysis in evaluating the quality of judicial reasoning of judges in *hadhanah* cases.

The framework needs to be strengthened with legal philosophical theories that can be used operationally to test the judge's reasoning process. Ronald Dworkin's thinking on legal principles shows that judicial reasoning is not just the application of rules, but involves principles that provide the basis for justification for decisions (Nicos, 2016). In the case of *Hadhanah, the best interest of the child* it can be seen as a principle that requires judges to explain why a parenting option is considered more capable of protecting the rights and interests of the child than other alternatives. Thus, the analysis not only questions whether the judge applied the relevant norms, but also whether the principles used have been adequately justified in the context of the facts of the case.

This problem becomes even more complicated when various interests must be considered together. According to Robert Alexy, legal principles are demands that must be realized as much as possible according to concrete circumstances and can clash with other principles or interests. This framework is relevant for *hadhanah* cases because the protection of children's religion can compete with the interests of psychological, emotional relationships, education, health, social, and parenting stability. Therefore, when judges place greater weight on religious protection, the quality of the judge's reasoning needs to be tested through arguments explaining why those interests take precedence over the interests of other children (Alexy, 2003).

In the context of Indonesian law, Satjipto Rahardjo's progressive legal idea expands the test by making humans the center of orientation for the application of law (Rahardjo, 2011). This point of view is used to assess whether the application of *hadhanah* norms produces substantive justice for children as legal subjects, or rather stops at formal conformity with certain categories of law. Progressive law does not intend to eliminate the norms used by judges, but rather to test whether they are applied while still paying attention to the needs and concrete conditions of human beings who are subject to legal protection.

The three perspectives provide different but complementary functions in this study. Dworkin is used to assess the quality of judges' justification for the principles used; Alexy is used to test the rationality of weighing between various potentially conflicting interests; While the progressive legal perspective is used to assess the extent to which reasoning is oriented towards the protection of children substantively. Thus, the philosophy of law in this

study is not just a theoretical foundation, but a critical paradigm for reading, testing, and evaluating judicial reasoning in *badhanah* cases.

Table 2: Philosophical-Juridical Parameters as a Framework for Judicial Reasoning Analysis of Judges

Philosophy Dimension Law	Focus Analyst	Assessment Indicators
Ontology	The Truth of <i>Hadhanah</i>	Children are positioned as legal subjects who must be protected, not objects of parental disputes.
Epistemology	Basis of Proof and Judge's Considerations	Considerations are based on the child's psychological, social, educational, environmental, and emotional relationships.
Axiology	Purpose of the decision	The verdict is directed to realize the benefits, protection of children, and substantive justice.
Juridical Dimension	Conformity with legal norms	The judge's consideration is in line with the KHI, the Child Protection Law, the Convention on the Rights of the Child, and jurisprudence.

According to the author, these parameters can be used as an analytical instrument to evaluate whether the judge's consideration in the *badhanah* case really reflects the principle of *the best interest of the child* or is still oriented towards formal legalism. Thus, legal philosophy not only functions as a theoretical foundation, but also as an evaluative tool for the quality of *judicial reasoning* of judges in *badhanah* cases.

Therefore, if these philosophical-juridical parameters are used, it can be seen that the settlement of *badhanah* disputes cannot be based solely on the formal legality of Article 105 of the KHI. The norm that children who have not been *mumayyiz* are in the care of their mothers does serve as a starting guideline (*prima facie rule*), but its application must still be tested based on concrete facts related to the best interests of the child. Therefore, the *badhanah* analysis must move from a legalistic approach to a more substantive and child protection-oriented approach. Because in Gustav Radbruch's view, law not only pursues certainty, but also justice and utility. Subject *badhanah* shows that legal certainty must be placed proportionately with the value of justice and utility, because a formal definite verdict is not necessarily fair to the child (Anisyaniawati et al., 2025).

Thus, legal philosophy provides the basis that judges should not simply be "mouthpieces of the law", but must play the role of interpreters of values. In *badhanah*

disputes, in the Religious Court, a judge is required to harmonize the norms of the KHI, the Marriage Law, the Child Protection Law, jurisprudence, and the principle of *the best interests of the child*. As Indonesia has ratified the *Convention on the Rights of the Children* through Presidential Decree Number 36 of 1990, so the principle of the best interests of children has a strong weight in the interpretation of national law.

In this context, the principle of the best interests of children can be a bridge between Islamic law, positive law, and legal philosophy. The provisions of the KHI establish a fundamental normative framework, while the Child Protection Act and the Convention on the Rights of the Child provide guidance in the protection of children’s rights. Legal philosophy acts as a reflective tool so that judges do not get caught up in formal legalism. Therefore, Article 105 of the KHI should be used as a preliminary legal presumption, not as an absolute provision that prevents proof to the contrary. This means that mothers are normatively prioritized to take care of children who have not yet *been mumayyiz*, but this priority can change if it is proven that the best interests of the child are more guaranteed with the father or other parties who meet the criteria.

Thus, based on the paradigm of legal philosophy, it provides a conceptual basis for judges to move from procedural justice to substantive justice. Procedural fairness is crucial because it ensures that cases are examined in accordance with applicable law, all parties are heard, and decisions are taken by the authorities with authority. However, in the case *badhanah*, procedural justice is inadequate if the decision taken is detrimental to the child. Substantive justice requires that the verdict truly answer the specific needs of the child. (Nasution & Nasution, 2021) In this context, the measure of justice is not only on “who wins”, but also on whether the child gets safe, stable, and dignified upbringing.

Based on this analysis, *badhanah* disputes need to be resolved using several parameters.

Table 3: Substantive Justice Parameters in Judicial Reasoning Evaluation
The Hadith Dispute

Parameter	Evaluated Focus	Assessment Indicators
Moral and Psychological Capacity of Parents	Eligibility of parents to carry out parenting functions safely and responsibly	Parenting skills, psychological conditions, role models, the ability to meet emotional needs, and the ability to provide a safe environment for children
Parenting Environment Stability	Environmental conditions that support the sustainability of	Housing stability, social and economic conditions, sustainability of parenting,

	children's growth and development	security, and an environment that supports child development
Children's Relationship with Both Parents	Maintenance of the child's relationship with father and mother after the determination of <i>badhanah</i>	Emotional closeness, communication, access to both parents, and efforts to maintain the relationship between children and parents who do not have custody
Education, Health, Social Development of Children	Willingness to cooperate in post-divorce parenting	Sustainability of education, health needs, social development, psychological needs, and opportunities for children to develop according to their developmental stages
Religious Protection	Protection of children's religion as part of the best interests of children in the perspective of Islamic family law	The sustainability of religious education, the religious environment, the formation of religious values, and the proportionality of religious protection with the interests of other children

The five parameters are used as substantive dimensions in the evaluation model, while the stages of fact identification, norm interpretation, identification of children's interests, weighing, and justification are mechanisms to test how each parameter is considered in the judge's judicial reasoning. With these distinctions, the parameters show what is assessed, while the evaluation stage shows how the assessment is carried out. Therefore, these five parameters show that substantive justice in *badhanah* cases is not only measured by who is normatively entitled to custody, but also by the ability of the decision to ensure optimal child growth and development. Thus, *the principle of the best interest of the child* serves as an evaluative standard that connects Islamic law, national law, and the protection of children's rights in judicial practice.

Ultimately, the philosophy of law in disputes *badhanah* teaches that the law should be on the side of life, not just script-oriented. Children who are the weakest party must be used as the focus of consideration. A fair verdict is not just about winning over the mother or father, but a verdict that ensures the child develops in an ideal environment. Thus, substantive justice in the case *badhanah* It can be interpreted as justice that combines the certainty of norms, social benefits, child protection, and family benefits.(Haryono, 2019) In this context, judges play the role not only of being the interpreter of the law, but also of the protector of human values that ensure that family law truly provides protection for children

after divorce. This refers to the provisions of Article 41 of the Marriage Law which states that both the mother or father of the parents of the divorced child, is obliged to maintain and educate their children solely for the benefit of the child (Damayanti et al., 2024).

Therefore, the principle *the best interest of the child* in the case *badhanah* serves as a normative and evaluative benchmark in national law. This principle ensures that the resolution of child custody disputes is not only based on formal norms, but also on substantive considerations that focus on the protection of children's rights and interests as a whole. (Naufan et al., 2026) So, children are not only the object of parental disputes, but also independent legal subjects who have rights to themselves. When the judge refuses to establish a *badhanah* just because there is no application, the procedural law actually fails to carry out the function of protecting the more vulnerable party, namely children. In the perspective of legal philosophy, this approach shows the dominance of legal positivism, which prioritizes procedural certainty over justice and utility.

Judicial Reasoning *Analysis* in Decision No. 563 K/AG.2025

In post-divorce child custody disputes, the application of the principle *best interest of the child* It needs to be seen through the reasoning process used by judges in connecting facts, norms, and values that are relevant to the child's condition. Therefore, the analysis of Decision No. 563 K/AG/2025 is not directed to determine the right or wrong of the verdict, but rather to reconstruct how the judge builds legal reasons, what factors are prioritized, and whether these reasons have an adequate juridical and philosophical basis when compared to other children's concerns. Although the Marriage Law states that both parents remain responsible for the upbringing of the child after divorce, the determination of custody cannot be based solely on the financial ability of the parents. Economic aspects must certainly be considered, but they are not the only determining element. Parties who are more materially established do not automatically get custody if the social, moral, or psychological environment offered does not support the development of the child. In this case, the Judge must consider comprehensively starting from physical welfare, stability of the parenting environment, emotional closeness with parents, to the moral and economic capabilities of the parties to the dispute. (Yuliartini, 2020)

To see how this principle of *best interest of the child* is fully applied in the Religious Court, the author refers to the Case Study of the Decision of the Mempawah High Court Number 354/Pdt.G/2024/PA.Mpw., dated March 6, 2025 and the Decision of the

Pontianak Religious High Court Number 9/Pdt.G/2025/PTA.Ptk., dated April 30, 2025., which was strengthened by the rejection of the Cassation by the Cassation Panel in accordance with the Decision of the Supreme Court of the Republic of Indonesia Number 563 K/AG/2025., dated October 15, 2025. The child custody case in this decision can be understood from the marriage bond between the Plaintiff and the Defendant which has lasted for quite a long time which ultimately led to divorce, and gave birth to 2 (two) minors. Based on the sitting of the case, the father (plaintiff) claimed that the mother (defendant) had apostatized (left Islam), and the defendant had remarried to a non-Muslim man less than a month after the divorce. This was the beginning of the plaintiff starting to feel anxious that the faith of his son who was born as a Muslim would be affected. The facts revealed at the trial indicated that the defendant had indeed returned to her original religion (Christianity), remarried in the church with a new husband who was also a Christian, and at the time of the trial, the defendant was pregnant with her new husband.

In this case, the Mempawah Religious Court granted the father's lawsuit to obtain custody of his two minor children. This decision was also upheld by the Pontianak Religious High Court and the Supreme Court of the Republic of Indonesia. The facts revealed at the trial were then used as a basis by the Panel of Judges to assess the case more comprehensively. Although Article 105 of the Compilation of Islamic Law normatively states that children who have not been *mumayyiz* are in the care of the mother, in this case the Panel of Judges did not solely apply a normative approach. The judge also assessed the factual condition of the children, including emotional relationships, children's lifestyle, environment, and comfort in the upbringing they experienced during their lives.

These facts are the basis for reconstructing the judge's judicial reasoning, as well as a starting point to test whether the factors prioritized by the judge have a sufficient relationship with the concrete interests of the child or are more based on normative assumptions about parenting capacity.

Based on all these considerations, the panel of judges at both the judicial level (*judex factie*) and also at the last level of the Supreme Court (*judex juris*) explicitly made the condition of the mother and the remarriage of the mother to a *non-Muslim* man as the main reasons for the loss of the right to *hadhanah*. In this consideration, the judge referred to the Hadith "*Anti abaqqu bihi ma lam tankibi*" ("You have more right to it as long as you are not married again") and the view of the jurists who stated that the busyness of mothers with their new husbands is feared to reduce attention to the children. In addition, the judge also emphasized that the

maintenance of children's religion (*hifẓ al-din*) is very important and in accordance with article 42 paragraph (2) of the Child Protection Law, before a child can determine his own religion, the child's religion follows the religion of his parents. This is because when parents marry Muslims, and the upbringing of a mother who has changed religion is considered to be dangerous to the child's beliefs.

From this construction, it can be seen that the judge's judicial reasoning is built through the relationship between the mother's religious status, remarriage, concern for the sustainability of children's religious education, and the concept of *hifẓ al-din*. The reasoning has an argumentative basis that can be defended because the protection of religion is one of the interests recognized in Islamic family law. Thus, the judge's consideration cannot necessarily be seen as a form of neglect of the principle of *the best interest of the child*. On the contrary, religious protection can be understood as one of the ways in which judges interpret the best interests of children in the context of Islamic family law.

However, the reasoning still needs to be tested in terms of the relationship between the facts considered and the concrete interests of the child. Maternal conversion and remarriage with non-Muslim men are indeed relevant to be considered in the perspective of Islamic family law, particularly with regard to the protection of children's religion. However, the relevance of a fact does not in itself prove that custody will better guarantee the interests of the child if it is given to the father. This is where the opposite argument against the judge's reasoning arises. The religious status of the caregiver does not automatically indicate the existence of psychological, social, educational, health, or emotional harm to the child. Therefore, the judge's reasoning power depends on the extent to which the facts are related to the child's concrete condition and compared to the quality of care that can be provided by each parent. Thus, the main problem does not lie in whether or not religious protection is taken into consideration, but in whether the religious protection has sufficient argumentative weight to outweigh the interests of other children.

In this study, the verdict was not analyzed to assess the right or wrong of the verdict, but to test the quality of the judicial reasoning that produced the verdict. The test is carried out by paying attention to arguments that support and potentially weaken the judge's reasoning, then assess them through a paradigm of legal philosophy that includes ontological, epistemology, axiology, and juridical ones.

Table 4: Evaluation of Judicial Reasoning in Decision Number 563 K/AG/2025 Based on Philosophical-Juridical Parameters

Dimensions	Reasoning Hakim	Supporting Arguments	Opposing Arguments
Ontology	Children are positioned as subjects who need to be protected, especially through religious protection	Religious protection is part of the interests of the child in Islamic family law	Children as legal subjects have multidimensional interests that are not limited to religion
Epistemology	The judge used the facts of the mother's conversion, remarriage and parenting conditions	This fact is relevant to concerns about children's religious education	This fact has not by itself proven the existence of a concrete impact on the psychological, social and emotional condition of children
Axiology	The verdict is directed at the benefit and protection of the child's religion	<i>Hifẓ al-din</i> is one of the important values in Islamic law	Children's benefits also include psychological, educational, health, social and emotional relationships
Juridical	The judge uses KHI, hadith, the Child Protection Law and jurisprudence	Reasoning has a clear normative basis	There has not been an explicit mechanism for weighing all children's interests.

Based on this evaluation, the judicial reasoning in Decision Number 563 K/AG/2025 shows that there are arguments that can be maintained normatively and philosophically. The judge did not solely use Article 105 of the KHI mechanically, but linked the condition of the mother, remarriage, religious protection, and the concept of *hifẓ al-din* to the interests of the child. This approach shows that there is an effort to understand *hadhanah* as a matter of child protection, not solely as a determination of who is formally more entitled to custody. However, the strength of the reasoning needs to be further tested on the extent to which the judge considers the interests of the child outside the religious aspect.

On the other hand, there are reasons to question the adequacy of the reasoning. Religious protection is a legitimate interest in Islamic family law, but making it a dominant factor requires justification that demonstrates a concrete relationship between the religious status of the mother and the interests of the child. If the mother's religious conversion is seen as a factor that automatically indicates the unworthiness of parenting, then the reasoning

risks shifting from an assessment of the child's condition to an assessment of the status of the parent. On the other hand, if there is evidence that these conditions actually affect religious education, security, psychological stability, or child development, then the judge's consideration is based on a stronger basis. Thus, there are two possible arguments that need to be distinguished: first, religious protection can be a legitimate reason if supported by concrete facts about the needs and risks faced by children; Second, this reason becomes inadequate if it only relies on the assumption that the religious differences of the caregiver are in itself contrary to the best interests of the child. From the perspective of legal philosophy, the question is not whether the judge can consider religion, but whether the weight of the argument has been weighed rationally and proportionately against the interests of other children.

Application of principles *the best interest of the child* It cannot be done automatically based on certain normative assumptions, but must be based on facts revealed at trial. (Kharlie, 2013) In the perspective of child-centered justice, the best interests of children must be assessed objectively through an examination of the psychological, social, educational, and emotional needs of children as legal subjects. Therefore, the ideal legal consideration is one that is able to harmonize the principles *the best interest of the child* With facts proven in court, the verdict not only provides legal certainty, but also guarantees optimal protection for the child's future.

Thus, the assessment of the quality of the judge's reasoning cannot be carried out only by comparing the verdict with the ideal indicator *of the best interest of the child*. The test must be directed at the process of argumentation: whether the facts chosen by the judge are relevant, whether the facts are sufficiently proven, whether the norms used are appropriate, whether there are alternatives to the interests that have been considered, and whether the reasons used are strong enough to explain why one parenting option is more protective of the child than the other. This approach allows the research to test the judge's reasoning more objectively without first assuming that the verdict must be in accordance with the researcher's construction of the best interests of the child.

The in synchronization of this arrangement has the potential to give rise to variations in interpretation in the application of the judiciary. In conclusion, the substantive review of the application of *the best interest of the child* principle emphasizes the importance of judicial *reasoning* in deciding custody disputes. The judge is required to formulate indicators of child welfare taken directly from the facts of the trial. Only with a rational, objective, and oriented

approach to optimal protection of the child can court decisions truly reflect the values of substantive justice that ensure the sustainability of the child's future.

Based on this test, the main problem in the application of *the principle of the best interest of the child* lies not solely in the existence or absence of mention of the principle in the decision, but in the quality of the reasons used by the judge to determine why the best interests of the child must be prioritized over other interests. Thus, the quality of *judicial reasoning* can be judged from the judge's ability to establish a rational relationship between facts, norms, values, and legal conclusions, as well as show the reasons why different alternatives were not chosen.

Implications of the Implementation of *The Best Interest of the Child* on Substantive Justice

The philosophical-juridical parameters consisting of ontology, epistemology, axiology, and juridical dimensions in this study not only function as a conceptual framework, but are translated into instruments to evaluate the quality of judicial reasoning of judges. Based on the results of the analysis of the verdict, the Judge's Judicial Reasoning Evaluation Model Based on *the Best Interest of the Child Principle* is built through the relationship between the child's concrete facts, legal norms, judge's interpretation, identification of children's interests, weighing interests, and justification of the verdict. In this construction, concrete facts and legal norms become the initial basis (*input*), judicial reasoning becomes the processing mechanism, the principle of *the best interest of the child* becomes an evaluative parameter, while substantive justice becomes an output that is assessed based on the quality of protection of the interests of the child.

Analysis of the Decision of the Mempawah Court of Appeals Number 354/Pdt.G/2024/PA.Mpw., the Decision of the Pontianak PTA Number 9/Pdt.G/2025/PTA.Ptk., and the Decision of the Supreme Court Number 563 K/AG/2025 shows that *the principle of the best interest of the child* has been used in the legal consideration of *hadhanah* disputes, but the level of its application needs to be tested based on the quality of judicial reasoning built by the judge. The test does not stop at whether the principle is mentioned in the consideration, but rather is directed at how the judge identifies the facts of the child, chooses and interprets the norms, determines the interests of the relevant child, resolves conflicts of interest, and gives reasons for parenting choices. The results of the analysis show that there is a tendency to dominate the aspect of religious

protection (*hifẓ al-din*) in the reasoning of judges, while the psychological aspects, education, health, stability of the parenting environment, and the emotional relationship of the child with both parents have not always received equal argumentative weight.

From the perspective of substantive justice, the best interests of the child cannot be reduced to just one specific dimension. Religious protection is an important part of childcare from the perspective of Islamic family law, but its application needs to be tested alongside the psychological interests, education, health, stability of the parenting environment, and the emotional relationship of the child with both parents. Therefore, in the evaluation model formulated by this research, each of these interests is treated as a dimension that must be traced from the facts of the trial and the judge's consideration. The evaluative question is not simply whether the interest is stated, but whether the interest is supported by facts, is considered in the reasoning process, and has a clear relationship to the parenting choices determined by the judge.

The evaluation model works through five stages. First, identify the child's concrete facts, by assessing whether the child's condition has been adequately explored based on the facts of the trial. Second, identification and interpretation of norms, by assessing the norms used by judges and the way in which these norms are related to facts. Third, identify the interests of children, by mapping religious, psychological, emotional, educational, health, social, and parenting stability interests that are relevant to the case. Fourth, weighing and justification, by examining how judges determine priorities when there are competing interests and whether these reasons explain the relationship between facts, norms, and parenting choices. Fifth, output testing, which assesses whether the resulting parenting choices really provide substantive and multidimensional protection for the interests of the child.

Based on the results of the analysis of the Decision of the Mempawah PA Number 354/Pdt.G/2024/PA.Mpw., the Decision of PTA Pontianak Number 9/Pdt.G/2025/PTA.Ptk., and the Decision of the Supreme Court Number 563 K/AG/2025, this study found that the application of the principle *of the best interest of the child* in *badhanah disputes* still faces problems in the form of the absence of clear, measurable parameters, and standardized in assessing the best interests of children. This condition has the potential to cause disparity in verdicts because the judge's assessment is greatly influenced by normative approaches, interpretation preferences, and facts that are considered dominant in the trial.

As a theoretical contribution as well as the main findings of the research, the author offers the Judicial Reasoning Evaluation Model of Judges Based on the Principle of *The Best Interest of the Child* which consists of five parameters of substantive justice in *hadhanah* disputes. (1) Moral and psychological capacity of parents which includes the ability to provide parenting, example, protection, and an environment that supports children's growth and development. (2) Stability of the parenting environment which includes social, economic, and sustainable conditions of the child's life after the verdict is rendered. (3) Protection of children's relationships with both parents as a form of fulfillment of children's rights to continue to receive affection, attention, and healthy emotional relationships. (4) Fulfilling the needs of children's education, health, and social development as part of the protection of children's future and quality of life. (5) Religious protection that is proportionately placed as one of the elements of the best interests of the child without ignoring other dimensions of protection. Therefore, the five parameters are the substantive dimensions that are the object of evaluation, while the five stages referred to earlier are mechanisms to test how these parameters are considered in the judge's judicial reasoning.

The evaluation model formulated in this study is not placed as a standard to state that the judge's decision is correct or wrong. These five parameters are the result of a synthesis of the testing process on the judge's reasoning, especially after comparing the arguments that support and oppose the judge's choice. Thus, these parameters serve as an evaluative instrument to see whether the judge's reasoning process has considered the interests of the child proportionately, not as a single measure that automatically determines the outcome of the case.

CONCLUSION

Based on the analysis of the Decision of the Mempawah PA Number 354/Pdt.G/2024/PA.Mpw., the Decision of PTA Pontianak Number 9/Pdt.G/2025/PTA.Ptk., and the Decision of the Supreme Court Number 563 K/AG/2025, this study found that *the judge's judicial reasoning* has a normative and philosophical basis in placing religious protection as one of the considerations in determining the right to *hadhanah*. These considerations can be justified from the perspective of Islamic family law because religious protection is part of the welfare of the child. However, the results of the test showed that the strength of the reasoning depended on the judge's ability to relate religious status and parenting conditions to the child's concrete risks or needs. If the

relationship is not explained through adequate facts, then reasoning has the potential to become overly dependent on normative assumptions about parental status.

Thus, the main problem in the application of the principle *of the best interest of the child* does not lie in whether or not the judge can prioritize religious protection, but in how these interests are weighed rationally and proportionately with the interests of the psychological, educational, health, social, stability of parenting, and emotional relationship of the child with his parents. The perspective of legal philosophy allows the process to be tested through ontological, epistemological, axiological, and juridical dimensions so that the evaluation does not stop at the conformity of the decision results with the principle *of the best interest of the child*, but also assesses the quality of the arguments that lead the judge to the conclusion.

The findings of the study were further formulated in the Judge's *Judicial Reasoning* Evaluation Model Based on the Principle *of The Best Interest of the Child* which consists of five parameters: moral and psychological capacity of parents, stability of the parenting environment, protection of children's relationship with both parents, fulfillment of educational needs, children's health and social development, and proportionally placed religious protection. The model is not intended to replace the independence of judges or determine the outcome of cases automatically, but rather as an evaluative framework to test the quality of legal arguments in *hadhanah* disputes.

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